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

CEA No.21 of 2026

Date: 30.07.2026

Between:

The Principal Commissioner of Central Tax & Customs.

... Appellant

And

M/s.Mars International India Pvt. Limited.

...Respondent

JUDGEMENT: *(As per the Hon'ble **Sri Justice P. Sam Koshy**)*

Heard ***Ms. D. Pallavi***, learned Senior Standing Counsel for CBIC appearing for the appellant and ***Mr. Karthik Ramana Puttam Reddy,*** learned counsel for the respondent. Perused the record.

2. The instant appeal has been preferred by the Commissioner, Central Tax and Customs under Section 35G of the Central Excise Act. The challenge is to the order passed by the CESTAT, Hyderabad Regional Bench, in Service Tax Appeal No. 22990 of 2014, decided on 21.11.2025. By the impugned order, the learned Tribunal has allowed the appeal preferred by

the respondent, setting aside the demand raised by the Department, as also the imposition of penalty etc.

3. The learned counsel appearing for the respondent, at the threshold, raised a preliminary objection, so far as the maintainability of the appeal under Section 35G of the Central Excise Act. The learned counsel for the respondent contended that the bare perusal of the entire contention put forth by the appellant in the appeal and on perusal of the substantial question of law framed by the appellant itself would show that the appellant has principally challenging the classification of the taxable services rendered by the respondent.

4. The learned counsel for the respondent relied upon a decision rendered by this Bench in CEA No.10 of 2026, decided on 20.04.2026, whereby under somewhat similar circumstances, the appeal was held to be not maintainable and that, if at all, if the Department intends to prefer an appeal, it has to be under Section 35L of the Central Excise Act before the Hon’ble Supreme Court rather than 35G of the Central Excise Act.

5. The learned counsel for the respondent further relied upon a recent decision of the Hon’ble Supreme Court dated

27.05.2026 in the case of ***Alupro Building System Private limited v. Commissioner of Central Excise, Bangalore-II***[1]**.**

6. On the contrary, the learned counsel appearing for the appellant produced before this Court a judgment of the Hon'ble Supreme Court dated 08.09.2022 in the case of ***Commissioner of Central Excise, Hyderabad v. M/s. Shriram Refrigeration Industries***[2], whereby the Hon'ble Supreme Court has reversed the order of the High Court, holding that since the dispute involved in the said appeal was not in relation to the rate of duty or the value of goods, the appeal is not one which could have been filed under Section 35L of the Central Excise Act, but is an appeal which is liable to be entertained under Section 35G of the Central Excise Act, and accordingly, setting aside the order of the High Court and the matter was remanded back.

7. The undisputed fact is that the demand raised by the Commissioner, Central Excise, through the order-in-original dated 30.05.2014 was reversed by the CESTAT by the impugned judgment, holding that the services rendered by the respondents are not taxable under Section 65 (65) of the Finance Act.

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[1] (2026) 42 Centax 456 (S.C) (27.05.2026)
[2] Civil Appeal Nos.2589-2599 of 2011

8. It is also pertinent to take note of two of the substantial questions of law, in addition to the other substantial questions of law raised by the appellants in the instant appeal, which is extracted hereunder:

> *B) Whether the Hon'ble CESTAT, Hyderabad is correct in law in failing to consider relevant judicial precedents on the taxability and classification of secondment arrangements while setting aside the service tax demand?*
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> *C) Whether the Hon'ble CESTAT, Hyderabad is correct in law in holding that an alleged error in classification of a taxable service absolves the assessee from service tax liability, despite the settled principle that misclassification affects only the taxable category or rate of levy and not the underlying taxability of the activity?*

9. The plain reading of the aforesaid two questions of law proposed by the appellant itself gives a clear indication of the dispute involved in the appeal relating to the classification. At this juncture, it would be relevant to take note of the provisions of Section 35G(1) which reads as under:

> *Section 35G(1) of the Central Excise Act, 1944 (as it stood prior to its omission):*
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> *"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 1st 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."*

10. And it would also be appropriate at this juncture to take note of the provision of Section 35L(2) read with 35L(1)(b). For ready reference, Section 35L(1) and (2) is being reproduced herein under:

> ***Section 35L(1):***
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> *An appeal shall lie to the Supreme Court from-*
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> ***(a)*** *any judgment of the High Court delivered-*
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> ***(i)*** *in an appeal made under section 35G; or*
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> ***(ii)*** *on a reference made under section 35G by the Appellate Tribunal before the 1st day of July, 2003; or*
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> ***(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 the passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or*
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> ***(b)*** *any order passed 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.*
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> ***Section 35L(2):***
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> ***"(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."*

11. In the case of ***M/s. Zoom Technologies (India) Limited Pvt. Limited***[3], decided by this Bench on 20.04.2026 in CEA No.10 of 2026, this Court referred to certain judgments on this very issue. In the case of the ***Commissioner of State Tax, Bangalore v. Scott Wilson Kirkpatrick (I) Pvt. Limited***[4]***,*** in paragraph No.35, it has held hereunder:

> *"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*

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[3] 2026-VIL-456-TEL-ST

[4] (2011 (23) S.T.R.321 (KAR.) – 2011 –VIL-190-KAR-ST

certain matters that the said Act provides for. 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.

12. The same view was also taken by the Bombay High Court in the case of ***Commissioner of CGST and Central Excise v.***

Ajit India Private Limited[5], wherein in paragraph Nos.7 to 9, the Bombay High Court has held hereunder:

> *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) - 1993-VIL-07-SC-CU] 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: -*
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> *"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 sald 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*

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[5] 2023 (70) GSTN 158 (Bombay),

> *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."*
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> *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.*
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> *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.*

13. It was also noticed that the said analogy was also reiterated by the Bench of Guwahati High Court in the case of ***Commissioner of CGST, Guwahati v. Oil India Limited***[6]***.***

14. Relying upon the aforesaid judgments, this Court had in ***M/s. Zoom Technologies*** (3rd cited supra) rejected the appeal preferred by the Central Tax and Customs holding that the appeal is not one which is maintainable under Section 35G, but is

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[6] 2023 (385) ELT 834 (Gau.)

one which would otherwise needs to be filed under Section 35L before the Hon'ble Supreme Court.

15. Further, we find that the recent decision of the Hon'ble Supreme Court in the case of ***Alupro Building Systems*** (1st cited supra), wherein at paragraph Nos.33, 40 to 47 reads as under:

> *33. The jurisdictional exclusion of the High Court on the issue of determination of rate of duty may be looked at from one another angle. In Commr. of Customs v. Motorola (India) Ltd., reported in (2019) 9 SCC 563, the issue before this Court was whether an appeal from the order of the CESTAT, on violation of conditions contained in customs exemption, would lie before the High Court under Section 130 of the Customs Act, 1962 ("the Customs Act") or this Court under Section 130E of the Customs Act. It is pertinent to note that Sections 130 and 130E of the Customs Act, respectively are pari materia to Sections 35G and 35L of the Act, 1944. The Court referred to the decision in Navin Chemicals (supra) wherein the expression "relation to" in the bracketed portion of Section 130 of the Customs Act was stated to indicate that the direct and proximate relationship of the question before the court to the "rate of duty of excise or to the value of goods" for the purpose of the assessment. The relevant observations read thus:-*
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> *"11. Upon a conjoint reading of the aforesaid provisions, it could thus be seen that an appeal shall lie to the High Court against every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. The only exception carved out is that an appeal shall lie before this Court and shall not lie before the High Court against the order relating, amongst other things, to the determination of any question having relation to the rate of duty of customs or to the value of goods for the purposes of assessment.*

12. It could thus clearly be seen that, only if any question having relation to the rate of duty is involved in an appeal or if it relates to value of goods for the purpose of assessment, the appeal would lie to this Court and in all other cases it would lie before the High Court.

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14. It could thus clearly be seen that, this Court, while considering the provisions of Section 130 and Section 130-E of the Customs Act, has held that where an appeal involves determination of any question that has relation to customs duty for the purpose of assessment or where an appeal involves determination of any question that has relation to the value of goods for the purposes of assessment, such cases will have to be treated separately and have to be given special treatment." (Emphasis supplied) 40. The true test of whether an amendment is clarificatory is not dependent on the label that the legislature attaches to it, but whether the amendment, on a purposive and contextual reading, does no more than make explicit what was already implicit in the original provision. The legislature's declaration that an amendment is clarificatory, although not conclusive, is a significant and weighty indicator of legislative intent that the courts must take into account and not lightly discard.

41. Sub-section (2) of Section 35L was inserted in the Act, 1944, by the Finance (No. 2) Act, 2014. Clause 99 of the Bill which sought to insert the sub-section stated that:-

"Clause 99 of the Bill seeks to insert a new sub- section (2) in section 35L of the Central Excise Act so as to clarify that determination of disputes relating to taxability or excisability is covered under the expression "determination of any question having a relation to rate of duty."

42. In the aforesaid context, the Memorandum on the Finance (No. 2) Bill, 2014, by the Central Board of Direct Taxes Memorandum also clarified the position as regards appellate jurisdiction of this Court. It reads thus:-

“Section 35L is being amended so as to clarify that determination of disputes relating to taxability or excisability of goods is covered under the term 'determination of any question having a relation to rate of duty' and hence, appeal against Tribunal orders in such matters would lie before the Supreme Court.”

43. The reading of the text of the provision stipulates that it does not create any new legal position. It merely gives statutory expression to what was already the natural and necessary consequence of collective reading of Sections 35G and 35L, respectively. As a result, such a clarificatory amendment would have retrospective effect.

44. It is trite law that an amendment could be characterized as clarificatory of existing law when the provision it seeks to amend was subject to more than one interpretation. In other words, the provision prior to the amendment was not being interpreted in harmony with the statutory intent without the amendment being read into it.

45. The phrase “shall include” denotes inclusive and expansive definition that clarifies the scope of an existing expression, rather than one that adds a new category to it. The use of the phrase signifies that the legislature was not introducing excisability as a new category of questions falling within the rate of duty, it was clarifying that excisability always fell within that expression, and any doubt to the contrary was unwarranted.

46. It appears that the amendment was introduced to clarify the position of law, with the aim of removing existing doubts and correcting judicial error, thereby rendering it declaratory in nature. By inserting sub-section (2), the legislature put an end to uncertainty, and reaffirmed the position that was always inherent in the scheme of Sections 35G and 35L, respectively.

47. We may also examine what the amendment does not do. Sub-section (2) does not create a new right of appeal. It does not vest a new jurisdiction in any court. It does not impose any new obligation upon assessees. It also does not alter the mechanism or procedure of assessment. All it does is clarify that when the legislature referred to questions having a relation to the rate of

> *duty, it includes within that expression the question of excisability of goods for the purpose of assessment. The absence of any new right, obligation, or liability created by the amendment is a significance of the fact that the amendment it is clarificatory in nature.*

16. So far as the judgment of ***M/s. Shriram Refrigeration Industries*** (2nd cited supra), referred by the learned Senior Standing Counsel for the appellant, we find that the said appeal was directly on the question of applicability and provisions of the Central Excise Act and whether the respondents can be said to be manufacture of stators or not and therefore liable to pay Central Excise duty or not, unlike the facts in the case of the respondent herein and therefore, the said judgment is quite distinguishable on facts itself.

17. Moreover, the most recent judgment in the case of ***Alupro Building Systems*** (1st cited supra) itself clarifies this aspect. In view of the same, we are of the considered opinion that the instant appeal under Section 35G of the Central Excise Act would not be maintainable. Rather, the appellants would have to prefer the appeal, if at all if they intend to, invoking the provisions of Section 35L of the Central Excise Act before the Hon'ble Supreme Court.

18. Accordingly, the instant appeal stands dismissed on the ground of maintainability. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

P.SAM KOSHY, J

NARSING RAO NANDIKONDA, J

30.07.2026
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