

Service Tax – Joint Secretary (Review) to have concurrent powers with CESTAT?

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Finance Bill 2012, proposes to introduce the provisions relating to Settlement Commission (Sections 31,32, 32 A to 32 P of the CE Act) and Revision by Central Government (35EE of the CE Act) as applicable to service tax also, by including these sections under section 83 of the Finance Act, 1994.

35 B of the CE Act, 1944 deals with Appeals to Tribunal. But, appeals against orders passed by the Commissioner (Appeals) on the below subjects are kept outside the jurisdiction of the Tribunal, by virtue of the first proviso under sub section (1) of Section 35 B.

*(a) a case of loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse;*

*(b) a rebate of duty of excise on goods exported to any country or territory outside India or on excisable materials used in the manufacture of goods which are exported to any country or territory outside India;*

*(c) goods exported outside India (except to Nepal or Bhutan) without payment of duty ;*

*(d) credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:*

Such orders are subject to revision by the Central Government under Section 35 EE of the Act. In other words, the jurisdiction of the Tribunal has been specifically ousted and such matters are kept exclusively under the revision powers of the Central Government.

Section 86 of the Finance Act, 1994 deals with Appeals to Tribunal in Service tax matters. It may be observed that the matters which are now sought to be placed under the revision powers of the Central Government, are not kept outside the jurisdiction of the Tribunal. No such amendments are proposed in Section 86 of the Finance Act, 1994. This will lead to a situation that in matters relating to the cases mentioned above, an assessee can choose between the CESTAT and Joint Secretary (Review)?

This could not have been the intention and we hope suitable amendments would be made in Section 86. It is further suggested that instead of drawing reference to Section 35 EE which only deals with "goods", a similar provision may be incorporated in the Finance Act, 1994 to deal with "services" for better clarity. It may be observed that the clauses need to be reworded as below:

(a) *not relevant.*

(b) *a rebate of service tax paid on taxable services exported to any country or territory outside India or rebate of duty of excise paid on excisable materials and service tax paid on input services used in the provision of taxable services, which are exported to any country or territory outside India;*

(c) *taxable services exported outside India without payment of service tax ;*

(d) *credit of any duty / service tax allowed to be utilised towards payment of service tax on taxable output services under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance (No. 2) Act, 1998:*