

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**EXCISE Appeal No. 10541 of 2023 - DB**

(Arising out of OIO-RAJ-EXCUS-000-COM-002-2023-24 dated 14/06/2023 passed by Principal Commissioner of CGST & CE-RAJKOT)

**RELIANCE INDUSTRIES LTD**

**.....Appellant**

A unit of Reliance Jamnagar SEZ,  
Village: Meghpar Padana,  
Digvijaygram, Jamnagar

*VERSUS*

**C.C.E & ST-CGST & CE -RAJKOT**

**.....Respondent**

CGST Bhavan, Race Course Ring Road,  
Rajkot, Gujarat - 360001

**APPEARANCE:**

Shri Vishal Agarwal & Ms Dimple Gohil, Advocate for the Appellant  
Shri Rajesh R Kurup, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. 10444/2024**

DATE OF HEARING: 27.09.2023  
DATE OF DECISION: 20.02.2024

**RAMESH NAIR**

The issue involved in the present appeal is whether the Central Excise authorities could have levied and recovered Special Additional Excise Duty in terms of Section 147 of the Finance Act, 2002 (SAED); Road and Infrastructure Cess in terms of Section 112 of Finance Act, 2018 (RIC) and Agriculture Infrastructure and Development Cess in terms of Section 125 of Finance Act, 2021 (AIDC) as a duty of Excise/Additional duty of Excise on removal of High Speed Diesel, which was manufactured in the Special Economic Zone (SEZ) to the Domestic Tariff Area (DTA). The said demand for SAED/RIC/AIDC has been raised against Reliance Industries Ltd, a unit in the Special Economic Zone (SEZ) and is over and above the duties of Customs already discharged at the time of removal to the DTA in terms of Section 30 of the SEZ Act, which as a part of Additional duty under Section 3(1) of the Customs Tariff Act, includes SAED, RIC as also AIDC, being Additional duties equal to the duty of excise leviable on like articles for the time being produced or manufactured in India.

1.2 The adjudicating authority has vide Order in Original No.RAJ-EXCUS-000-COM-002-2023-24 dated 14-6-2023, being impugned in the present proceedings, confirmed the demand for levy and recovery of Excise duty under Section 11A read with Section 147 of Finance Act, 2002, Section 112 of Finance Act, 2018 and Section 125 of Finance Act, 2021 in the form of SAED, RIC and AIDC respectively alongwith interest thereon under Section 11AA and penalty under Rule 28 of the Central Excise Rules, 2017. This demand for Central Excise Duty has been confirmed over and above what has already been assessed and paid in terms of Section 30 of the SEZ Act, 2005 on removal of HSD from the SEZ to the DTA by rejecting the appellant's contention to the effect that the additional duty recovered under Section 3(1) of the Customs Tariff Act, had already factored in the said levies under the Finance Act as a part of the additional duty leviable under Section 3(1) of the Customs Tariff Act. The adjudicating authority has rejected the contention that in terms of Section 30 of SEZ Act, duties of Customs including anti-dumping, countervailing and safeguard duty under the Customs Tariff Act, 1975 as leviable on such goods, when imported into India, stood levied and collected and that there would be duplication of the duties, if the levy under the Finance Acts were once again levied and collected, by holding that if the SEZ was deemed to be a territory outside the Customs Territory of India for undertaking authorised operations then clearances from SEZ into DTA should have been reckoned as exports for the SEZ and imports for the DTA. However, the definition of exports in Section 2(m) of the SEZ Act does not consider such a supply as an export for the SEZ unit, therefore it could safely be concluded that clearance from SEZ to DTA is a normal clearance of goods manufactured within India and consequently all the levies of duties/cesses under the Central Law enactments in respect of clearance of manufactured goods shall apply, subject to exemption, if any granted from such levy/duty/cess.

2. Shri Vishal Agarwal, learned counsel with Ms. Dimple Gohil, Advocate appearing on behalf of the appellant submits that:

- (a) Section 147(3) of the Finance Act, 2002, Section 112(3) of the Finance Act, 2018 and Section 125(4) of the Finance Act, 2021 stipulates that the provision of the Central Excise Act shall, as far as

may be, apply to the levy and collection of SAED, RIC and AIDC as they apply in relation to levy and collection of duty of excise under the Central Excise Act or the Rules and Regulations made thereunder.

(b) The Finance Act, in terms of which the levy of SAED, RIC and AIDC was introduced did not stipulate or provide for the person liable to discharge the said levy, as also the geographical or territorial limits to which the said levies would extend. These essential ingredients, vital for the levy to sustain, are supplied by the Central Excise Act, 1944 as specifically made applicable in terms of Section 147(3) of the Finance Act 2002, Section 112(3) of the Finance Act, 2018 and Section 125(4) of the Finance Act, 2021.

(c) Since Section 3 of the Central Excise Act, 1944 stipulates that the levy and collection of Central Excise duty would not apply to goods produced or manufactured in Special Economic Zones. The said exclusion provided for in Section 3 of the Central Excise Act, 1944 equally apply to the levy under the Finance Acts in question.

(d) SAED in terms of Section 147 of the Finance Act, 2002 was levied as a surcharge while RIC levied under Finance Act, 2018 and AIDC under the Finance Act, 2021 were levied as additional duty of excise. Since the basic excise duty, to which these duties were a surcharge or an additional duty, itself was not leviable as the Central Excise Act itself does not apply to goods manufactured in SEZ, the said surcharge or additional duty could also not have been levied, as the same were to be levied in addition to any other duties of excise chargeable under the Central Excise Act or any other law for the time being in force.

(e) SEZ is a *sui generis* enclave, which is outside India for the purposes of taxation as is evident from Section 30 of the SEZ Act, 2005 read with Rule 47/48 of the Special Economic Zone Rules, 2006 which envisages that clearance from the SEZ to the DTA is accorded the same treatment as in respect of goods physically imported into India and requires payment of duties of Customs leviable under the Customs Tariff Act, which includes in terms of Section 3(1) of the Customs Tariff Act, 1975, additional duties of customs equivalent to duty of excise on like goods produced or manufactured in India. Therefore, SAED, RIC and AIDC stood already levied and discharged as a part of the Additional Duty of Customs, when the goods were cleared from the SEZ to the

DTA. Since duty of excise had already been recovered as a part of additional duty of customs in terms of section 30 of the SEZ Act, it was impermissible to once again independently recover the same as a duty of excise leviable in terms of the respective Finance Acts.

3. On the other hand Shri Rajesh R. Kurup, Learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the adjudicating authority in the impugned order. In particular, it has been contended that unlike the Central Excise Act, there was no exclusion provided for goods produced or manufactured in an SEZ under the Finance Acts in question. Further the SEZ cannot be considered as a territory outside India as contended by the Appellant, the SEZ is only considered outside the Customs territory of India for undertaking authorised operations and therefore the levy under the Finance Act, would apply even to goods produced or manufactured in an SEZ.

4. We have carefully considered the submissions made by both sides and perused the records. It is not in dispute that the Appellant in question is a unit in the Special Economic Zone and has manufactured and cleared High Speed Diesel to the DTA, *inter alia* on payment of applicable duties of Customs in terms of Section 30 of the SEZ Act, 2005 (which as a part of Additional duty of customs leviable under Section 3(1) of the Customs Tariff Act, 1975, includes the levy of SAED, RIC and AIDC). The question that we need to deliberate and decide upon is whether the said levy of SAED, RIC & AIDC could be once again imposed and recovered by the Central Excise field formation, as a duty of excise.

4.1 We find it surprise that the Adjudicating Authority who is an integral part of the department of Revenue has conveniently ignored the fact that any goods removed from the SEZ to the DTA are regarded to as having been imported into the DTA and accordingly in terms of Section 30 of the SEZ Act, subjected to duties of customs, including anti dumping duty, countervailing duty, and safeguard duty under the Customs Tariff Act, 1975. It is undisputed that the HSD in question has been subjected the levy of additional duty under Section 3 (1) of the Customs Tariff Act, which is equal to the Excise duty for the time being leviable on like article, produced or manufactured in India. As a part of the said additional duty

under Section 3(1) of the Customs Tariff Act, the amount leviable in respect of SAED, RIC and AIDC under respective Finance Acts, has already been levied and collected.

4.2 Faced with the challenge of justifying how a clearance which is regarded as an import into India and applicable customs duties recovered on the same could be subjected to a levy of Central Excise duty in addition to additional duty under Section 3(1) of Customs Tariff Act, the Adjudicating Authority has in para 3.4.5.1 and 3.4.5.2 concluded that *"..... consequently, it is safe to conclude that the clearance from the SEZ unit to the DTA is normal clearance of manufactured goods within India i.e. domestic tariff area and all the levy duty, SEZ created under Central Law enactments in respect of clearance of manufacture goods shall apply....."*

4.3 It is indeed shocking as to how the Adjudicating Authority could have concluded that the removal from the SEZ to the DTA is just a normal clearance of manufactured goods within India, when Section 30 of the SEZ Act stipulates that, any goods removed from the SEZ will be chargeable to duties of customs, as leviable on such goods when imported. Further, Rule 47 of the SEZ Rules, 2006 envisages that the DTA sale of goods manufactured by an SEZ unit shall be against submission of import license as applicable to imports of similar goods into India under the Foreign Trade Policy. Rule 48 requires a bill entry for home consumption to be filed in respect of clearances to the DTA, and further envisages that the valuation and assessment shall be made in accordance with the Customs Act and Rules made thereunder. Merely because there is a specific definition of export under the SEZ Act and clearance from SEZ to DTA does not fall within the said definition of export for the purpose of the SEZ this however is no ground for holding that the removal from the SEZ to the DTA which is normally assessed but also considered for all purposes as an import, being considered as a normal clearance of goods manufactured within India. In our view two statutes (SEZ and the Finance Acts, levy in excise duty) have to be read and construed in a harmonious manner and cannot be read an interpreter in a manner to create a conflict between the two.

4.5 In fact, a similar predicament was considered by the larger Bench of this Tribunal in the case of Kumar Architect Pvt. Ltd Vs. CCE reported in 2013 (290) ELT 372, in respect of clearances made by a 100% EOU to the DTA. The Revenue had in that case urged that education Cess and secondary and higher education cess is to be paid thrice over, when goods are cleared from EOU to the DTA. Once as a part of additional duty under Section 3 (1), the second time as a part of customs duty, since what was to be paid by an EOU was an amount equal to the duty of customs, as if the goods were imported. The third cess was sought to be levied on the premise that EOU being within India the major of the duty was the customs duty however, what was leviable was excise duty and on this Excise duty cess was required to be discharged. The Larger Bench rejected this contention of the Revenue on various counts, one of which being that the duty payable on goods cleared from an EOU to the DTA as to be on Par with the duties payable on goods imported from abroad into the country. It was held that the interpretation suggested by the Revenue would have the effect of goods cleared from the EOU to the DTA suffering a higher duty vis-a-vis that leviable on import of goods into the country. Such an interpretation was held to be clearly at odds with the principle that duty is payable on goods cleared into DTA from 100% EOU should be on par with duty leviable on goods imported into the country from abroad.

4.6 The ratio laid down by the Larger Bench of this Tribunal applies in all force to the present factual situation also, in as much as an SEZ is deemed to be a territory outside the customs territory of India for undertaking authorized operations. It is for this reason that on clearances from the SEZ to the DTA, duties of customs as leviable on such goods when imported into India is a required to be discharged, this being the case there cannot be any logic or rational in requiring the SEZ to pay duties and taxes higher than those payable on imports of goods into the country. If the reasoning propounded by the Adjudicating Authority is accepted then on clearance from the SEZ to the DTA the goods would have to once again suffer the duties of SAED/RIC and AIDC, under the Finance Acts as a duty of excise, which already from a part of addition duty under section 3(1) of Customs Tariff Act. Such an interpretation cannot be countenanced as it would lead to an invidious situation of removal from the SEZ to DTA, being tax higher

than imports of goods into the country, this is contrary to the legislative principle of regarding removal from SEZ to the DTA as an import.

4.7 It is also relevant to note here that under the EOU scheme there was no provision akin to section 53 of the SEZ Act, with these the SEZ to be a territory outside the Customs Territory of India for undertaking authorized operations. This deeming provision has been acknowledged by the CBIC even for the period prior to the enactment of the SEZ Act, 2005 vide Circular No.68/2003-CUS dated 30.07.2003 wherein it was clarified that *"SEZ will be considered as a Foreign Territory for the purpose of duties and taxes. In other words supplies from DTA to SEZ will be considered as exports by the DTA unit and supply to DTA by the SEZ will be considered as import by the DTA unit."* The said Circular further clarifies that *"supplies to and from the SEZ will be governed by the provisions of the Customs Act, 1962 and not by the provision of Central Excise Act, 1944."* It is settled law that a deeming provision has to be given entire place i.e. if the SEZ is deemed to be a territory outside the customs territory and the good cleared to the DTA there from as imports then the removal from the SEZ to the DTA cannot be considered as a normal clearance of manufactured goods within India, especially in light of Section 51 of the SEZ Act which has the effect of the SEZ Act overriding anything in consistent in any other law for the time being in force. The law with regard to the deeming fiction is that *'in case of any deeming fiction in statute, it's full legal effect must be given, one cannot go behind such deeming fiction in law and imagine contrary.'* We are therefore of the view that, removal from SEZ to the DTA being an import, the Adjudicating Authority had no justification in ignoring the fact that the removal from SEZ to the DTA had already suffered additional duty under Section 3(1), which included the duties leviable under the Finance Acts and there was no justification in once again seeking to recover the very same amount separately as a duty of excise.

4.8. Notwithstanding the above, we also find that applying the ratio laid down by the Apex Court in the case of Govind Saran Ganga Saran Vs. Commissioner of Sales Tax 1985 SUPP (SCC) 205 the levy of SAED, RIC and AIDC under the relevant Finance Acts, cannot be given effect to without the support and reference to the provisions of the Central Excise Act, 1944 and the Rules made thereunder relating to levy and collection, as

made applicable in terms of Section 147(3)/112(3)/125(4) of Finance Acts 2002/2018/2021 respectively. We will first deal with this aspect as it goes to the very fulcrum of the proceedings initiated against the Appellant. For doing so we are extracting herein below the relevant provisions of the Finance Act, 2002, 2018 and 2021.

Relevant extracts of Finance Act, 2002:

**147. Special additional excise duty .** - (1) *In the case of goods specified in the Eighth Schedule, being goods manufactured, there shall be levied and collected, for purposes of the Union, by surcharge, a duty of excise, to be called the Special Additional Excise Duty, at the rates specified in the said Schedule.*

(2) *The Special Additional Excise Duty chargeable on goods specified in the Eighth Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, or any other law for the time being in force.*

(3) *The provisions of the Central Excise Act, and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall, as far as may be, apply in relation to the levy and collection of the Special Additional Excise Duty leviable under this section in respect of the goods specified in the Eighth Schedule, as they apply in relation to the levy and collection of the duties of excise on such goods under that Act, or those rules, as the case may be.*

Relevant extracts of Finance Act, 2018:

**112. Road and Infrastructure Cess on excisable goods.** — (1) *There shall be levied and collected, in accordance with the provisions of this Chapter, for the purposes of the Union, an additional duty of excise, to be called the Road and Infrastructure Cess, on the goods specified in the Sixth Schedule (hereinafter referred to as scheduled goods), being the goods manufactured or produced, at the rates specified in the said Schedule for the purpose of financing infrastructure projects.*

(2) *The cess leviable under sub-section (1), chargeable on the scheduled goods shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944) or any other law for the time being in force.*

(3) *The provisions of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, appeals, offences and penalties shall, as far as may be, apply in relation to the levy and collection of the cess leviable under this section in respect of*

*scheduled goods as they apply in relation to the levy and collection of the duties of excise on scheduled goods under the said Act or the rules, as the case may be.*

*Relevant extracts of Finance Act, 2021:*

**125. Agriculture Infrastructure and Development Cess on excisable goods. — (1)**  
*There shall be levied and collected, in accordance with the provisions of this section, for the purposes of the Union, an additional duty of excise, to be called Agriculture Infrastructure and Development Cess, on the goods specified in the Seventh Schedule (hereinafter referred to as scheduled goods), being the goods manufactured or produced, at the rates specified in column (3) of the said Schedule, for the purposes of financing the agriculture infrastructure and other development expenditure.*

*(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Agriculture Infrastructure and Development Cess levied under this section for the purposes specified in sub-section (1), as it may consider necessary.*

*(3) The cess leviable under sub-section (1), chargeable on the scheduled goods, shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944), or any other law for the time being in force.*

*(4) The provisions of the Central Excise Act, 1944 (1 of 1944), and the rules and the regulations made thereunder, including those relating to assessment, non-levy, short-levy, refund, exemptions, interest, appeals, offences, and penalties shall, as far as may be, apply in relation to the levy and collection of the cess leviable under this section in respect of scheduled goods as they apply in relation to the levy and collection of duties of excise on such goods under the said Act or the rules or regulations, as the case maybe.*

4.9. To recapitulate, the four components identified by the Apex Court as constituting necessary and essential elements which have to be present in the taxing statute in a clear, unambiguous, and a definitive manner for the levy of tax to sustain are the following:-

- a) enunciation of the taxable event;
- b) indication of the person on whom the levy is imposed and is obliged to pay the tax;
- c) rate at which the tax is imposed;
- d) the measure and value to which the rate will be applied.

Of the above four components, clearly the provisions of the three Finance Acts under which SAED, AIDC and RIC have been levied, when read on a standalone basis without reference to the levy and collection provisions in the Central Excise Act do not specify either the person liable to pay tax which is component No.2 or the measure and the value to which the rate is to be applied, which is component No.4. The three Finance Acts are therefore, in our view, not self-contained and therefore do not by themselves constitute a complete code to levy and collect the duties leviable thereunder.

4.10. Even in respect of the first component viz., the taxable event, the provisions of the Finance Act are not by themselves sufficient to sustain the levies. It can be seen that while Section 147 of the Finance Act, 2002 prescribes that the duty being levied is on goods manufactured and Section 112 of the Finance Act, 2018 as also Section 125 of the Finance Act, 2021 prescribes that the duty being levied is on goods manufactured or produced. It appears to us that by merely prescribing that the tax is on manufacture, the first component that enters into the concept of tax is not achieved. The charging provision needs to provide the event attracting the levy to tax for example, manufacture or production of goods in a given geographical location or territory. In our view, if the Finance Acts, in question are read on a standalone basis the taxable event has been prescribed in an incomplete manner, inasmuch as, merely specifying that the levy is on manufacture or production is not enough, it also needs to be specified that the levy would be attracted when the production or manufacture takes place at a particular location, territory, etc., failing which the nature of levy is vague and uncertain and falls foul of the criteria laid down by the Apex Court in the case of *Govind Saran Ganga Saran* (supra).

4.11. It will be relevant to compare the charging provision of the aforesaid Finance Acts vis-à-vis the charging provision under the Central Excise Act, 1944, the Customs Act, 1962, Service Tax law as provided for in Chapter V of the Finance Act, 1994, as also the provisions of the levy of Goods and Services Tax under the Central Goods and Services Tax Act, 2017 and as

also the Integrated Goods and Services Tax Act, 2017 and see if they define the taxable event with reference to the location/territory. For ease of comparison we are extracting the charging provision under the Central Excise Act, 1944, the Customs Act, 1962, Service Tax law as provided for in Chapter V of the Finance Act, 1994, as also Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017:

Central Excise Act, 1944

**[SECTION 3. Duty specified in the Fourth Schedule to be levied. —** (1) *There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule :*

**Provided** *that the duty of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a hundred per cent. export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 (51 of 1975).*

**Explanation 1. —** *Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.*

**Explanation 2. —** *For the purposes of this sub-section, —*

(i) *“hundred per cent. export-oriented undertaking” means an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), and the rules made under that Act;*

(ii) *“Special Economic Zone” shall have the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).*

Customs Act, 1962

*SECTION 12. Dutiable goods. — (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.*

*[(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]*

Service Tax-Chapter V of Finance Act, 1994

**SECTION [66B. Charge of service tax on and after Finance Act, 2012.** — *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of [fourteen per cent.] on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.]*

*(52) “taxable territory” means the territory to which the provisions of this Chapter apply;*

**SECTION 64. Extent, commencement and application.** — *(1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.*

*(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

*(3) It shall apply to taxable services provided on or after the commencement of this Chapter.*

Central Goods & Services Tax Act, 2017

**SECTION 9. Levy and collection.** — *(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

**SECTION 8. Intra-State supply.** — (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply :

**Provided** that the following supply of goods shall not be treated as intra-State supply, namely :-

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply :

**Provided** that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

**Explanation 1.** - For the purposes of this Act, where a person has, -

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment [\* \*]  
\*] registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

**Explanation 2.** - A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

Integrated Goods & Services Tax Act, 2017

**SECTION 5. Levy and collection.** — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human

*consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person :*

***Provided*** that the integrated tax on goods [other than the goods as may be notified by the Government on the recommendations of the Council] imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962).

***SECTION 7. Inter-State supply.*** — (1) *Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in -*

- (a) two different States;*
- (b) two different Union territories; or*
- (c) a State and a Union territory,*

*shall be treated as a supply of goods in the course of inter-State trade or commerce.*

*(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.*

*(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in -*

- (a) two different States;*
- (b) two different Union territories; or*
- (c) a State and a Union territory,*

*shall be treated as a supply of services in the course of inter-State trade or commerce.*

*(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*

*(5) Supply of goods or services or both, -*

- (a) when the supplier is located in India and the place of supply is outside India;*
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or*
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,*

*shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.*

4.12. It is evident from a perusal of the charging provisions of the Central Excise Act, Customs Act, Chapter V of Finance Act, etc that they intertwine

categorically the taxable event attracting the levy with reference to its territorial coverage. For instance, the Central Excise Act, provides that the Central Excise duty shall be levied and collected on all excisable goods produced or manufactured in India (excluding goods produced or manufactured in Special Economic Zones). Likewise, the Customs Act stipulates that the duty of customs is leviable on goods imported into or exported from, India. On the other hand, Chapter V of the Finance Act 1994 which governed the levy of Service tax provided that tax shall be levied on services provided or agreed to be provided in the taxable territory, the said expression has been defined to mean the whole of India except the State of Jammu and Kashmir. Similarly, the CGST and IGST Act also prescribe the levy is on intra-state/inter-state supply of goods or services or both. As to what constitutes intra-state/inter-state has been stipulated in Section 7 and 8 of the IGST Act. It is thus evident and elementary that every Act has to stipulate the taxable event attracting the levy. If Section 147(1) of the Finance Act, 2002, Section 112(1) of the Finance Act 2018 and Section 125(1) of the Finance Act, 2021 are read on a standalone basis, they will fall foul of the requirement of prescribing the taxable event as they do not prescribe that the production or manufacture has to happen in any particular location. In the absence of such a prescription the levy cannot be given effect to, as the taxable event itself is uncertain and vague.

4.13. It appears to us that to obviate any challenge to the levy being vague and uncertain the legislature has consciously in sub-section 3 of Section 147 of the Finance Act, 2002, Sub-section 3 of Section 112 of Finance Act 2018 and Sub-section 4 of Section 125 of the Finance Act, 2021 stipulated that the provision of the Central Excise Act 1944 and the Rules made thereunder shall, as far as may be apply in relation to levy and collection of the duties under the Finance Acts, as they apply in relation to levy and collection of duties under the Central Excise Act, 1944 or the Rules made thereunder. In our view this statutory prescription has to be given a meaning and effect. If the provision for levy in sub-section (1) of Section 147/Section 112/Section 125 of the Finance Act 2002, 2018 and 2021 were enough to sustain the levy, then there would have been no need to provide that the provisions of the Central Excise Act, 1944 and the Rules made

thereunder to be made applicable as far as may be, to levy and collection of duties under the relevant Finance Acts.

4.14. The expression "as far as may be" has been explained by the Apex Court in the case of Dr. Pratap Singh vs the Directorate of Enforcement reported in AIR 1985 SC 989 to mean that the provisions of the Act being referred to have to be followed to the extent possible. Applying the ratio laid down by the Apex Court in the case of Dr. Pratap Singh, it is imperative on the Central Excise authorities to give effect to the provision regarding levy and collection of Central Excise duty under the Central Excise Act, 1944 and the Rules made there under, to the extent the same is possible and that only if necessary a deviation from the same can be undertaken to give effect to the purpose of the Finance Act. In other words, subject to there being no inconsistency or conflict, between the provisions of the Central Excise Act, and the Rules made thereunder vis-à-vis the Finance Acts, referred to above, the provisions relating to levy and collection of Central Excise duty under the Central Excise Act 1944 and the Rules made thereunder would equally apply to the levy under the relevant Finance Act. In case there is any inconsistency or conflict between the two, the provisions of the Central Excise Act 1944 or the Rules made thereunder would not apply.

4.15. It now needs to be seen whether the provisions of the Finance Act levying SAED, RIC and AIDC under Section 147(1)/112(1)/125(1) would cease to be uncertain and vague with respect to the taxable event if the provisions of the Central Excise Act, 1944 and the Rules made thereunder are applied to the levy and collection to the said duties under the respective Finance Act and further whether there is any inconsistency between the Central Excise Act vis-à-vis the Finance Act, so as to rule out the application of the provision of the Central Excise Act and the Rules made thereunder.

4.16. To us it appears that if the taxing event provided under the Central Excise Act, being production or manufacture in India, excluding the production or manufacture in Special Economic Zone is applied to the charging provisions under Section 147(1)/112(1)/125(1) of the Finance

Act, 2002, 2018 and 2021 respectively, then, the taxable event under the said Finance Acts would not be vague and unascertainable and would not fall foul of the test laid down in the case of Govind Saran Ganga Saran (supra).

4.17. In our view the levy under Section 147(1)/112(1)/125(1) of the Finance Act, 2002, 2018 and 2021 respectively, applies to goods manufactured or produced in India, excluding goods produced or manufactured in the Special Economic Zones. This is the only way that the said charging sections can be made operational and effective, by reading in the provisions relating to levy and collection provided for under the Central Excise Act, 1944 and the Rules made thereunder.

4.18. We find that the adjudicating authority has not assigned any reason in the impugned order for rejecting the appellant's contention regarding levy under the Finance Acts being inapplicable to goods manufactured or produced in the Special Economic Zone. According to the Respondent since the levy under the Finance Acts was over and above the levy under the Central Excise Act, the provisions of the later Act could not have been invoked. This finding in our view is at odds with the specific provision under the Finance Acts providing for the provisions of the Central Excise Act and the Rules, made thereunder relating to levy and collection being applicable, as far as they may be, apply to levy and collection under the Finance Acts.

4.19. We also find force in the appellant's submission that had it not been for invocation of the provisions of the Central Excise Act, 1944 particularly Section 3B thereof, which, stipulates that in cases where circumstances exist, the Central Government can amend the rate schedule so as to increase the rate of duty, that the amendment to the 8<sup>th</sup> Schedule to the Finance Act, 2002 by Notification No.25/2022-CE dated 31-8-2022, so as to increase the rate of duty of SAED from Rs.6/- per litre to Rs.12/- per litre on aviation turbine fuel would not have been possible. The text of Section 3B of the Central Excise Act, 1944 is extracted herein below:-

***“SECTION 3B. Emergency power of Central Government to increase duty of excise.***

***— (1) Where, in respect of any goods, the Central Government is satisfied that the***

*duty leviable thereon under section 3 should be increased and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, amend the Fourth Schedule to substitute the rate of duty specified therein in respect of such goods in the following manner, namely :—*

*(a) in a case where the rate of duty as specified in the Fourth Schedule as in force immediately before the issue of such notification is nil, a rate of duty not exceeding fifty per cent. ad valorem expressed in any form or method;*

*(b) in any other case, a rate of duty which shall not be more than twice the rate of duty specified in respect of such goods in the Fourth Schedule as in force immediately before the issue of the said notification :*

4.20. It is relevant to note here that normally to amend the tariff is vested only with the Parliament. In the normal course the 8<sup>th</sup> Schedule to the Finance Act could not have been amended by the Central Government by issuing a Notification. There is also no provision to this effect directly under Section 147 of Finance Act, 2002/Section 112 of Finance Act, 2018 and Section 125 of Finance Act, 2021. It is only by virtue of the provision relating to levy and collection under the Central Excise Act and the Rules made thereunder, which have been made applicable to levy and collection under the Finance Act that the Central Government has been able to by virtue of Section 3B of the Central Excise Act, 1944 amend the 8<sup>th</sup> Schedule to the Finance Act, 2002 and increase the rate of SAED on ATF. There is absolutely no answer that the Revenue has to this submission.

4.21. We find that the Respondent has in the impugned order proceeded on a tangent by referring to Central Excise Laws (Amendment and Validation) Act, 1982 to contend that if under any Central Law, the levy and collection of the duty of excise is in terms of the provision of the Central Excise Act, 1944, then the exemption provided for in the Central Excise Act, 1944 would not ipso facto apply to the levy of duty of excise under the other Central Acts. In support of this proposition, reliance is also being placed on the judgement of the Apex Court in the case of Unicorn Industries vs UOI reported in 2019 (370) ELT 3. We find that in the case of Unicorn Industries the issue in dispute was whether the exemption from levy of Central Excise duty provided for under the Central Excise Act, 1944 would ipso facto result

in exemption being extended from the levy of Education cess under the Finance Act, 2004 as also NCCD under the Finance Act, 2001 and Additional Excise duty (Pan Masala and Tobacco Products) under Finance Act, 2005. The Apex Court did not agree with the assessee's contention therein that an exemption granted from the levy of Central Excise duty under the Central Excise Act, 1944 would ipso facto apply to the levy of other excise duties under the other Finance Acts. It is, however relevant to note here that there is no dispute therein that the Central Government could have in exercise of powers under Section 5A of the Central Excise Act, granted exemption from the levy of excise duty by way of Education cess under the Finance Act, 2004 as also NCCD under the Finance Act, 2001 and Additional Excise duty (Pan Masala and Tobacco Products) under Finance Act, 2005.

4.22. The dispute in the present case is whether the provisions of the Central Excise Act, 1944 can be resorted to while construing the provisions governing levy and collection of duty under the three Finance Acts viz: SAED under the Finance Act 2002; RIC under the Finance Act 2018 and AIDC under the Finance Act, 2021. In our view the judgement in the case of Unicorn infact supports the case of the appellant inasmuch as the Apex Court held that while construing the levy and collection provisions with respect to Education cess under the Finance Act, 2004 as also NCCD under the Finance Act, 2001 and Additional Excise duty (Pan Masala and Tobacco Products) under Finance Act, 2005, to which also the provision regarding levy and collection under the Central Excise Act, 1944 and the Rules made thereunder has been made applicable, that provision of Section 5A of the Central Excise Act, 1944 providing for exemption from the levy could have been applied if the Central Government so choose.

4.23. In the case of Unicorn, since there was no exemption issue qua the levy of Education cess, NCCD as also Additional Excise duty (Pan Masala and Tobacco Products) that the exemption issued under the Central Excise Act, was only in respect of Central Excise duty and accordingly it was held that the said exemption could not *ipso facto* extendable to other levies. In the facts of the present case there are no exemptions issued under the Central Excise Act, 1944 which the Appellant seeks to apply to the levy under the Finance Acts in question. The fact situation covered under the Central Excise Laws (Amendment and Validation) Act, 1982 and Unicorn Industries (supra) being completely different and poles apart, the principle

laid down therein does not further the case of the Respondent in the present case.

4.24. We are therefore of the view that the appellant was completely justified in contending that the provisions of the Central Excise Act, 1944 with regard to levy and collection of Central Excise duty, to the extent they are not inconsistent, apply equally to the provisions of the Finance Act and accordingly the levy under the Finance Act will apply to goods manufactured or produced in India, other than the goods produced or manufactured in SEZ.

4.25. We also find substance in the appellant's contention to the effect that the duties under the concerned Finance Acts, being in addition to any other duty of excise, chargeable on such goods under the Central Excise Act, is a clear indication that the levy under the relevant Finance Acts is in itself in the nature of a duty of excise chargeable on goods under Section 3 of the Central Excise Act, 1944. Further the use of the expression 'in addition to any other duties of excise' makes it clear that when no other duty of excise can be levied on goods manufactured in an SEZ by virtue of Section 3 of the Central Excise Act, the levy under the respective Finance Acts, being in addition to a nil excise duty is not contemplated or permitted under the respective Finance Acts.

5. In light of the above discussions, we hold that the impugned order is not sustainable and accordingly set aside the same. The appeal is allowed with consequential relief, if any, in accordance with law.

*(Pronounced in the open court on 20.02.2024)*

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**