

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY  
AND  
THE HONOURABLE SRI JUSTICE NARSING RAO  
NANDIKONDA**

**C.E.A No.10 OF 2026**

**20.04.2026**

Between:

The Commissioner of Central Tax & Customs,  
Hyderabad GST Commissionerate,  
L B Statium Road, Basheer Bagh,  
Hyderabad, Telngana – 500 004.

...Appellant

A N D

M/s Zoom Technologies (India) Pvt. Ltd.,  
8-2-695/E/1, Road No.12, Banjara Hills,  
Hyderabad, Telangana – 500 034.

...Respondent

**JUDGMENT**: (*per Hon'ble Sri Justice P.Sam Koshy*)

Heard Mr. Vijhay K. Punna, learned Senior Standing Counsel for the CBIC for the appellant and Mr.Narendra Dave, learned counsel representing M/s Lakshmi Kumaran & Sridharan for the respondent. Perused the record.

2. The challenge in the present central excise appeal under Section 35G of the Central Excise Act, 1944 is to the order passed

by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Hyderabad dated 11.09.2025.

3. The contention of the learned counsel for the appellant is that the nature of transaction involved is the right to use information technology software for commercial exploitation and such transactions fall within the definition of Information Technology Software Service (ITSS) under Section 65(105) (zzzze) of the Finance Act, 1994.

4. The question of law which the learned counsel for the appellant is trying to raise is whether the nature of transaction carried out by the respondent would amount to a sale of goods or a service rendered under the Finance Act, 1994 under the aforesaid section. It would be relevant, at this juncture, to take note of the relevant section i.e., Section 35G (1) of the Central Excise Act, 1944, which is reproduced hereunder:

**Appeal to High Court:** (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1<sup>st</sup> day of July, 2003 (not being an order relating among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for

purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

Along with said section, it also relevant to read Section 35L of the aforesaid Act, more particularly sub-Section (2) to Section 35L. For ready reference, the provision to Section 35L is also being reproduced hereunder:

**(2) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.**

Sub-Section (2) to Section 35L stood inserted under the Central Excise Act w.e.f., 06.08.2014 by virtue of the Finance Act, 2014. The plain reading of the aforesaid provision i.e., sub-Section (2) to Section 35L read with Section 35G would make it evidently clear that in the event of a dispute in relation to the rate of duty of excise or the value of the goods, the appeal dealing with the said two aspects will not be one which would be maintainable before the High Court under Section 35G. Likewise, if we read Section 35L(2) along with Section 35G, it will further make it clear that the exception carved out under Section 35G so far as the appeals to the High Court are concerned, it would not be in respect of

matters pertaining to rate of duty of excise or the value of goods and it includes matters pertaining to determining taxability part and also matters determining the excisability of the goods for the purpose of assessment. This, in other words, means that wherever the question of law pertains to the rate of duty or the value of the goods or where the question of law raised is either the determination of the taxability part or the excisability of the goods, an appeal would lie only to the Supreme Court and not to the High Court.

5. The substantial question of law agitated by the learned Senior Standing Counsel for the Department in the present appeal would clearly reflect that the grounds raised pertain to the taxability part, as the question of law framed is whether the transaction under dispute would fall within the category of 'sale of goods' or 'service' under the Finance Act, 1994. This ground in terms of sub-Section (2) of Section 35L would be only one which would be challengeable before the Hon'ble Supreme Court and not by way of an appeal under Section 35G.

6. The view of this Bench stands further fortified from the decision of the Division Bench of the Karnataka High Court in the case of **COMMISSIONER OF STATE TAX, BANGALORE vs. SCOTT WILSON KIRKPATRICK (I) PVT. LTD.**,<sup>1</sup> wherein in paragraphs 35 and 36 it has been held as under:

35. Therefore, the expression 'rate' is often used in the sense of a standard or measure. 'Rate' generally is an impost, usually for current or recurrent expenditure, spread over a district or other local area and is distinct from an amount payable for work done upon or in respect of particular premises. 'Rate' is defined by Webster to be the price or amount stated or fixed for anything. The word 'rate' includes any toll, due, rent, rate or charge. It means the scale or amount of any other charges. The word 'rate' is used with reference both to a percentage or proportion of taxes, and to a valuation of property. 'Rate' is used in an Act declaring that the Legislative Assembly shall provide by law for a uniform and equal rate of taxation and assessment, applies to the percentage of fixation, as used in connection with 'taxation' and to the valuation of the property, as used in connection with 'assessment'. It is a valuation of every man's estate or setting down how everyone shall pay, or be charged with, to any tax. By the use of the expression 'rate' a relation between the taxable income and the tax charged is intended, but the relation need not be of the nature of proportion of fraction. The Explanation to **Sub-section (5) of Section 35E of the Central Excise Act**, the expression includes the determination of a question relating to the rate of duty, to the value of Service for the purposes of assessment; to the classification of Service under the Tariff and whether or not they are covered by an exemption notification: and whether the value of Service for the purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for.

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<sup>1</sup>2011 (23) S.T.R 321 (Kar.)

Questions relating to the rate of duty and to the value of Service for purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of Service and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of Service for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of Service for purposes of assessment. Determination of rate of duty in relation to any Service include determination of a question whether any Service or not, whether the process if any undertaken in the service centre amounts to taxable Service or not, and if the Service rendered during that process are excisable goods or not would fall within the meaning of the expression 'determination of the rate of duty of excise or the value of the goods for the purposes of assessment of duty' used in Section 35G(1) and Section 35L(b) of the Act. Therefore, the phrase 'rate of tax' does not mean fraction of tax payable because what is the tax payable i.e., fraction payable is decided by the legislature. Once that is prescribed by the legislature in the Act, the Court cannot sit in judgment and alter or modify the said rate of tax. The Court has no jurisdiction to go into the correctness or otherwise of the rate of tax payable in the sense the rate prescribed by the legislature. In the case of Finance Act 1994, the rate of service tax payable is uniform to all the services. If rate of tax is to be understood in the sense it is suggested, Section 35G and 35L, has no application at all to the Finance Act. Such an interpretation would render Section 83 in so far as applying the provisions of section 35g and 35L redundant. Then there is no provision in the Finance Act, 1994 for determination of the aforesaid disputes. That was not the intendment of the Parliament. Therefore, the argument that the rate of tax means only the rate at which tax is payable or a fraction is unsustainable.

36. Broadly the following disputes do not fall within the jurisdiction of High Court under Section 35(g) of the Act:

- (a) Dispute relating to the service tax payable on any service /taxable service.
- (b) The value of the taxable service for the purposes of assessment

- (c) A dispute as to the classification of services.
- (d) Whether those services are covered by an exemption notification or not.
- (e) Whether the value of services for the purposes of assessment is required to be increased or decreased.
- (f) The question of whether any services are taxable services or not
- (g) Whether an activity is a service rendering activity or not, so as to attract levy of service tax.
- (h) Whether a particular services fall within which heading, sub-heading of **Section 65(105) of the Service Act 1994** which defines "taxable service".

7. A similar view has also been taken by the Division Bench of the Bombay High Court in the case of **COMMISSIONER OF CGST AND CENTRAL EXCISE, THANE VS. AJIT INDIA PVT. LTD.**,<sup>2</sup> wherein in paragraphs 6 to 9 it was held as under:

6. Sections 35G and 35L of the Excise Act are quoted as under :-

"35G. **Appeal to High Court.** - (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1<sup>st</sup> day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

35L. **Appeal to Supreme Court.** - (1) An appeal shall lie to the Supreme Court from -

- (a) any judgment of the High Court delivered -
  - (i) in an appeal made under section 35G; or
  - (ii) on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003;

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<sup>2</sup> 2023(70) G.S.T.L. 158 (Bom.)

(iii) on a reference made under section 35H, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

(2) For the purpose of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment."

*(Emphasis supplied)*

7. The Apex Court in the case of Navin Chemicals Manufacturing and Trading Company Limited v. Collector of Customs [1993 (68) E.L.T. 3 (S.C.) = 1993 taxmann.com 522 (SC)] has decided that classification issue is an issue of rate of duty and/or value of goods for the purposes of assessment. Paragraph 11 of the said decision is usefully quoted as under :-

"11. It will be seen that sub-section (5) of section 129D uses the said expression determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment and the Explanation thereto provides a definition of it for the purposes of this sub-section. The Explanation says that the expression includes the determination of a question relating to the rate of duty; to the valuation of goods for purposes of assessment; to the classification of goods under the Tariff and whether or not they are covered by an exemption notification; and whether the value of goods for purposes of assessment should be enhanced or reduced having regard to certain matters that the said Act provides for. Although this Explanation expressly confines the definition of the said expression to sub-section (5) of Section 129D, it is proper that the said expression used in the other parts of the said Act should be interpreted similarly. The statutory definition accords with the meaning we have given to the said expression above. Questions relating to the rate of duty and to the value of goods for

purposes of assessment are questions that squarely fall within the meaning of the said expression. A dispute as to the classification of goods and as to whether or not they are covered by an exemption notification relates directly and proximately to the rate of duty applicable thereto for purposes of assessment. Whether the value of goods for purposes of assessment is required to be increased or decreased is a question that relates directly and proximately to the value of goods for purposes of assessment. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purposes of assessment, questions arise directly and proximately as to the rate of duty or the value of the goods.'

*(Emphasis supplied)*

8. The Hon'ble Supreme Court having decided that classification issue in Navin Chemicals Manufacturing and Trading Company Limited v. Collector of Customs (supra) in an issue of rate of duty and for value of goods for the purposes of assessment, the same is binding on us. Therefore, in view of Section 35G(1) as quoted above, which specifically prohibits an appeal being entertained by this Court, if it is an order of the Tribunal relating amongst other things to the determination of any question having arisen on account of "rate of duty" or the "value of goods" for the purposes of assessment, this Court would not have jurisdiction.

9. Considering the above discussion and that question No. 5(c) refers to classification issue that would need to be decided, we hold that this appeal is not maintainable before this Court and the course of action available to the appellant is to file an appeal before the Supreme Court under Section 35L(1)(b) of the Excise Act.

8. This view also stands reiterated by the Division Bench of Guahati High Court in the case of **COMMISSIONER OF CGST, GUWAHATI vs. OIL INDIA LIMITED**<sup>3</sup>.

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<sup>3</sup> 2023(385) E.L.T 834 (GAU.)

9. In view of the aforesaid judicial precedents and the statutory provision reflected in the preceding paragraphs, we are of the considered opinion that the grounds of challenge to the impugned order and the proposed substantial questions of law are not grounds which would be permissible for the appellant to challenge under Section 35G, rather these are grounds which would be perhaps available to the appellant under Section 35L of the Central Excise Act, 1994 only before the Supreme Court.

10. Reserving the right of the appellant for availing the same, if at all if they so want, the present appeal stands rejected on the technical ground of maintainability. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

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**P.SAM KOSHY, J**

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**NARSING RAO NANDIKONDA, J**

20.04.2026

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