

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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.12056 of 2019
Service Tax Cross-Objection (CO) No. 10766 of 2019

(Arising out of OIA-RAJ-EXCUS-000-APP-102-103-2019 dated 07/05/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

C.C.E. & S.T.-RAJKOT

.....Appellant

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

VERSUS

RELIANCE INDUSTRIES LIMITED

.....Respondent

Village- Meghpar/ Padana, Gagva
Jamnagar
Jamnagar, Gujarat

APPEARANCE:

Shri Utkarsh Sharma, Special Counsel for the Appellant

Shri Vipin Jain, Shri Aqeel Sheerazi, Shri Vishal Agrawal & Ms. Dimple Gohil
(Advocates) for the Respondent

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

Final Order No. A/ 12621 /2021

DATE OF HEARING: 17.08.2021
DATE OF DECISION: 17.12.2021

RAMESH NAIR

The brief facts of the case are that the respondent being an SEZ Unit had filed refund claims under Notification No.12/2013-ST dated 01.07.2013 claiming refund of service tax paid to the service providers of taxable services received by them for carrying out authorized operations in their SEZ unit, service tax paid under reverse charge mechanism for the taxable services received for carrying out authorized operations in SEZ and also refund of service tax distributed to SEZ Unit under ISD Invoices under Rule 7 of Cenvat Credit Rules, 2004. The adjudicating authority vide Order-In-Original sanctioned refund claims for the entire amount claimed by the respondent.

1.1 Being aggrieved by the Order-In-Original, the department has preferred appeal before the learned Commissioner (Appeals), who upheld the Order-In-Original and rejected the appeal filed by the department. Therefore, the present appeal filed by the revenue for the part amount out of the refund allowed by the learned Commissioner (Appeals), the revenue's grounds of appeals made in the appeal memo are summarized below:-

- (a) That requirement of Para 3 (III)(f) is not satisfied as the respondent had filed more than one refund claim for each quarter.
- (b) The reasons assigned for condoning delay beyond one year as required by Para 3(III)(e) are not cogent and valid.
- (c) The Deputy Commissioner had not verified the correctness of the distribution of Cenvat Credit made by the ISD in favour of the SEZ Unit through ISD Invoices, the refund claim was sanctioned without verification of documents and only accepting the declaration made by the respondent in as much as since Table-II contains no column for specifying the date of actual payment to the registered service provider, no such date was actually furnished by the respondent in the table and the summary sheet.
- (d) The Deputy Commissioner had no means of verifying the correctness of respondent's assertion that the delay beyond one year from the date of payment to the registered service provider. As such this error shows that the refund was sanctioned without verification of documents.
- (e) The lower authorities adopted an incorrect approach when dealing with the exemption notification and ignored the settled law which prescribes that condition in exemption notification ought to be directly construed consistent with the principles established by Constitution Bench of the Hon'ble Supreme Court in the case of COMMISSIONER OF CUSTOMS (IMPORT) MUMBAI Vs. DILIP KUMAR AND CO. Reported in 2018 (361) ELT 577 (SC)

The respondent also filed a Cross Objection bearing No.ST/CO/10766/2019.

02. Shri Utkarsh Sharma, learned counsel appearing on behalf of the appellant (revenue) reiterates the grounds of appeal. He submits that as regard the compliance of Para 3(III)(e) of Notification No.12/2013-ST, it is clear that the refund of service tax shall only be allowed subject to the

conditions mentioned therein. Clause (e) being a part of the list of mandatory conditions without which the refund shall not be granted. As per the said condition refund shall be filed within one year from the end of the month in which actual payment of Service Tax made by the SEZ Unit or Developer to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be shall permit therefore, this condition is mandatory and cannot be construed a mere matter of procedure. The respondent is entitled to the benefits of the notification only upon fulfilment of all the conditions prescribed therein. In this regard he placed reliance on the following judgments:-

- COMMISSIONER OF CENTRAL EXCISE Vs. HARI CHAND SHRI GOPAL- 2010 (260) ELT 3 (SC)
- UNION OF INDIA Vs. GANESH METAL PROCESSORS INDUSTRIES- 2003 (151) ELT 21 (SC)

2.1 He submits that as submitted by the respondent even though there are two distinct eventualities, both the eventualities are covered under clause (e) of Para3 (III) of Notification wherein, mandatory conditions for claiming exemption under the notification have been laid down which makes it clear that period of one year prescribed in Para 3(III)(e) is a general condition meant for all situations. He submits that the respondents contention that the provision of notification have to be construed keeping in view the benevolent and beneficial object and purport of the statute that clause(e) of Para 3(III) has no application to the eventualities covered by Table-II of Form A-4 which are absolutely preposterous and holds no merit.

2.2 He further submits that in the following judgments, it has been held that non-fulfilment of conditions of notification would not entitle the party to its exemption/benefits.

- LAXMI SOLVEX vs. CCE, INDORE- 2017 (3) G.S.T.L. 435 (Tri.-Del.)
- CCE, INDORE vs. K.S. OILS LTD.- 2017 (52) S.T.R. 261 (Tri.-Del.)
- PRINCIPAL COMMISSIONER OF S.T. Vs. R.R. GLOBAL ENTERPRISES PVT. LTD.- 2016 (45) S.T.R. 5 (A.P.)

As regard the respondent's contention that the revenue's attempt to place time limit in clause(e) with respect to refund arising out of the ISD Invoice has the effect of indirectly imposing a time limit in Para 7 of Cenvat Credit

Rules, 2004 when no such time limit exists in the said rule. The said argument is baseless as the notification specifically provides for refund of Service Tax wherein, refund claim has been filed within one year from the end of month in which actual payment of service tax was paid by such Developer or SEZ Unit to the registered service provider and the same applies to refund arising out of the ISD Invoice as well which is apparent from Table II of Form A4 therefore, any refund claim whether it is for the refund covered in Table-I or Table-II, the same limitation period of one year applies to both the categories. Therefore, refund claim filed after one year of stipulated time provided under the notification is not admissible to the respondent.

2.3 He submits that ISD Invoice are as old as four years had been left out and later on included in the list of invoices of the present claim which are under dispute. As per the provision relating to input service distribution, the credit attributable to service used by more than one unit but not to all units shall be distributed on pro-rata basis of the turn over during the relevant period of such units to the total turnover of all units on which credit is attributable and which are apparently in the current year. However, in this case it is seen that the respondent who has its own ISD has distributed the credit after four years which do not appear to be credible. An entity which has to claim refund under Notification No.12/2013-ST dated 1.7.13 have to directly oblige with the conditions specified therein under clause (e) being one of the important condition. He submits that there is no proof or evidence on record to show that the invoice listed in the present claim had not been already subjected to refund claim in the past and that refund had not been already sanctioned in respect of these invoices as submitted in the grounds of appeal, no proper verification or scrutiny of the claim documents had been conducted by the adjudicating authority.

2.4 He further submits that from the details of Table-II of Form A-4 of the subject claim, some of the invoice are as old as year 2013 and distribution of credit pertaining to these invoices have been made after a gap of four years i.e. in the year 2017, the date of payment of service tax to service provider have also been made in the year 2013 which indicates that the late distribution of ISD Invoices, late filing of the refund claim. He submits that admittedly there is a vast gap between the date of payment to the service

provider and the refund application. There is a gross violation of conditions of the notification.

2.5 As regard the issue that the respondent had filed more than one refund claim per quarter, the same is not permissible under clause (f) of Para 3(III). The respondent's contention that they have filed one refund claim for each quarter including the quarter of dispute namely, June-2017 to September-2017 and that no more than four refund claims have been filed for any given year and they have also submitted a chart indicating the dates relevant quarters for which the claims have been filed. He submits that the contentions of the respondent are totally incorrect under the pretext the refund claim for one quarter i.e. of the quarter July- 2017 to September-2017. Respondent also filed claim for the invoice pertaining to the period from August 2013 to October-2017 therefore, it is clear that the appellant have filed more than one refund claim for one quarter accordingly, violated the conditions of Para3 (III)(f) of notification. He submits that the judgements cited by the appellant on this issue are not squarely applicable in this case.

2.6 He submits that the reasons for extending the time period beyond one year under clause (e) of Para3 (III) by the Deputy Commissioner are not cogent and valid. The learned Deputy Commissioner has given the reason for condoning the delay is the voluminous documentation was involved, this reason is not convincing. The delay was also attributable to the delay in distribution of the common credit at ISD Level therefore, the reasons assigned by the Deputy Commissioner condoning the delay are not reasonable and correct. He submits that as regard the submission of the respondent that provision regarding filing of claim by SEZ Unit in Para 3 (III)(e) are worded liberally is not correct as the said condition is mandatory. As regard the respondent's reliance on this Tribunal Final Order No.A/10493-10494/2019-WZB/AHD dated 13.3.19 which was upheld by the Hon'ble High Court vide Order dated 12.12.19 in their own case involving the same issue of previous period. He submits that in the instant case the condonation of Delay relates to claim period of more than four years also which is without any rationale justification as the number of invoices involved in the refund claim is more than 33,000 in number. He submits that it is beyond understanding how such a huge number of invoices were left out over a period of four years. The only reason furnished by the claimant to the

Deputy Commissioner is that due to tremendous volume of documentation they could not have filed the refund claim within one year and this explanation has been agreeably accepted by the adjudicating authority. He submits that the delay can be condoned only in exceptional matter therefore, the discretion exercised by the adjudicating authority for condoning the delay is without just and valid grounds. As regard the judgments of the hon'ble Tribunal and hon'ble High Court in the respondent's own case, the revenue has filed the Special Leave Petition before the Hon'ble Supreme Court against the said orders which is pending decision.

2.7 As regard the dispute about verification of the claim he submits that from the refund claim documents and the adjudicating authority's order, the verification from the point of view of clause (a) of Para 3(III) has not been done in proper manner. He referred to some part of the Order-In-Original whereby, he submits that there are no findings about the authenticity of the services provided by the service provider which were common to authorized operations in SEZ Unit in the operations and the DTA Units. There are no findings also about the authenticity of older invoices taken up in the present claim whether those invoices had already been covered in the previous quarterly claims and this is not repeat of the same. In view of this, it is evident that despite the report from the jurisdictional Range Superintendent which indicates inability to conduct the verification of all the relevant documents, the adjudicating authority has sanctioned the refund claim. The details of distribution of ISD Jamnagar to SEZ have not been verified.

2.8 In view of his above submission, the appellant prays that their appeal be allowed and matter be remanded for proper verification.

03. Shri Vishal Agrawal along with Shri Akhil Sheraji, Shri Vipin Jain & Ms. Dimple Gohil, Advocates appearing on behalf of the respondent submits that Para 3 (III)(e) of Notification No.12/2013-ST is not applicable to their refund corresponding to Table-II of Form- A4. The notification covers two distinct kinds of situations and requires details to be furnished separately in respect of each of these two situations. The said situations are as follows:-

- (a) Where services are received by the SEZ Unit directly from Registered Service Provider in terms of contracts executed between the two. In such cases, the services are exclusively meant for use in the SEZ Unit and are paid for by the SEZ Unit itself where legal

framework for making such payments is different from the normal framework in that an SEZ Unit under the RBI guidelines is entitled to make payments to the registered service provider in foreign currency facility which does not exist for units in the DTA.

- (b) Where services are received by the SEZ not directly from the registered service provider but through the head office located in the DTA. Services provided by the Registered Service Providers in such situation common services meant for the DTA Units as well as for the SEZ Units. The entitlement of the SEZ unit to claim refund or avail cenvat credit flows from the ISD Invoice and not on the strength of the mother invoice issued by the Registered Service Provider to the DTA Units. In these situations, no payment is made directly by the SEZ Units to the Registered Service Provider.

3.1 It is the submission of the respondent that Table-I of the Notification covers a situation where services are procured and paid directly by an SEZ Unit as such services are for exclusive use in the SEZ. Table-II on the other hand covers services which are common to DTA and SEZ Operations which are procured and paid for by the Head Office in the DTA.

3.2 He submits that in the revenue's appeal, the challenge for the sanctioned refund covered by Table-II on the ground that they were filed late is totally misconceived and untenable as it provides on the erroneous premise that the period of one year prescribed in Para 3(III)(e) applies only to refund covered by Table-II of Form A-4 of the notification. From the plain reading of the said clause (e), it is clear that limitation prescribed therein applies only to situation covered by Table-I of Notification. This clause has no application to situation covered by Table-II of Form-A4 where refunds are claimed on the strength of ISD Invoices.

3.3 He submits that the period of one year prescribed in clause (e) must be completed from the end of the month in which actual payment of Service Tax was made by the SEZ Unit to the Registered Service Provider. The provision covers only instances covered by Table-I wherein, SEZ deals directly with the Registered Service Provider and makes payment to it. In Table-II situations payment to the service provider is made not by the SEZ Unit but by the Head Office in DTA therefore, in respect of payment for

services made by Head Office Para 3(III)(e) is incapable of application as the time limit prescribed therein begins from the date of payment of service providers by the SEZ Unit. He submits that the submission of the respondent that clause (e) is not applicable to Table-II cases does not render clause (e) redundant or otiose but instead confines its application to Table-I cases.

3.4 He further submits that the refund covered by Table-II relates to input services which are common to authorised operations of SEZ Unit as well as DTA Operation and the tax paid on such common input service which are distributed in the manner provided for in Rule 7 of the Cenvat Credit Rules, 2004. In such scenario, there is no contract between the SEZ Unit and the Registered Service Provider therefore, never any actual payment made by the SEZ Unit in favour of the Registered Service Provider. In such cases, the invoice would stand issued in the name of the ISD only and payment to the service provider would also be made to the Registered Service Provider by the ISD (which is in the DTA). Consequently, in this case there can be no question of SEZ making any payment to the Registered Service Provider.

3.5 He submits that since the provision of the notification are required to be interpreted harmoniously with the provision of Cenvat Credit Rules and the SEZ Rules, all of them have relevance in working of the notification. It is necessary to take note of the following two relevant provisions in Rule 7 of Cenvat Credit Rules which deals with distribution of common input services or Rule 19(7) of SEZ Rules which will need to be interpreted and construed harmoniously with the provision of the notification:

- (a) Rule 7 of the Cenvat Credit Rules deals with distribution of common input services by an ISD does not lay down any outer limit for distribution of credit. Therefore, revenue's attempt to place time limit in clause (e) with respect to the refund arising out of ISD Invoices as effective of indirectly imposing time limit under Rule 7 where no such time limit exists in the said rule.
- (b) Rule 19(7) of the SEZ Rules expressly provides that an SEZ Unit and the DTA Operations of the company have two distinct identities with separate books of accounts therefore, it would be totally inappropriate and impermissible to substitute the words 'SEZ Units' in clause (e) with the words 'Claimants'.

3.6 He further submits that even if Rule 19(7) of the SEZ Rules do not exist, such an interpretation would have been impermissible as it goes against cardinal principle of lateral principles of Fiscal Statute as laid down time and again in the series of judgments by the Hon'ble Supreme Court. He placed reliance on the judgments of COMMISSIONER OF C.EX. & CUS., KERALA Vs. LARSEN & TOUBRO LTD.-2015 (39) S.T.R. 913 (S.C.). He submits that the revenue proceeds on the assumption that condition prescribed in all cases (a) to (h) of Para 3(III) are applicable to both Table-I as well as Table-II cases. He submits that many of the clauses are common to both Table-I and Table-II but some of them are applicable only to one of the two tables in Form A-4. He pointed out that the earlier Order of the Tribunal dated 13.3.19 though had not decided this issue but had recorded a prima facie view that the above contention was convincing. It is for this reason Hon'ble High Court of Gujarat did not decide on this issue of law but made it clear that Para 13 of its order dated 12.12.19 that this issue was being kept open and could be decided in any other proceedings before appropriate forum uninfluenced by any observation made by the High Court in its order dated 12.12.19. He placed reliance on the Hon'ble Supreme Court judgement in the case of CIT Vs. B.C. SRINIVASA SETTY-(MANU/SC/285/1981) & COMMISSIONER OF C.EX. & CUS., KERALA Vs. LARSEN & TOUBRO LTD.-2015 (39) S.T.R. 913 (S.C.).

3.7 He further submits that assuming that Para 3 (III)(e) is applicable in respect of Table-II cases, the period of time prescribed therein is extendable without any fetters and without the need to assign reasons thus, making it clear that the said provision is to be construed liberally and not directly, particularly in view of the beneficial and benevolent nature of the notification and the SEZ Law. He placed reliance on the following judgment.

- COLLECTOR, LAND ACQUISITION, ANANTNAG Vs. MST. KATIJI -1987 (28) ELT 185 (SC)
- P.B. DEVASWOM Vs BHARGAVI AMMA (MANU/SC/7894/2008).

3.8 He submits that since there is no mandatory time limit prescribed for extending the delay, the delay should be considered liberally and the substantial benefits of refund cannot be denied. He further submits that Section 26 of the SEZ Act grants a statutory exemption from levy of Service Tax on services consumed within the SEZ Unit. In light of the statutory

exemption, Government had no legal right to levy any service tax where such services were being consumed by the SEZ Unit therefore, provision in the said notification have to be construed keeping in mind the benevolent and beneficial object and purport the statute since the government did not have right in the first instance to levy and collect service tax. He placed reliance on the judgment in GOVERNMENT OF KERALA Vs. MOTHER SUPERIOR ADORATION CONVENT (MANU/SC/127/2021) & CCE VS. FAVOURITE INDUSTRIES (MANU/SC/270/2012).

3.9 As regard the grounds of appeal that only one refund claim per quarter being permissible under clause (f) of Para 3(III). He submits that this issue is no longer res-integra and has already been decided in favour of the respondent in the following judgments:-

- SRF LIMITED Vs. CCE & ST-2017 (3) G.S.T.L. 347 (Tri.-Del.)
- WESTERN CANS P. LTD. Vs. C.C.Ex.MUMBAI-1- 2011 (270) E.L.T. 101
- CCE Vs. CHAMUNDI TEXTILES (SILK MILLS) LTD.- 2011 (270) ELT 531 (Tri.-Bang.)

3.10 He submits that the revenue's contention that period for which the refund has already been filed, refund in respect of invoices for that earlier period cannot be filed as it will amount to filing of more than one refund claim for a particular quarter. It is the submission of the appellant that they have filed only one refund claim for each quarter including the quarter in dispute namely July 2017 to September 2017. In other words, not more than four refund claims have been filed for any given year. He referred to Annexure-A which records the dates and relevant quarters for which refund claims have been filed.

3.11 He submits that the revenue contended the reasons assigned by the Deputy Commissioner for granting extension of time are not cogent and valid. In this regard, it is his submission that considering the peculiar facts and circumstances of the case there is no infirmity in the reason assigned by the Deputy Commissioner for extending the time period within which the refund claim could be filed. As regard claim refers to Table-II there are more than 33,400 ISD Invoices which were supported by backup documents such as Mother Invoice, ISD Invoice and Invoice Verification documents and the bank payment vouchers altogether the documents are approximately more

than 1.5 Lakhs. In covering letter dated 31.10.17 itself shows that these documents were submitted in 1255 Volumes. In this fact the reason given by the Deputy Commissioner regarding voluminous documents involved is not bold or exaggerated assumption but one which is duly backed and supported by facts. The so-called delay was attributed entirely due to the distribution of the common credit at the ISD Level. In so far as the SEZ Unit is concerned, the claim was filed within one year from the receipt of ISD Invoices. Prior to the receipt of ISD Invoice, the respondent SEZ Unit had no means to claim refund as the amount of refund attributable to the SEZ becomes known to the SEZ Unit only on receipt of the ISD Invoice. It is clear from columns 9, 10 & 11 of Table-II itself that the refund claim in respect of common input services has to be backed and supported by ISD Invoice, without having the ISD Invoice, the SEZ Unit cannot file a refund claim. In view of the reason assigned by the Deputy Commissioner, condoning the delay are reasonable and correct.

3.12 He further submits that even if the reason assigned by the Deputy Commissioner for extending time are not cogent, nothing prevents appellate forum from discarding that reasoning and substituting their reasoning with its own reasoning. This tribunal in the appellant's own case vide its Final Order No. A/10493-10494/2019-WZB/AHD dated 13.3.2019 while dealing with the earlier case where no reasons had been assigned by the Deputy Commissioner, it was held that as an appellate forum it was entitle to exercise the powers vested in the Deputy Commissioner and condoned the delay if it was satisfied with the reasons for such delay. The above approach of the Hon'ble Tribunal was challenged by the revenue before Hon'ble Gujarat High Court which challenge was dismissed by the Hon'ble Gujarat High Court by upholding not only the power of condoning delay but also accepting the reasons assigned in the Tribunal Order for condoning the delay.

3.13 As regard the contention of the revenue that the Adjudicating Authority had failed to carry out the verification exercise relating to the distribution of credit between DTA Unit and the SEZ is concerned, it is submitted that the requirement in the said clause (a) is that the distribution of the credit has to be made in the manner specified in Rule 7 of Cenvat Credit Rules, 2004. The respondent had submitted a Chartered Accountant

Certificate in accordance with the requirement of Rule 7 of Cenvat Credit Rules, 2004 as provided in Para 3(III)

- (a) Read with Para 2 of Form A-4 of the notification, it is not the case of the revenue in its appeal that the turnovers declared in the refund application were in any manner incorrect or inaccurate. The appeal of the revenue also does not disclose any instance of incorrect distribution of Cenvat Credit. The Range Superintendent was called upon to submit his verification report which was submitted on 30.11.2017. Thus, the assertion in revenue's appeal for no verification was carried out by the adjudicating authority is mere *ipse-dixit* and unsupported by any material or any instance of any error in the distribution. No Show Cause Notice was issued to the ISD Registrant as there is no dispute in the correctness of the distribution made by ISD. Therefore, the correctness of ISD Invoice cannot be doubted accordingly, there is no error in the documents on the basis of which the refund was claimed. He submits that in this regard the respondent relies upon the order of this Hon'ble Bench in the respondent's own case for the previous period wherein, the similar grounds raised by the revenue reported at COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX Vs. RELIANCE INDUSTRIES LTD.-2019 (26) G.S.T.L. 34 (Tri.-Ahmd), doubting the correctness of the distribution of the Cenvat Credit sighting any specific instance or error in any particular invoice was rejected.

3.14 He submits that the finding of the Hon'ble Tribunal was accepted by the revenue and there was no challenge of the said finding before the Hon'ble Gujarat High Court in Tax Appeal No.740 & 743 of 2019.

3.15 He further submits that the reviewing authority ought not to have ordered for filing appeal as there was no right to levy and collect tax from SEZ Unit and at any rate, refund of Table-II services would have otherwise been admissible under Rule 5 of Cenvat Credit Rules, 2004. He placed reliance on the following judgment BARCLAYS GLOBAL SERVICE PVT. LTD. Vs. CCT-2018 (362) ELT 889(T).

3.16 As regard the contention in the revenue's appeal that the documents submitted along with claim do not contain particulars of the date of payment

so as to enable the adjudicating authority to verify compliance with the requirement of Para 3 (III)(e) is not only baseless and unsubstantiated but also factually incorrect. It was submitted in the course of hearing that along with refund claims, the respondent had filed statements in Exhibit-B & B1 and certified copies of documents which were Exhibits-C & C1. It was submitted that the certified copies of documents submitted as Exhibit C & C1 were in total of 1255 volumes, each volume containing hundreds of documents. The number of documents submitted along with refund claim were in excess in Lakh and the number of invoice covered by Table-II for this particular claim were more than 33,400 and for each of these invoices, the respondent had submitted ISD Invoice, Mother invoice, Invoice Verification (IV) Documents, Bank Payment Vouchers. He submits that as directed by the hon'ble Bench, the respondents have submitted the copies of the following documents:-

- a) First page of the statement showing invoice-wise details of taxable services received from various Service Providers and service tax paid to them (Enclosed as Exhibit B & B1 to Refund Application dated 30.10.2017 bearing F.No.: RIL/SEZ-Unit/STX/Refund-Jam-03/2017-18/172) It may be noted that Exhibit B relates to Table-I and Exhibit B1 relates to Table-II.
- b) Sample on one set each, of Certified Copies of documents supported with copies of Invoice Verification (IV) document and Bank Payment Voucher (BPV) evidencing payment for such specified services used for the authorized operations and service tax paid to the Service Providers (Enclosed as Exhibit C & C1 to Refund Application dated 30.10.2017 bearing F.No.:RIL/SEZ-Unit/STX/Refund-Jam-03/2017-18/172).

With these above submissions, the appellant prays that the revenue's appeal be dismissed. The respondent filed additional submission vide letter dated 24th November, 2021 in response to the additional points of submission filed by the appellant on 14.10.21 which is taken on record and considered.

04. We have carefully considered the submissions made by both the sides and perused the appeal records, Cross Objection as well as written submissions made by the appellant as well as by the respondent. The issue to be decided in this case is that whether the sanction of respondent's refund

claim in terms of Notification No.12/2013-ST dated 01.07.2013 by the lower authorities is correct and legal and in compliance with the conditions prescribed therein.

4.1 As regard the issue that the respondent is required to file only one refund claim for each quarter in terms of Clause (f) of Para 3 (III) of the notification, firstly, the respondent have admittedly filed only one refund claim for each quarter therefore, it cannot be said that the respondent have filed more than one claim in each quarter. Secondly in the facts that the respondent have filed refund claim in quarter July 2017 to September 2017 which includes the claim of the invoices which are for the period from August 2013 to October 2017 even if, it is assumed that the refund claim for the part of the invoices which were pertaining to earlier quarter filed in the quarter July 2017 to September 2017 only on this ground, refund cannot be denied. As this issue has time and again considered in the judgments cited by the respondent. In the case of SRF LIMITED, this tribunal passed the following order:

4. Notification No. 12/2013, dated 1-7-2013 provides exemption to taxable services provided in SEZ unit or the developer of SEZ unit for authorized operation. The refund procedure under the said notification is contained in Paragraph III(e) therein, which provides that the refund claim shall be filed within one year from the end of the month, in which actual payment of Service Tax was made by the developer or the SEZ unit to the registered service provider. The Clause (f) In Paragraph III also provides that the SEZ unit or the developer shall submit only one refund application under the notification for every quarter. It is an admitted fact on record that within one year from the date of actual payment of Service Tax to the service provider, the appellant had filed the refund application. However, the refund application for Rs. 4,64,114/-, has not been considered by the authorities below on the ground that Service Tax paid during the particular quarter, has not been claimed for that quarter. On a conjoint reading of Clauses (e) and (f) contained in the Notification, it transpires that the statutory requirement of time limit for filing the refund application is contained in Clause (e), which has to be strictly adhered to by the assessee for the purpose of claiming refund. The condition in Clause (f) is to facilitate the Department to scrutinize or to process the refund application. Thus, the condition for filing the claim on quarterly basis has been provided therein.

5. Since Clause (f) is procedural in nature and the appellant in this case has complied with the statutory provisions of filing the refund application within one year from the date of payment of Service Tax to the service provider, in my opinion, rejection of refund claim of Rs. 4,64,114/- by the authorities below is not in conformity with the conditions laid down in Notification dated 1-7-2013.

6. Therefore, I do not find any merits in the impugned order and allow the appeal in favour of the appellant with consequential benefit of refund.

Similar issue has been considered in another case of this tribunal in the case of WESTERN CANS P. LTD.(supra)

8. To deal with the first issue, we have gone through the Notification 5/2006 dated 14-3 2006 wherein it is provided that the refund claim can be submitted not more than once in any quarter in a calendar year. From the perusal of the provisions, we find that the intent of the legislature was that the assessee should not file refund claim on day to day basis or weekly or invoice-wise. To avoid multiplicity of the refund claim this provision was made, therefore, it is suggested that refund claim can be filed on quarterly basis in a calendar year i.e. not more than four times in a calendar year. It does not mean that the assessee has to file refund claim quarterly. It is not the intent of the legislature. In our opinion, if the assessee files a refund claim once in a year that will also avoid the multiplicity. Therefore we do not find any merit in the denial of the rebate claim on this ground.

In the case of CCE Vs. CHAMUNDI TEXTILES (SILK MILLS) LTD.(supra), the same issue has been decided as under:

7. I have carefully considered the case records and the submissions made by both sides. The ground raised to assail the impugned order is that it had allowed refund of accumulated input service credit which did not pertain to the goods exported during the periods for which the claims were made. I find that this aspect has been clarified by C.B.E.C. in para 3.3 of Circular No. 120/01/2010-S.T., dated 19-1-2010, which is reproduced below.

"3.3 Quarterly refund claims [para 2(d) above]:

As regards the quarterly filing of refund claims and its applicability, since no bar is provided in the notification, there should not be any objection in allowing refund of credit of the past period in subsequent quarters. It is possible that during certain quarters, there may not be any exports and therefore the exporter does not file any claim. However, he receives inputs/input services during this period. To illustrate, an exporter may avail of Rs 1 crore as input credit in the April-June quarter. However, no exports may be made in this quarter, so no refund is claimed. The input credit is thus carried over to the July-September quarter, when exports of Rs. 50 lakh and domestic clearances of Rs. 25 lakh are made. The exporter should be permitted a refund of Rs. 66 lakh (as his export turnover is 66% of the total turnover in the quarter) from the Cenvat credit of Rs 1 crore availed in April-June quarter. The illustration prescribed under para 5 of the Appendix to the notification should be viewed in this light. However, in case of service providers exporting 100% of their services, such disputes should not arise and refund of Cenvat credit, irrespective of when he has taken the credit, should be granted if otherwise in order. Such exporters may be asked to file a declaration to the effect that they are exporting 100% of their services, and, only if it is noticed subsequently that the exporter had provided services domestically, the proportional refund to such extent can be demanded from him."

There is no dispute that the claims are consistent with the clarification. I also find that in assessee's own case this Tribunal had sustained a similar order of the Commissioner (A) and had followed the reasoning reflected in the above extract of the C.B.E.C. Circular

In view of the above view taken by this tribunal that merely because refund claim in respect of invoices of earlier quarter filed in the subsequent quarter, the refund claim on this ground alone cannot be denied therefore, this ground of revenue's appeal is not sustainable.

4.2 As regard the ground of appeal that the reason assigned for condoning delay beyond one year as required by Para 3(III)(e) are not cogent and valid. We find that the learned Deputy Commissioner has extended the time period by exercising his discretion and considering the reasons therefore, the same cannot be interfered. Moreover, we find that there is a humungous set of documents which runs into 1255 Volumes including 33,400 ISD Invoices, it is obvious that to compile such a voluminous documents it is a time consuming exercise therefore, the delay in filing the refund in respect of ISD Invoices is cogent and reasonable. Therefore, the claim of the respondent that the documentation involved was voluminous is not a bold or exaggerated assertion. We further find that the delay is attributed entirely to the delay in distribution of the common credit at the ISD Level. However, the claim was filed within one year from the receipt of ISD Invoice therefore, firstly there is no delay from the date of ISD Invoice but even if it is considered that there is a delay the same is supported by proper reason. Further the respondent could not have filed refund claim without having ISD Invoices therefore, it was beyond their control to file refund claim before issuance of ISD Invoice. Even the department would not entertain any refund claim without the issuance of ISD Invoice in respect of claim under Table-II of Form A-4. It is clear from coloumn 9, 10 & 11 of Table-II that the claim for refund in respect of common input services has to be based and supported by the ISD Invoice, without having ISD invoice, the SEZ Unit cannot file claim for refund. The notification does not contemplate that an SEZ Unit while making a refund must file its claim on the basis of estimation or informal communication from the ISD Office about the extent of Cenvat credit attributable to the SEZ Unit. Therefore, in view of the above reasons assigned by the Deputy Commissioner for extending the time limit for filing refund claim are reasonable and correct.

4.3 It is settled law that discretion exercised by a statutory authority who is empowered to exercise such discretion cannot be interfered with lightly or routinely. The mere fact that the committee of Commissioners found the reasons assigned to be not convincing, without any basis it is not sufficient for filing a review as the reasons given in exercise of its statutory powers of exercising discretion. In the grounds of appeal there is no averment by the revenue that the reasons assigned suffer from any perversity or are premised on non-existent facts so as to warrant interference with the exercise of the discretion. We find that even if the reasons assigned by the Deputy Commissioner for extending the time are not cogent, nothing prevents for a higher forum to substitute that reasoning with its own reasoning. In the present case it is not only the Deputy Commissioner who has extended the period by recording the reasons but the learned Commissioner (Appeals) also endorsed the said reasoning.

4.4 We further find that in the appellant's own identical case, this tribunal vide Order No. A/10493-10494/2019-WZB/AHD dated 13.3.2019 considered the reason submitted by the assessee and even though no proper reason had been assigned by the Deputy Commissioner, the appellate tribunal by considering the reason condoned the delay. The relevant order is reproduced below:

"8. The Revenue has contended that even if it is assumed that the adjudicating authority had exercised the discretion vested with him, it was obligatory on his part to have specified reasons for exercising such discretion. We find that this argument of the Revenue does not warrant acceptance inasmuch as clause (e) does not stipulate that the exercise of power to condone the delay in filing the claim for refund, shall be for reasons to be recorded in writing as is the case with the several other statutory provisions in Chapter V of the Finance Act, 1994. To quote as an example, Section 85(3A) of the Finance Act, 1994 which deals with filing of an appeal before the Commissioner (Appeals) provides that the Commissioner (Appeals) shall, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal, allow it to be presented within a further period. Such a satisfaction on the part of the Commissioner (Appeals) obviously would have to expressly form a part of the reasoning in his order. However, insofar as clause (e) of Para 3(III) is concerned there is no such stipulation. In the facts of the present case, we are of the view that, the adjudicating authority has judicially exercised the discretion vested in it. The exercise of such discretion could have been questioned only if it is shown to be mala fide or vitiated with perversity. It is nobody's case that the exercise of discretion by the adjudicating authority is mala fide or perverse, consequently the challenge to such exercise of such discretion is clearly unsustainable.

9. In our view, even if one was to presume for the sake of argument that the adjudicating authority had processed the refund claim without verifying the compliance with the condition regarding time limitation prescribed in clause (e) of Para 3(III), even then there is no warrant to remand the matter back to the adjudicating authority as has been contended by the Revenue, inasmuch as, even if the adjudicating authority had not exercised the jurisdiction vested with it, we can do so and we exercise the said discretion and condone the delay in filing the claim for refund, as prescribed in clause (e) of Para 3(III) of Notification No.12/2013. In our view any other interpretation would do violence to the objective with which the entire exemption mechanism by way of refund has been put in place..."

Against the above Tribunal Order, the revenue had filed an appeal before the Hon'ble Gujarat High Court which was dismissed by upholding not only the power of Tribunal to condone the delay (when the Deputy Commissioner had not given reasons) but also accepting the reason assigned in the Tribunal's Order for condoning the delay. The relevant extract of the Hon'ble High Court's Order dated 12.12.2019 is reproduced below:

"10.2 In the light of the principles enunciated in the above decisions, the powers of the appellate authority being an extension of the powers of the assessing authority, any order that could be passed by the assessing authority can be passed by the appellate authority. Under the circumstances, no infirmity can be found in the view of the Tribunal that if the adjudicating authority has not exercised the discretion to condone the delay, the Tribunal can exercise such discretion."

In view of the above legal position, in the present case also independently looking to the facts as discussed above, we are of the view that the reasons are absolutely correct for extending the time limit for filing the refund claim therefore, the revenue's grounds of appeal is not sustainable.

4.5 As regards grounds of appeal that Deputy Commissioner has not done the verification of distribution of credit between DTA Unit and SEZ Unit, we find that requirement in the clause (a) of Para 3 (III) of Notification is that the distribution of the credit has to be made in the manner specified in Rule 7 of Cenvat Credit Rules, 2004. For this purpose, the refund application requires the reason to furnish the details of turnover of the SEZ Unit in the previous Financial year as also the turnover of the DTA Operations in the previous Financial year. It is not under dispute that the respondent had furnished along with its claim complete break up of turnover details duly certified by Chartered Accountant in accordance with the requirements of

Rule 7 of Cenvat Credit Rules, 2004. As provided in Para 3 (III)(a) read with Table-II of Form A-4 of the notification, revenue has nowhere disputed that the turnovers declared in the refund application while in any manner incorrect or inaccurate. It is also not the case that in any particular instance, the distribution of Cenvat Credit is incorrect. It is also observed that it is on record that after receipt of refund application, the Range Superintendent was called upon to submit his verification report which was submitted by him on 30.11.2017 as recorded in Order-In-Original thus, the contention of the revenue that no verification was carried out by adjudicating authority is absolutely incorrect and not supported by any material or instance of an error in the distribution. It is also found that in case of any incorrect distribution of credit by ISD Registrant the jurisdictional Officers of ISD Registrant is suppose to issue a Show Cause Notice disputing the correctness of the distribution made by the ISD. As submitted by the respondent no such Show Cause Notice has been issued to the respondent's ISD registrant or any other DTA Unit of the respondent contesting the correctness of the distribution made by ISD registrant. It is also a fact that the appeal of the revenue also does not cite any such instance, we find that the similar ground was raised by the revenue in the respondent's own case for the previous period wherein, similar ground was raised by the revenue doubting the correctness of distribution of Cenvat Credit without citing any specific instance or error in any particular invoice but this tribunal has rejected the said ground of the revenue. The relevant order dated 13.3.2019 is reproduced below:

"10. Insofar as contravention of clause (a) of Para 3(III) of Notification No. 12/2013 is concerned the Revenue has sought remitting the matter back for verification of the correctness of the distribution of credit made to the SEZ unit through ISD invoices. In other words the Revenue wants the verification to be undertaken as to whether the distribution was in accordance with the Rule 7 of the Cenvat Credit Rules, 2004. On the other hand the respondent has contended that along with the claim for refund all the necessary data required for the purpose of verification had been furnished. In fact the certification of the same data by the statutory auditors was furnished through email, as was the practice that was followed for processing such refund claims. It was submitted that no infirmity was shown by the Revenue in its appeal with respect to the manner in which the credit was distributed and consequently there was no basis or reason for doubting the correctness of the distribution made so as to warrant a remand.

11. We have examined the claim for refund and in particular Para 2 of Form A-4 wherein details regarding turnover of the DTA and the SEZ have been furnished. It is not in dispute that the services covered by Table-II of Form A-4 were common to the authorised operations in the SEZ and the

operations in the DTA. Such common credit has been distributed on the basis of the turnover of the SEZ unit and that of the DTA unit as envisaged in clause (a) of Para 3(III). We are unable to accept the objection of the Revenue nor has the Revenue shown as to what is incorrect with the claim of refund filed by the respondent assessee. In our view the adjudicating authority has acted completely in accordance with law while processing the claim for refund in the manner prescribed in the refund notification. We do not agree with the objections of the Revenue that the adjudicating authority has not applied his mind to compliance of provision of clause (a) of Para 3(III), on the contrary we find that the Revenue has not been able to justify their submissions by pointing out any infirmity in the order of the adjudicating authority."

4.6 We find that as per the submission made by the respondent, the above finding of the Tribunal attained finality as though the revenue challenged the above order before the Hon'ble High Court under Tax Appeal No.740 & 743 of 2019 but the above finding was not challenged in the said Tax Appeal. In view of the above position of law, in the respondent's own case, the refund cannot be questioned on the ground that the verification of document was not done by the Deputy Commissioner hence this ground is also rejected.

4.7 We further find that as per the ground of appeal of the revenue, the main contention is that the respondent have not complied with the contention of Para 3(III)(e) of the Notification No.12/2013-ST in as much as the refund claim in case of refund claimed under Table-II of Form A-4 of Notification, the refund claim was filed beyond one year from the date of actual payment of service tax made by the respondent to the registered service provider. The said notification is reproduced below:-

*In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), **No. 40/2012-Service Tax, dated the 20th June, 2012**, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 482 (E), dated the 20th June, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.*

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner:

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II) The ab-initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which ab-initio exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-

(a) the service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the Cenvat Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.

(b) the SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which ab-initio exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).

(c) the SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the

said Act or the rules made thereunder, shall file the claim for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;

(d) the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;

(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter:

Explanation.- For the purposes of this notification "quarter" means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(g) the SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.

(h) if there are more than one SEZ Unit registered under a common service tax registration, a common refund may be filed at the option of the assessee.

(IV) The SEZ Unit or Developer, who intends to avail exemption or refund under this notification, shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed, for authorised operations in the SEZ.

4. Where any sum of service tax paid on specified services is erroneously refunded for any reason whatsoever, such service tax refunded shall be recoverable under the provisions of the said Act and the rules made there under, as if it is recovery of service tax erroneously refunded;

5. Notwithstanding anything contained in this notification, SEZ Unit or the Developer shall have the option not to avail of this exemption and instead take CENVAT credit on the specified services in accordance with the CENVAT Credit Rules, 2004.

6. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, or the said Act, or the rules made there under shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

7. This notification shall come into force on the date of its publication in the Gazette of India

TABLE-II

S. No.	Description of taxable service	Name and address of service provider	STC No. of service provider	Invoice* No.	Date	Value of service	Service tax + cess Amt.	Amount distributed to the SEZ Unit/Developer out of the amount mentioned at column No. (8) (Claimed as refund)	Document* under which amount mentioned at column (9) was distributed to the SEZ Unit/Developer	
									No.	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Total Amount										

*Certified copies of documents are enclosed

2. (i) The turnover of the authorised operation of the SEZ Unit/Developer in the previous financial year : _____;
- (ii) Turnover of the DTA operations in the previous financial year :
3. I/We Declare that-
- (i) information given in this application for refund is true, correct and complete in every respect and that I am authorised to sign this application for refund of service tax;
- (ii) the specified services, as approved by the Approval Committee of SEZ, on which exemption/refund is claimed are actually used for the authorised operations in SEZ;
- (iii) we have paid the service tax amount along with the cesses, being claimed as refund vide this application, to the service provider;
- (iv) refund of service tax has not been claimed or received earlier, on the basis of above documents/information;
- (v) we have not taken any CENVAT credit under the CENVAT Credit Rules, 2004 of the amount being claimed as refund;
- (vi) proper account of receipt and use of the specified services on which exemption/refund is claimed, for the authorised operations in the SEZ, is maintained and the same shall be produced to the officer sanctioning refund, on demand.

Signature and name (of proprietor/managing partner/person authorised by managing director of the SEZ Unit/Developer) with complete address, telephone and e-mail.

Date :

Place :

4.8 On careful perusal of the above notification, we find that though in Para 3 (III)(e) there is a condition that the refund claim should be filed within one year from the actual date of payment of service tax to the registered service provider however, the discretion to extend the said time limit is vested with the Assistant Commissioner/Deputy Commissioner of Central Excise. Firstly, as we observed above, the Deputy Commissioner has rightly extended the time limit on the cogent reason. Secondly the condition (e) of Para 3 (III) of Notification is applicable only in respect of the refund claimed under Table-I of Form A-4. From the Table-II, coloumn 9, 10 & 11 it clearly provides that only amount distributed to the SEZ Unit/Developer needs to be claimed as refund and detail of documents such as ISD Number and date has to be mentioned. As per the said format, the refund claim

under table-II can only be filed when the SEZ Unit receives the ISD Invoices. In the present case there is no dispute that the respondent has filed the refund claim within one year from the date of ISD Invoices. It is clear that without the ISD Invoices, refund cannot be filed. As per the format of Table-II in such case it is impossible to file a refund claim from the date of actual payment of service tax to the service provider therefore, the condition prescribed under clause (e) of Para 3 (III) is applicable only in respect of Table-I of Form A-4. The conditions prescribed under clause (a) to (h) are for the refund filed under Table-I & II therefore, obviously all such conditions shall not be applicable for refund made under Table-I & II both. Some conditions shall apply to Table-I and some shall apply to Table-II. For example, clause (a) shall be applicable only in respect of common service used for SEZ as well as operations in DTA where the refund has to be claimed under Table-II of Form A-4 whereas, this condition is not applicable in a case of input service used exclusively in SEZ and refund claim is made in Table-I of Form A-4. Clause (b) on the other hand is applicable to both refund covered under Table-I as well as refund covered under Table-II of Form A-4. Similarly, clause (c), (d), (f) and (g) are equally applicable to refund covered under Table-I and Table-II of Form A-4 of the notification. However, on bare perusal of clause (e) it is clear that the same is applicable only for refund covered under Table-I of Form A-4 since the Table-II only covers refund of common credit distributed by an ISD/Head Office. Therefore, in our clear view Para 3 (III)(e) of notification neither can be made applicable in respect of refund made under Table-II nor it is applicable. As regard delay in issuing the ISD Invoices firstly, there is no time limit prescribed under Rule 7 of Cenvat Credit Rules, 2004 for distributing credit under ISD Invoices nor any dispute was raised as regard the time and manner of issue of ISD Invoices at the end of ISD Registrant therefore, there is no illegality in issuance of ISD Invoice belatedly. In view of above, we are of the clear view that clause 3(III)(e) of Notification No.12/2013-ST is not applicable in respect of refund claim made on the basis of ISD Invoice in Table-II of Form A-4 appended to the said notification.

4.9 Without prejudice to our above findings, we also find that as per the condition Para 3(III)(e) of notification, the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such developer or SEZ Unit to the registered

service provider. From this condition, it is mandatory that the payment of service tax has to be made by the SEZ Unit. In the present case, only the services covered under the Invoices which are exclusively used by the SEZ Unit and refund of which claimed under Table-I payment of service tax is directly made by the SEZ to the service provider. However, in case all the services which are attributed to the SEZ Unit as well as DTA Unit of the respondent company the payment was made by the Head Office of the respondent SEZ Unit and the credit related to service attributed to the SEZ unit was distributed through ISD Invoice to the respondent's SEZ Unit. In this case payment was not made by the respondent's SEZ Unit therefore, the condition of clause (e) of Para (III) of the notification shall not apply for the reason that the said clause is applicable only in a case where the payment of service tax is directly made by the SEZ to the service provider when the services are exclusively used in the SEZ unit. Legislators intention is very clear that one year period is applicable only in case of payment directly made by SEZ Unit and not in a case where the Head Office of the SEZ unit is making the payment.

4.10 The law clearly made distinction between the SEZ Unit and the DTA Unit of the same company. In this regard Rule 19 (7) of SEZ Rules is reproduced below:-

(7) If an enterprise is operating both as a Domestic Tariff Area unit as well as a Special Economic Zone Unit, it shall have two distinct identities with separate books of accounts, but it shall not be necessary for the Special Economic Zone unit to be a separate legal entity:

[Provided that foreign companies can also set up manufacturing Units as their branch operations in the Special Economic Zones in accordance with the provisions of Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulation, 2000 as amended from time to time.]

From the above Rule 19(7) it can be seen that it expressly provides that SEZ Unit and the DTA Operations of the company have two distinct identities with separate books of accounts. In this position, the books of accounts of the SEZ Unit cannot be correctly prepared unless income and expenditure of SEZ Unit is clearly identified.

4.11 In the case of expenses of all services received by SEZ Unit can be ascertained only on the basis of input service distribute invoices, on the basis of which the SEZ unit's books of accounts can be maintained properly and correctly therefore, the ISD Invoice is the only document for all the

purposes for the SEZ Units. As per the above intention of Rule 19(7), the SEZ Unit is a separate legal entity. The words used in clause (e) of Para (III) of notification that prescribes one year from the date of payment by the SEZ Unit should be construed directly and according to which the one year period for filing refund shall apply only in case where the payment is directly made by SEZ Unit for which Table-II is prescribed for claiming the refund in that condition (e) shall be applied in case of refund made in Table-II of Form A-4 accordingly, the condition of Para 3(III)(e) of notification is clearly not applicable in case of refund claim made by the respondent in Table-II of Form A-4 appended to the notification.

4.12 Without prejudice to the above, we further find that in terms of Para 5 of Notification, the SEZ Unit shall have option to avail Cenvat Credit instead of this exemption notification in accordance with Cenvat Credit Rules, 2004 therefore, the respondent is entitle for the refund under Rule 5 of Cenvat Credit Rules, 2004. In view of this, under any circumstances the SEZ Unit should not be burdened with any duties of Excise, Service Tax therefore, for a minor procedural lapse if the SEZ Unit is burdened with duties/taxes, the whole objective of SEZ Scheme will stand defeated.

4.13 As regard the heavy reliance made by the learned counsel appearing on behalf of the appellant in judgments of Hon'ble Supreme Court in the case of DILIP KUMAR (supra) it is otherwise settled position that if any procedural condition is violated, the substantive benefit of the notification cannot be denied therefore, the Hon'ble Supreme Court judgment in the case of DILIP KUMAR cannot be applied invariably in cases where the violation of condition which is procedural. The ratio of the judgment can be applied considering the facts of each case and also the nature of condition which is violated. Therefore, in the facts of the present case ratio of Hon'ble Apex Court in the case of DILIP KUMAR cannot be applied. Even if it is assumed that clause (e) of Para 3 (III) of Notification is applicable and there is a delay in filing the refund, the lapse is only of procedural. For that matter substantial benefit of refund cannot be denied and a liberal approach for condonation of delay needs to be taken as held by the Apex Court in the case of COLLECTOR, LAND ACQUISITION, ANANTNAG Vs. MST. KATIJI -1987 (28) ELT 185 (SC) Wherein, the following order was passed:-

3. The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of the CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step-motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grate status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits.

Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is

condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

4. Appeal is allowed accordingly. No costs

Similar view was taken in the case of P.B. DEVASWOM Vs BHARGAVI AMMA (MANU/SC/7894/2008), the Hon'ble Supreme Court considering the issue of condonation of delay laid down the following principle:

- (i) The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words 'sufficient cause' in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the Appellant.*
- (ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased Respondent when the appeal abates, it will not punish an Appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*
- (iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*
- (iv) The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.*
- (v) Want of 'diligence' or 'inaction' can be attributed to an Appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the Appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to listed for final hearing for a few years, an Appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting Respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal.*

Limitation Act, 1963 (Central Act 36 of 1963)-Section 5- Principles governing condonation of delay in filing petition to set aside abatement.

Held:

Thus it can safely be concluded that if the following three conditions exist, the courts will usually condone the delay, and set aside the abatement (even though the period of delay is considerable and a valuable right might have accrued to the opposite party--LRs of the deceased--On account of the abatement);

- (i) The Respondent had died during the period when the appeal had been pending without any hearing dates being fixed;*
- (ii) Neither the counsel for the deceased Respondent nor the Legal Representatives of the deceased Respondent had reported the death of the Respondent to the court and the court has not given notice of such death to the Appellant.*
- (iii) The Appellant avers that he was unaware of the death of the Respondent and there is no material to doubt or contradict his claim. Appeal against Judgment of High Court of Kerala in S.A. No. 147 of 1993.*

Ratio Decidendi:

In an application for condonation of delay the length of delay is not material but it is the acceptability of the explanation which is the main criterion.

4.14 In the present case, the main issue is that there is a delay in filing the refund claim which as per the department is in violation of Clause (e) of Para 3 (III). This being a procedural lapse cannot be the ground for denying the substantial benefit of the exemption notification which is granted by way of refund of service tax in the SEZ. The Hon'ble Supreme Court in the case of GOVERNMENT OF KERALA Vs. MOTHER SUPERIOR ADORATION CONVENT (supra) even after dealing with the Hon'ble Supreme Court judgment in the case of DILIP KUMAR (supra) given the following order:-

22. A recent 5-Judge Bench judgment was cited by Shri Gupta in Commr. of Customs v. Dilip Kumar & Co. MANU/SC/0789/2018 (2018) 9 SCC 1. The 5-Judge Bench was set up as a 3-Judge Bench in Sun Export Corporation v. Collector of Customs MANU/SC/0703/1997 1997 (6) SCC 564 was doubted, as the said judgment ruled that an ambiguity in a tax exemption provision must be interpreted so as to favour the Assessee claiming the benefit of such exemption. This Court after dealing with a number of judgments relating to exemption provisions in tax statutes, ultimately concluded as follows:

66. To sum up, we answer the reference holding as under:

66.1. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the Assessee to show that his case comes within the parameters of the exemption Clause or exemption notification.

66.2. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/Assessee and it must be interpreted in favour of the Revenue.

66.3. The ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, MANU/SC/0703/1997 (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in Sun Export case stand overruled.

23. It may be noticed that the 5-Judge Bench judgment did not refer to the line of authority which made a distinction between exemption provisions

generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it (see Quinn v. Leathem [1901] AC 495 as followed in State of Orissa v. Sudhansu Sekhar Misra MANU/SC/0047/1967 (1968) 2 SCR 154 at 162, 163)

24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench.

In view of the above judgment of the Hon'ble Supreme Court, it is settled that in case of violation of condition of the notification which is in the nature of procedural lapse, the substantial benefit of the exemption notification cannot be denied.

4.15 In view of the above settled legal position, even though there is a delay the same was condoned by the lower authority which is absolutely in line of the above principle laid down by the Hon'ble Supreme Court.

05. As per our above discussion and findings, We do not find any infirmity in the impugned order. Accordingly, the impugned order is upheld, Revenue's appeal is dismissed. CO also stand disposed of.

(Pronounced in the open court on 17.12.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)