**IN THE CUSTOMS, EXCISE & SERVICE TAX**
**APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing/Decision: 7.6.2017**

## Appeal No. ST/269/2012-SM

(Arising out of Order-in-Appeal No. 423/ST/D-II/11 dated 14.11.2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), New Delhi)

Ricardo India Pvt. Ltd. Appellant

Vs.

CST, Delhi Respondent

**Appearance**

Shri Anant Bhatia, C.A. - for the appellant

Shri K. Poddar, D.R. - for the respondent
Shri G.R. Singh, D.R.

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

## Final Order No. 55128/2017

**Per Ashok K. Arya :**

M/s Ricardo India Pvt. Ltd. is in appeal against order-in-appeal No.423/2011 dated 24.11.2011 whereunder rejection of refund claims of the appellant has been sustained. The period covered is April, 2008 to March, 2009.

2. On behalf of the appellant, ld. CA Shri Anant Bhatia appeared and Revenue was represented by ld. DRs, Shri K. Poddar and Shri G.R. Singh.

3. After having carefully considered the facts of the case and submissions of both the sides, it appears that this appeal has wrongly been filed before this Tribunal. In this regard, it is right to reproduce relevant provisions given in Section 86 of the Finance Act, 1994, which are as under :

> **"Section 86 - Appeals to Appellate Tribunal.**
>
> **86.** (1) Save as otherwise provided herein, an assessee aggrieved by an order passed by a Principal Commissioner of Central Excise or Commissioner of Central Excise under section 73 or section 83A or, or an order passed by a Commissioner of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order within three months of the date of receipt of the order.
>
> **Provided** that where an order, relating to a service which is exported, has been passed under section 85 and the matter relates to grant of rebate of service tax on input services, or rebate of duty paid on inputs, used in providing such service, such order shall be dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944 (1 of 1944):
>
> **Provided** further that all appeals filed before the Appellate Tribunal in respect of matters covered under the first proviso, after the coming into force of the Finance Act, 2012 (23 of 2012), and pending before it up to the date on which the Finance Bill, 2015 receives the assent of the President, shall be transferred and dealt with in accordance with the provisions of section 35EE of the Central Excise Act, 1944…………

3.1 Thus, as per provisions of Section 86 (1) of the Finance Act, 1944 given above, when the matter pertains to grant of rebate of duty, such matter shall be dealt with in accordance with the provisions of Section 35EE of Central Excise Act, 1944. Consequently, in this matter no further action is warranted by the CESTAT. However the Registry is directed that as per Further Proviso to Section 86(1) of the Finance Act, 1994, this matter be transferred to Joint Secretary (Revision Authority) of Central Government which deals with such cases under Section 35EE of Central Excise Act, 1944.

4. In the result, this matter stands disposed off in above terms.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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