

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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 400 of 2012

(Arising out of OIA-COMMR-A-/241-242/VDR-II/2012 dated- 30/04/2012 passed by Commissioner of Central Excise-VADODARA-II)

Messrs Dic Fine Chemicals Pvt Ltd

.....Appellant

Plot No. Z-3, Dahej Special Economic Zone,
Dahej, Vagra,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii

.....Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat - 390023

WITH

Service Tax Appeal No. 401 of 2012

(Arising out of OIA-COMMR-A-/241-242/VDR-II/2012 dated- 30/04/2012 passed by Commissioner of Central Excise-VADODARA-II)

Messrs Dic Fine Chemicals Pvt Ltd

.....Appellant

Plot No. Z-3, Dahej Special Economic Zone,
Dahej, Vagra,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-ii

.....Respondent

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat - 390023

Appearance:

Shri Amal Dave, Advocate appeared for the Appellant

Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A / 12278 - 12279 /2022

DATE OF HEARING: 10.10.2022
DATE OF DECISION: 23.12.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellants refund claim made under Notification No 15/2009- ST dated 20.05.2009 can be rejected on the ground that the input services are not approved as per the approval list by the approval committee of SEZ.

2. Shri Amal Dave, Learned Counsel appearing on behalf of the appellant submits that it is settled law that only for the lapse of non approval of

input services in SEZ, refund cannot be rejected. Therefore he placed reliance on the following judgments :

- Markers Mart and Prince Exports Vs. CCE, Jaipur-II- 2016 (2) TMI 258- CESTAT New Delhi
- Harman Connected Services Corporation India Pvt Ltd Vs. CCT, Bengaluru East – 2021 (49) GSTL 11 (Tri.Bang)
- Intas Pharma Ltd Vs. CST, Ahd. -2013 (32) STR 543 (Tri.-Ahmd)
- Divi's Laboratories Ltd Vs. CCE, Vishakhapatnam – 2021 (54) GSTL 400(Tri.- Hyd)
- Sears It & Management Services (I) Pvt Ltd Vs. CCE, Pune-III – 2018 (8) GSTL 425 (Tri.-Mumbai)
- Metlife Global Operations Support Center (P) Ltd Vs. CST, New Delhi – 2021 (46) GSTL 418 (Tri.Del)
- GMR Aerospace Engineering Ltd Vs. Union of India - 2019 (31) GSTL 596 (AP)

3. Shri Dinesh Prithiani, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. Learned AR also pointed out that the Learned Commissioner (Appeals) has not given any finding on the issue of time bar.

4. I have carefully considered the submission made by both sides and perused the records. As regard the issue that whether the refund claim can be rejected on the ground that the input services on which the refund claim was made by SEZ is not approved by the approval committee. As per the facts of the present case the refund claim is pertaining to the period March to May, 2009 and the appellant had applied and the approval was given by the Approval Committee in September, 2009. Even though belatedly the facts remains that the input services were approved by the Approval committee. Without prejudice , I find that this issue is no longer res- integra as in various judgments this Tribunal has expressed clear view that the approval of input services by the approval committee is only a procedural requirement and due to this procedural lapse refund cannot be rejected. I refer to the following judgments:

- Sears It & Management Services (I) Pvt Ltd Vs. CCE, Pune-III – 2018 (8) GSTL 425 (Tri.-Mumbai)

"4. *We have carefully considered the submissions made by both sides. We find that the clause (c) to the Notification No. 9/2009-S.T. as amended by Notification No. 15/2009-S.T. reads as under :*

the exemption claimed by the developer or "(c) units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone except for services consumed wholly within the Special Economic Zone".

From the plain reading of the aforesaid clause (c) of the Notification No. 9/2009-S.T., it is clear that the exemption by way of refund is not available to the services consumed wholly within the Special Economic Zone however as per the first para of the notification all the services provided in relation to authorized operations in a SEZ and received by SEZ unit are exempted therefore the services received by the appellant even though consumed wholly within the SEZ are exempted per se. However the refund in respect of Service Tax paid on such services is not governed by Notification No. 9/2009-S.T. but the service tax otherwise not required to be paid on the services consumed wholly within the SEZ. In the facts of the present case there is no dispute that the Service Tax was paid on such services which are otherwise exempted. Therefore the appellant is entitled for the refund but not under Notification No. 9/2009-S.T. but under Section 11B of the Central Excise Act, 1944. We therefore direct the adjudicating authority to process the refund claim of the appellant under the provisions of Section 11B of the Act. The appeals are allowed by way of remand to the adjudicating authority for passing a fresh order on the claim of the refund made by the appellant in the above terms."

- Harman Connected Services Corporation India Pvt Ltd Vs. CCT, Bengaluru East – 2021 (49) GSTL 11 (Tri.Bang)

"6.After considering the submissions of both the parties and perusal of the material on record, I find that the only ground on which refund has been rejected is that the said specified services are not included in the Default List and services approved by the Development Commissioner of SEZ. Further, I find that there is no dispute that the said services have been used by the appellant for authorized operation in the SEZ. Further, I find that not mentioning the said services in the Approved List is only a technical defect and it should not debar the substantive benefit to the assessee who has utilized those services for carrying out authorized operation. I also note that both the input services have been subsequently included by the Development Commissioner of SEZ in the List of default services. This issue has been considered by the Tribunal in number of cases and in the case of Commissioner of Central Excise Mangalore Commissionerate v. Mangalore SEZ Ltd. cited supra, the CESTAT has held as under :

*"The Government's intention is clear that the SEZ units should either not require to pay or if paid they are eligible for refund. **Mere not mentioning the services in Annexures II & III is only a technical one which should not debar the substantial benefit.** In this case, it is clear that the appellant who had availed the services inside the SEZ were not liable to pay service tax and the appellant who had paid the Service Tax for the services availed within SEZ should not be penalized for the same. Therefore, denying the eligible refund to the appellant on the ground that services availed by the appellant were not listed in the annexures II & III is not justified. Therefore, I am inclined to allow the refund in respect of the above services. The amendment to the Notification No. 9/2009 by Notification No. 1/2009 was beneficial in nature so that the units do not have to first pay the service tax and then come forward for refund if entire services were wholly consumed with procedural prescriptions*

of Notification No. 9/2009 or 15/2009. These Notifications are calibrated to enable recip.

6.1 *Further, in the case of Intas Pharma Ltd. v. CST, Ahmedabad cited supra CESTAT has held as under :*

"On true and fair construction of Notifications No. 9/2009 and 15/2009 issued under Section 93(1) of the Act, considered in the light of the overarching provisions of Sections 7 and 26(e) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor 15/2009 disentitle immunity to Service Tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009 and 15/2009 merely contour the process by which the benefit of exemption/immunity to tax is operationalised. Notification Nos. 9/2009 and 15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of claiming refund of Service Tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a SEZ. On this harmonious construction, the immunity to Service Tax provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be eclipsed the procedural prescriptions of Notification No. 9/2009 or 15/2009. These Notifications are calibrated to enable recipients of taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the Service Tax, wherever assessed and collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the substituted provisions, of clause/sub-paragraph 'c' of Notification No. 15/2009 cannot be inferred to have imposed any disability on the recipient of services consumed wholly within the SEZ, from seeking refund of Service Tax remitted on such transactions, by the providers of such services."

6.2 *The same analogy of Intas Pharma has been followed by the CESTAT Mumbai in the case of Reliance Industries Ltd. v. CCE, Mumbai-I, cited supra. Further, in the case of Mahindra Engineering Service Ltd. v. CCE, Pune-I cited supra, CESTAT Mumbai has held as under :*

"It is also noted that the SEZ Act, clearly provides under Section 50(1) that it will have overriding effect over the provisions of any other law. As both the SEZ Act and Service Tax Act, have been passed by Parliament, the provisions of Section 51 have to be given effect to. The reliance placed on the DHL Logistic Pvt. Ltd. (supra) by the A.R. relates to exemption notification No. 4/2004 which did not incorporate the refund mechanism. On the other hand, in the case of Intas Pharma Ltd. v. CST reported in [2013 \(32\) S.T.R. 543](#) (Tri. - Ahmd.) = 2013-TIOL-1091-CESTAT-AHM, it was held that provisions of SEZ Act have overriding effect. Therefore, there appears to be no reason to deny the refund claim."

6.3 *Further, in the case of Union of India v. Makers Malt cited supra, CESTAT has held as under :*

"In view of provisions of SEZ Act, 2005, services supplied to SEZ are immune from Service Tax and conditions of notification granting exemption by way of refund cannot override this immunity. Thus refund cannot be denied on ground of non-filing of authorised list of operations."

6.4 Further, in the case of *Target Corporation India Pvt. Ltd. v. Asst. Commissioner of Service Tax, Bangalore* cited supra, Learned Commissioner has held as under :

"Non-inclusion of said services in the list can be viewed as a procedural lapse since the adjudicating authority has clearly stated in the order that apart from the above said criteria, the claims on the said services suffer no other infirmity."

7. In view of various decisions cited supra squarely covering the issue in favour of the appellant, I hold that the impugned order is not sustainable in law and in view of ratio of various decisions cited supra, I set aside the impugned order by allowing the appeal of the appellant."

4.1 In view of the above decision and also with support of other decision cited by the learned counsel the issue is no longer res-integra in as much as it was held that due to non approval of input services refund cannot be rejected under Notification No. 15/2009 -ST dated 20.05.2009. Accordingly, the refund is not liable to be rejected on this ground. As per the learned AR Commissioner (Appeals) has not given finding on the time bar therefore for this purpose the matter is remanded to the Commissioner (Appeals) to give finding on the issue of time bar.

5. Accordingly, the appeals are allowed by way of remand to the Commissioner (Appeals).

(Pronounced in the open court on 23.12.2022)

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