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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10201 of 2024-DB

(Arising out of OIO-VAD-EXCUS-002-COM-006-23-24 dated 19/12/2023 passed by Commissioner of Central GST & Central Excise-Vadodara-II)

ANJANI EXCAVATION OPERATION ....Appellant
IPCL Road Opposite Jalaram Restarant at PO Dahej,
Bharuch, Gujarat-392130

VERSUS

Commissioner of Central Excise and Service Tax –
CGST & Central Excise Vadodara II ......Respondent
GST Bhavan, Arkee Garba Ground,
Nr. Telephone Exchange, Subhanpura,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Nimesh S Desai, Advocate for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

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

Final Order No.12623/2024

DATE OF HEARING: 08.10.2024
DATE OF DECISION: 08.11.2024

RAMESH NAIR

Issue involved in the present case is that whether the appellant being a subcontractor of main contractor provided services in the SEZ is liable to service tax or otherwise.

2. Shri Nimesh S Desai Learned Counsel appearing on behalf of the appellant at the outset submits that there is no dispute that the service was provided in the SEZ. The service tax demand was made on the ground that appellant is not entitled for exemption Notification No. 09/2009- ST dated 03.03.2009 as amended by Notification No. 15/2019-ST dated 20.05.2019 on the ground that the appellant have failed to provide declaration in form A-1 and A-2. Further, Rule 10 of SEZ Rules, 2006 does not extent the benefit to the subcontractor for the SEZ unit. The appellant have received payment from main contractor and not from SEZ unit. He submits that all these allegations are not relevant for a service provider in the capacity of

the subcontractor. The only requirement is that the service should be provided in the SEZ which is undisputed. The services have been approved qua the main contractor which is sufficient requirement for granting exemption. He placed reliance on the following judgments:-

- Messrs Dix Fine Chemicals Pvt Ltd vide final order No. A/12278-12279/2022 dated 23.10.2022 CESTAT-Ahmedabad
- Intas Pharma Ltd- 2013 (32) STR 543 (Tri-Ahmedabad)
- Intas Pharmaceuticals Ltd- 2022 (64) GSTL 216 (Tri.-Ahmd.)
- Reliance Ports and Terminals Ltd- 2015 (40) STR 200 (Tri-Ahmd.)
- Sudhir Chand Jain- 2018 (8) GSTL 302 (Tri.-All.)
- CST Vs. Fedco Paints and Contracts -2017 (3) GSTL 364 (Tri.-Mumbai.)
- SRF Ltd- 2022(64) GSTL 489 (Tri.-Del.)
- Wabco India Ltd- 2021 (54) GSTL 37 (Tri.- Chennai)
- Torrent Energy Limited Vs. State of Gujarat [SCA No. 14856 of 2010 and SCA 711 of 2014]
- L&T Vs. State of Andhra Pradesh- 2006 (148) STC 616 (AP)
- State of Andhra Pradesh Vs. L & T (2008) 16 STT 501=17VST 1 (SC)

3. Shri Tara Prakash, Learned Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, we find that this is the second round of the appeal. In the first round, this Tribunal had remanded the matter vide final order No. 11444/2023 dated 05.07.2023, wherein it was observed as under:-

> *"11. We have carefully considered the submissions made by both sides and perused the records. After going through the appeal records, we find that the main ground of Revenue in the present matter is that Notifications and SEZ Act and Rules provides exemption from payment of Service tax on taxable services provided to a Developer or SEZ unit for carrying out the authorized operation in a Special Economic Zone, but there is no provision for exemption for services provided by sub-contractor to contractors appointed by a Developer or Unit in the SEZ Act. In the present matter SEZ units appointed main contractors for carrying out work and main contractor appointed to Appellant as sub-contractor for carrying out works of SEZ units. Further in term of Notification No. 9/2009-ST dated 03.03.2009 service tax exemption is available to services received by the Developer of*

units of SEZ with approval from the approval committee. In the instant case appellant does not have any approval from the competent authority to provide the services to Developer or SEZ units. In terms of said Notification No. 9/2009 –ST, as service provider who provides services to SEZ units or developers of SEZ, has to pay Service tax on services so provided on which service receiver i.e. SEZ units or developer of SEZ may claim refund.

12. We find that even though the sub-contractor provided the service as sub-contractor to the main contractor but it is not under dispute that the service was provided in the SEZ which prima-facie show that services were provided by the appellant as sub-contractor which was ultimately received by the SEZ developer or unit in SEZ. As per the decisions cited by the learned Counsel, in some of the case laws, identical issue has been considered where the service was provided by sub-contractor even then the exemption notification was extended under Notification No. 9/2009-ST and/ or 15/2009-ST.

13. It is also the contention of the Revenue that the services provided by sub-contractor are not approved. In this regard we find that it is not the service provider specific if the services are approved in relation to the main contractor, there should not be any need of separate approval of list of services with the sub-contractor. Moreover, in the judgments cited by the appellant, it was also held that the approved list of services is only a procedural requirement which should not come in the way of granting substantial benefit of notification. It is also submission of the appellant that there are judgments on the issue that in the SEZ Act the exemption from duty and service tax is provided which prevails over the other Acts therefore, in this position, only on the basis of the subordinate legislation and procedural lapse thereof, the exemption provided in the parent Act i.e. SEZ Act, cannot be denied. All these aspects need to be reconsidered by the Adjudicating Authority.

14. Accordingly, we set-aside the impugned order and allow the appeal by way of remand to the Adjudicating Authority to pass a fresh order considering our above observations and also the judgments on all the issues involved herein. The appeal is allowed by way of remand to the Adjudicating Authority."

From the above observation, it can be seen that all the issues have been dealt with and a prima facie view was given that the procedural lapse should not come in the way of granting the exemption under Notification No. 09/2009- ST dated 03.03.2009 as amended. It was also observed that the parent Act i.e. SEZ Act itself grant exemption but all these observation were brushed aside by the adjudicating authority. We find that the appellant being a sub-contractor cannot be expected to obtain a A1, A2, the same has been obtained by main contractor, since, direct dealing of the main contractor with SEZ unit. Therefore, expecting form the sub contractor all the procedure to be followed is incorrect. The main criteria for granting the exemption is that the service should be provided in the SEZ unit which is not under the dispute in the present case. Once this fact is established, then not only service is exempt under Notification No. 09/2009- ST dated 03.03.2009 but also not taxable in terms of the Section 51 read with Section 26 of the SEZ Act. This issue has been considered time and again in the following judgments:-

a) In the case of Intas Pharma Ltd (Supra) this Tribunal has given the following findings:-

> ***"7.*** *We notice that the Special Economic Zones Act, 2005 (Central Act 28 of 2005) was enacted providing for SEZ within the territory of India and for providing inter alia immunities/exemptions from taxes/duties/cesses. Section 7 of the 2005 Act enjoins that any goods or services exported outside, or imported into, or procured from the domestic tariff area, by a unit in SEZ or a developer shall, subject to such terms and conditions and limitations, as may be prescribed be exempted from payment of taxes/duties/cesses under all enactments specified in the First Schedule. The First Schedule does not enumerate the Act (Finance Act, 1994) as among the enactments in respect of which exemption from taxes/duties or cesses is available under Section 7 of the 2005 Act. However, Section 26(1)(e) enacts that subject to the provisions of sub-section (2) thereof, every developer and entrepreneur shall be entitled to exemption from Service Tax under Chapter (V) of the Act on taxable services provided to a developer or unit to carry on the authorised operations in a SEZ.*
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> ***8.*** *In view of the legislated exemption supra and since provisions of the 2005 Act are provided an overriding effect vide Section 51; and absent any provision in the Act which eclipses the overarching trajectory of the 2005 Act, the immunity to Service Tax in respect of taxable services provided in relation to SEZ is a legislatively enjoined immunity. Therefore, any Service Tax paid/remitted by a service provider is liable to be refunded to the provider who has remitted Service Tax in relation to taxable services provided to a developer or unit, to carry on authorized operations in a SEZ.*
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> ***9.*** *However, the issue in this case is refund claimed by the petitioner as the recipient of the taxable service of Architect, Interior Decorator and Consulting Engineer, i.e. in respect of those services provided to the appellant by M/s. Venkataramanan Associates. Notification No. 9/2009-S.T., dated 3-3-2009 as earlier adverted to, enables claim of exemption by developers or units in SEZ by way of refund of Service Tax paid for services used in relation to authorized operations in SEZ, insofar as the claim for refund is filed within six months or within such extended period as the Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, shall permit.*
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> ***10.*** *Insofar as Notification No. 15/2009-S.T. is concerned, Para 'c' of the earlier Notification No. 9/2009-S.T. was substituted. The current requirement is that the exemption claimed by the developer or units of SEZ shall be provided by way of refund of Service Tax paid on the specified services used in relation to the authorised operations in the SEZ, except for services consumed wholly within the SEZ.*
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> ***11.*** *On true and fair construction of Notifications 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.

12. *Therefore, the rejection of the appellant's claim by the adjudicating authority and affirmation of such rejection by the Commissioner (Appeals), to the extent Rs. 56,650/-, in relation to Architect, Interior Decorators and Consulting Engineer services provided by M/s. Venkataramanan Associates, is unsustainable and is so declared. The order impugned herein namely the Order-in-Appeal dated 29-10-2012 is set aside. Appellant shall be entitled to refund of Rs. 56,650/-.*

13. *Appeal is allowed accordingly. No costs."*

b) In the case of Reliance Ports and Terminals Ltd. (Supra) this Tribunal has passed the following order:-

"5. *Heard both sides in detail and perused the records. The issue involved in this case is whether service provider is entitled to exemption from payment of Service Tax during the period from 3-3-2005 to 20-5-2005 when such services were provided inside SEZ. Under Notification No. 15/2009-S.T., dated 20-5-2009, exemption from payment of service to the service providers was made available by a suitable amendment in proviso (c) of para 1 of Notification No. 9/2009-S.T., dated 3-3-2009 for the services provided inside SEZ. Before this amendment also, exemption was available to the service recipient by way of refund by the service recipient subject to certain conditions. In this regard, appellant has relied upon the judgment of Tata Consultancy Services Ltd. v. CCE & ST (LTU), Mumbai (supra), under which it was held that even if a service provider was not required to pay duty as per the amended provisions of Notification No. 9/2009-S.T. but paid for some reasons then the service provider was entitled to refund under Section 11B of the Central Excise Act, 1944. On the same analogy when services supplied to SEZ are considered as services provided inside a SEZ unit, there is no Service Tax liability on such deemed export as held by CESTAT in the case of Sujana Metal Products Ltd. v. CCE, Hyderabad [2011 (273) E.L.T. 112 (T.-Bang.)].*

__6.__ The appellant has further relied upon the judgment of Intas Pharma Ltd. v. CST, Ahmedabad (supra) holding that in view of the provisions of Sections 7, 26 and 51 of 2005 Act [SEZ Act, 2005], exemption to services provided to a SEZ were always available and Notification No. 9/2009-S.T. and No. 15/2009-S.T. have only operationalized the exemption provided. Para 11 of the above judgment is reproduced below :

"11. On true and fair construction of Notifications 9/2009 and 15/2009 issued under Section 93(1) of the Act, considered in the light of overarching provisions of Section 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 operationalized. 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."

It is also relevant to quote the provisions contained in Sec. 26(1)(e) and Sec. 51 of the SEZ Act, 2005 as reproduced below :

"26(l)(e) : exemption from Service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorized operations in Special Economic Zone.

51. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

__7.__ From the provisions contained in Section 26(1)(e) of the SEZ Act, read with Rule 30(10) of the SEZ Rules, 2006, it can be seen that no Service Tax is payable on the services provided by a service provider to a SEZ unit. Further, Sec. 51 of the SEZ Act also makes an over-riding provision that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No. 9/2009-S.T. and amended Notification No. 15/2009-S.T. have been only issued to operationalize the exemption/immunity available to SEZ unit under Sec. 26(1)(e) of the SEZ Act, 2005.

__8.__ In view of the above findings, the appeal filed by the appellant is allowed."

c) In the case of Fedco Paints and Contracts (Supra) this Tribunal Mumbai Bench has given the following view:-

__"5.__ After hearing both the sides, we find that the main ground of the appeal of the Revenue is that the respondent had never provided services directly to the SEZ unit but was contracted as a sub-contractor to provide services to a unit in SEZ. Hence, the benefit of Notification No. 4/2004-S.T. is not applicable. It is undisputed that during the period 1-4-2005 to 31-3-

2009 the respondent had rendered various services to the unit situated in SEZ and being developed by the SEZ developer. It is also undisputed that appellant was a sub-contractor. On this factual matrix, we have to now consider the Notification No. 4/2004-S.T. which reads as under :

"Service tax exemption to services provided to a Developer or units of Special Economic Zone — Notification No. 17/2002-S.T. superseded

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue), No. 17/2002-Service Tax, dated 21-11-2002, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 21-11-2002, vide, G.S.R 777(E), dated 21-11-2002, except as respects things done or omitted to be done before such supersession, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service of any description as defined in clause (90) of sub-section (1) of section 65 of the said Act provided to a developer of Special Economic Zone or a unit (including a unit under construction) of Special Economic Zone by any service provider for consumption of the services within such Special Economic Zone, from the whole of service tax leviable thereon under section 66 of the said Act, subject to the following conditions, namely:-

(i) the developer has been approved by the Board of Approvals to develop, operate and maintain the Special Economic Zone;

(ii) the unit of the Special Economic Zone has been approved by the Development Commissioner or Board of Approvals, as the case may be, to establish the unit in the Special Economic Zone;

(iii) the developer or unit of a Special Economic Zone shall maintain proper account of receipt and utilisation of the said taxable services.

Explanation. - For the purposes of this notification, -

(1) "Board of Approvals" means the combined Board of Approvals for export oriented unit and Special Economic Zone units, as notified in the Official Gazette, from time to time by the Government of India in the Ministry of Commerce and Industry;

(2) "developer" means a person engaged in development or operation or maintenance of Special Economic Zone, and also includes any person authorised for such purpose by any such developer;

(3) "Special Economic Zone" means a zone specified as Special Economic Zone by the Central Government in the notification issued under clause (iii) of Explanation 2 to the proviso to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944)."

***6.** It can be seen from the above reproduced notification that the said notification exempts any taxable service provided by any service provider for consumption of the service within a Special Economic Zone, subject to following/adhering to the conditions. It is also undisputed that all the conditions mentioned in the notifications are satisfied by the SEZ developer i.e. M/s. Reliance Industries Ltd. On the face of such factual matrix, we find that the adjudicating authority was correct in coming to the conclusion that the proceedings initiated by show cause notice issued needs to be dropped. We also find as regards taxability of the service rendered to the SEZ developer was in dispute before this Tribunal in the case of Sujana Metal Products Ltd. v. Commissioner of Central Excise - 2011 (273) E.L.T. 112 (Tri.-Bang.) and this Tribunal came to a conclusion that where the services*

> *are rendered to SEZ or a unit in SEZ, as long as it is rendered for consumption in a Special Economic Zone, the services are exempt. We also note that the provisions of Section 26 of the Special Economic Zone overrides provisions of other law and exempts any services or taxes if the same are consumed in Special Economic Zone.*
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> ***7.*** *In view of the foregoing and the authoritative judicial pronouncement, we find no merits in the appeal filed by the Revenue and the same stands rejected and hold impugned order is correct and legal and does not require any interference. cross-objection is also disposed of."*

From the above judgments, it can be seen that it is settled that when subcontractor provided the service on behalf of the main contractor in the SEZ, the same is exempted from payment of service tax. Considering the judgments and facts of the present case, the appellant is not liable to pay service tax.

5. Accordingly the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 08.11.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha