

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. 01

Service Tax Miscellaneous Application No. 85233 of 2023

(on behalf of Appellant/Respondent)

In

Service Tax Appeal No. 85626 of 2014

(Arising out of Order-in-Appeal No.402-407/BPS/MUM/2013 dated 23.09.2013 passed by Commissioner of Central Excise and Service Tax (Appeals IV), Mumbai-I)

Commissioner of Service Tax, Mumbai-II

4th Floor, New Central Excise Building, Maharshi karve Road,
Churchgate, Mumbai-400020.

.....Appellant

VERSUS

Mail Order Solutions (I) Ltd.

Plot No. 15/B, 112/112 Raheja Plaza, Park Sons Press
Compound, Veera Desai Road, Andheri (W), Mumbai-400053.

.....Respondent

WITH

Service Tax Miscellaneous Application No. 85234 of 2023

(on behalf of Appellant/Respondent)

In

Service Tax Appeal No. 85627 of 2014

(Arising out of Order-in-Appeal No.402-407/BPS/MUM/2013 dated 23.09.2013 passed by Commissioner of Central Excise and Service Tax (Appeals IV), Mumbai-I)

Commissioner of Service Tax, Mumbai-II

4th Floor, New Central Excise Building, Maharshi karve Road,
Churchgate, Mumbai-400020.

.....Appellant

VERSUS

Mail Order Solutions (I) Ltd.

Plot No. 15/B, 112/112 Raheja Plaza, Park Sons Press
Compound, Veera Desai Road, Andheri (W), Mumbai-400053.

.....Respondent

AND

Service Tax Miscellaneous Application No. 85235 of 2023

(on behalf of Appellant/Respondent)

In

Service Tax Appeal No. 85628 of 2014

(Arising out of Order-in-Appeal No.402-407/BPS/MUM/2013 dated 23.09.2013 passed by Commissioner of Central Excise and Service Tax (Appeals IV), Mumbai-I)

Commissioner of Service Tax, Mumbai-II

4th Floor, New Central Excise Building, Maharshi karve Road,
Churchgate, Mumbai-400020.

.....Appellant

VERSUS

Mail Order Solutions (I) Ltd.

Plot No. 15/B, 112/112 Raheja Plaza, Park Sons Press
Compound, Veera Desai Road, Andheri (W), Mumbai-400053.

.....Respondent

AND

Service Tax Miscellaneous Application No. 85236 of 2023

(on behalf of Appellant/Respondent)

In

Service Tax Appeal No. 85629 of 2014

(Arising out of Order-in-Appeal No.402-407/BPS/MUM/2013 dated 23.09.2013 passed by Commissioner of Central Excise and Service Tax (Appeals IV), Mumbai-I)

Commissioner of Service Tax, Mumbai-II

4th Floor, New Central Excise Building, Maharshi karve Road,
Churchgate, Mumbai-400020.

.....Appellant

VERSUS

Mail Order Solutions (I) Ltd.

Plot No. 15/B, 112/112 Raheja Plaza, Park Sons Press
Compound, Veera Desai Road, Andheri (W), Mumbai-400053.

.....Respondent

AND

Service Tax Miscellaneous Application No. 85237 of 2023

(on behalf of Appellant/Respondent)

In

Service Tax Appeal No. 85630 of 2014

(Arising out of Order-in-Appeal No.402-407/BPS/MUM/2013 dated 23.09.2013 passed by Commissioner of Central Excise and Service Tax (Appeals IV), Mumbai-I)

Commissioner of Service Tax, Mumbai-IIAppellant
4th Floor, New Central Excise Building, Maharshi karve Road,
Churchgate, Mumbai-400020.

VERSUS

Mail Order Solutions (I) Ltd.Respondent
Plot No. 15/B, 112/112 Raheja Plaza, Park Sons Press
Compound, Veera Desai Road, Andheri (W), Mumbai-400053.

AND

Service Tax Miscellaneous Application No. 85238 of 2023

(on behalf of Appellant/Respondent)

In

Service Tax Appeal No. 85631 of 2014

(Arising out of Order-in-Appeal No.402-407/BPS/MUM/2013 dated 23.09.2013 passed by Commissioner of Central Excise and Service Tax (Appeals IV), Mumbai-I)

Commissioner of Service Tax, Mumbai-IIAppellant
4th Floor, New Central Excise Building, Maharshi karve Road,
Churchgate, Mumbai-400020.

VERSUS

Mail Order Solutions (I) Ltd.Respondent
Plot No. 15/B, 112/112 Raheja Plaza, Park Sons Press
Compound, Veera Desai Road, Andheri (W), Mumbai-400053.

Appearance:

Shri Vinod Kumar, Authorized Representative for the Appellant
Shri Ishaan Patkar along with Abhinav Shah & Durgesh Desai Advocates for the
Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

MISCELLANEOUS ORDER NO. M/85262-85267/2023

Date of Hearing:20.04.2023

Date of Decision:20.04.2023

PER : S. K. MOHANTY

Heard both sides and examined the case records.

2. The applicant has filed these miscellaneous applications, seeking for recall/ review of the order No. A/1854-1865/2015-STD dated 24.06.2015 passed by the Tribunal. The reason for filing these miscellaneous applications is that in terms of sub-section (2A) of Section 86 of the Finance Act, 1994, Revenue has been permitted under the statute to file appeal before the Tribunal in respect of the order passed by the Commissioner (Appeals). In other words, it has been contended by the applicant that it is assessee alone, who can assail the impugned order passed by the Commissioner (Appeals) in respect of the issues concerning rebate of duty on exportation of goods before the revisionary authority, instead of filing appeal before the Tribunal. The applicant has also stated that the order dated 24.06.2015 of the Tribunal was questioned before the Hon'ble Bombay High Court in the Writ Petition filed in the year 2021. The question raised in those Writ Petition was to the effect that whether the order of the Tribunal is maintainable on the ground of jurisdiction. On perusal of the order dated 22.02.2023 passed by the Hon'ble Bombay High Court, we find that the Hon'ble Court were pleased to dispose of the writ petition, by permitting the applicant to file application before the Tribunal for recall/review of the impugned order.

3. The provisions regarding filing of appeals before the Tribunal are governed under the provisions of Section 86 of the Finance Act, 1994. Sub-section (1) *ibid* provides for filing of the appeal by an assessee before the Tribunal. The first proviso appended to sub-section (1) mandates that in respect of the order passed by the Commissioner of Central Excise (Appeals) under Section 85 *ibid*, relating to the matter of grant of rebate relating to service which are exported, the order shall be reviewed by the Central Government in terms of Section 35EE of the Central Excise Act, 1994. Sub-section (2A) *ibid* provides that against any order of the Commissioner of Central Excise (Appeals), Revenue can file appeal before the Tribunal. On a cogent reading of above provisions, it reveals that assessee is only permitted to file the Revision Application before the Central Government in terms of Section 35EE and no such provisions exists for the appeals to be filed by the Revenue.

4. Therefore, the appeals filed by Revenue are maintainable before the Tribunal for a decision on merits. Accordingly, Registry is directed to list all the appeals filed by Revenue for final hearing on 04.05.2023.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)

