**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 88478 of 2018

(Arising out of Order-in-Appeal No. NGP-1/APPL/93/2017-18 dated 28.03.2018 passed by Commissioner of GST and Central Excise (Appeals), Nagpur)

M/s Krish International .....**Appellant**
Plot No.25, Office No. 5,
Saisakha Apartments,
Shardashram Colony, Nirala Bazar,
Aurangabad

VERSUS

Commissioner of Central Excise & Service Tax, Aurangabad .....**Respondent**
N-5, Town Centre, CIDCO,
Aurangabad,
Maharashtra-431030

Appearance:

Shri Anand Nahar, Advocate for the Appellant
Shri Onil Shivadikar, Authorized Representative

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87515/2019

Date of Hearing: 22.11.2019
Date of Decision: 22.11.2019

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. This appeal is directed against the impugned order dated 28.03.2018 passed by the Commissioner of GST and Central Excise (Appeals), Nagpur. The issue involved in this appeal relates to filing of rebate claim under Rule 6A of the Service Tax Rules, 1994 read with Notification No. 39/2012-ST dated 20.12.2012. The appellant has assailed the impugned order on the ground that denial of the benefit of rebate provided under the notification dated 20.12.2012 is not in conformity with the statutory provisions.

3. Insofar as filing of appeal before the Tribunal is concerned, Section 86 of the Finance Act, 1994 provides that an order passed by the Commissioner of Central Excise (Appeals) can be appealed against before the Tribunal. The proviso clause appended to Section 86 *ibid* mandates that where an order, relating to a service which is exported, has been passed under Section 85 *ibid* 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.

4. In this case, admittedly the learned Commissioner (Appeals) has passed the impugned order under Section 85 *ibid,* in deciding the issue of rebate claim filed by the appellant*. As per the provisions of Section 86 ibid,* instead of filing of appeal before the Tribunal, the revision application can only be filed before the competent authority in terms of Section 35EE *ibid*. However, on perusal of the preamble annexed to the impugned order, I find that the Office of the Commissioner (Appeals) has not given any reference of filing revision application before the competent authority. Hence, under confusion, the appellant had approached the Tribunal for resolving the dispute.

5. In view of above, the appeal filed by the appellant is dismissed as not maintainable under the proviso to Section 86 *ibid*. However, the appellant is at liberty for filing of application provided under Section 35EE *ibid* before the competent authority.

6. The appeal is disposed of in above terms.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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