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

REGIONAL BENCH-COURT NO. 2

Service Tax Appeal No. 10297 of 2017 – SM
(Arising out of Order in Appeal VAD-EXCUS-002-APP-243-2016-17 dated 20.07.2016 passed by Commissioner (Appeals-I), Central Excise, Customs and Service Tax- Vadodara)

Cryogas Equipments Pvt Ltd **........Appellant**
Survey No.26P, Plot No.9/l,
Hi-Tech Engineering SEZ of Synefra Engg.
and Construction Ltd., Village Pipalia,
Distt. Vadodara.

VERSUS

Commissioner of Central Excise and
Service Tax - Vadodara-II **......Respondent**
3rd Floor, Central Excise Bldg.,
Subhanpura, Vadodara 390023

APPEARANCE:
Shri Parth Rachchh, Advocate appeared for the Appellant
Shri Sarjeet Kumar, Superintendent (AR) appeared for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA

Final Order No.10329/2026

DATE OF HEARING/ DECISION: 07.04.2026

DR. AJAYA KRISHNA VISHVESHA

1. This appeal is directed against the impugned Order-in-Appeal dated 20.07.2016 passed by the learned Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara through which he upheld the Order-in-Original passed by the Adjudicating Authority and rejected the appeal.

1.1 The facts of the case in brief are that appellant has filed service tax refund claim with the Jurisdictional Assistant Commissioner Central Excise under Notification No. 17/2011-ST relating to service tax paid during the period April 2012 to March 2013. Notification No.17/2011-ST dated 01.03.2011 provides for a scheme of exemption by way of refund for the taxable services specified in clause (105) of Section 65 of Finance Act, 1994 which are provided in relation to the authorized operations in a Special Economic Zone (SEZ) and received by a developer or units of a SEZ. While verifying the claim, the department has observed that the claimant had submitted the list of specified services duly approved by the Competent Authority (i.e. Approval Committee of Sector Specific Engineering-SEZ) prevailing prior to 27.11.2013 had been approved only on 09.01.2014 by the Approval Committee of KASEZ whereas, the claimant had claimed refund of service tax paid during the period April 2012 to March 2013 i.e. prior to approval of the list of Specified service. The department was of the view that the claimant had not fulfilled the conditions of Notification No.17/2011-ST dated 01.03.2011 and therefore, a show cause notice bearing No. V/18-40/WD/ST/Ref./Cryogas/12-13 dated 12.03.2014 was issued to the claimant proposing rejection of service tax refund claim of Rs.4,75,116/- for the service tax paid on Specified Services used for Authorised Operations in SEZ as per Notification No.17/2011-ST dated 01.03.2011.

1.2 The show cause notice was adjudicated by the Assistant Commissioner, Division-Vadodara vide Order-in-Original dated 31.12.2015 through which the learned Assistant Commissioner rejected the service tax refund claim dated 17.11.2013 of Rs.4,75,116/- filed by the appellants. Feeling aggrieved from the impugned Order-in-Original, appeal was filed by the appellant before the learned Commissioner (Appeals). The learned Commissioner (Appeals) rejected the appeal and upheld the Order-in-Original passed by the Adjudicating Authority. Feeling aggrieved from the impugned Order-in-Appeal dated 20.07.2016, the present appeal has been filed before the Tribunal.

2. The learned Counsel for the appellant submitted that the learned Commissioner (Appeals) has rejected the appeal of the appellant on the ground that the appellant had filed refund claim for the period April 2012 to March 2013 on 20.11.2013 without a list of approved services as on the date of filing. The learned Commissioner has observed in the impugned order that para 2(b) of Notification No.17/2011-ST laid down that for the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorized operations approved by the Approval Committee of the concerned SEZ whereas para 2(c) of the Notification provides that Developer or Unit of SEZ, who does not own or carryout any business other than SEZ operations, shall furnish a declaration to that effect in Form A-l verified by the Specified Officer of the SEZ. It is the mandatory condition of the Notification. Since, the appellant received the list of Approved Services from the office of the Development Commissioner, KASEZ, under a covering letter dated 09.01.2014 and the period of refund claim was from April, 2012 to March, 2013, the refund claim was filed without a list of approved services as on the date of filing and appellant had not followed the conditions prescribed under the Notification.

2.1 The argument of the learned Counsel for the appellant is that the services given to SEZ are governed by the SEZ Act which has overriding effect over all the other laws. Hon'ble Tribunal has in the case of **M/s. Inox India**

Pvt. Ltd. reported at 2024 (3) TMI 922 - CESTAT AHMEDABAD has categorically held that services provided to SEZ are generally exempt as per Section 26 of the Special Economic Zone Act, 2005 and therefore, the substantive benefit of service tax exemption provided under Section 26 of the Special Economic Zone Act and Rule 31 of the Special Economic Zone Rules cannot be denied due to procedural requirement under Notification No.9/2009-ST dated 03.03.2009. In the case of **M/s. SRF Ltd.** reported at 2022 (64) GSTL 489 (Tri.-Del.), CESTAT Delhi also came to the conclusion that service tax is exempted by Section 26 of the SEZ Act, 2005 and hence, the exemption notification itself is not necessary. The requirement of the exemption Notification is irrelevant as long as the services are received in the SEZ. Similar view has been taken by the Hon'ble Tribunal in the following cases:-

a) **M/s. Adani Power Mundra Ltd.** reported at 2025 (1) TMI 224-CESTAT AHMEDABAD,
b) **M/s. Vedanta Aluminium Ltd.** reported at 2024 (3) TMI 1325 CESTAT KOLKATA ,
c) **M/s. EXL Services SEZ BPO Solutions (P) Ltd**. reported at 2023 (9) TMI 196-CESTAT ALLAHABAD.

2.2 The learned Counsel for the appellant also submitted that as long as the department does not dispute that the services of transport of goods through pipeline were received in the SEZ, the substantive benefit of refund of service tax paid cannot be denied merely because the appellant has received list of approved services after the date of filing refund claim and that the appellant has not furnished a declaration in Form A-l as per conditions of the Notification No. 17/2011-ST dated 01.03.2011. Therefore, considering the undisputed fact that the services were provided in the SEZ located in Pipalia, Vadodara, the amount which the appellant has paid towards receiving such services is exempt from payment of service tax by Section 26 of the SEZ Act, 2005. Hence, refund of Rs.4,75,116/- was wrongly rejected by the Revenue. The learned Counsel for the appellant prayed that the impugned order may be set aside and the appeal may be allowed. It has also been prayed that the refund claim of the appellant of Rs.4,75,116/- and interest on delayed payment of refund may be allowed.

3. The learned Authorised Representative (AR) reiterated the impugned order passed by the learned Commissioner (Appeals) and submitted that the appellant failed to comply with the conditions of Notification No.17/2011-ST, therefore, the refund claim of the appellant was rightly rejected by the

Adjudicating Authority and the Appellate Authority. It has been prayed by the learned AR that the impugned order passed by the learned Commissioner (Appeals) may be upheld and the appeal of the appellant may be rejected.

4. I have heard the learned Counsel for the appellant and the learned AR for the department and perused the records. In **SRF Ltd.** Vs. **Commissioner of Cus., C.Ex & S.T., LTU, New Delhi** reported at 2022 (64) G.S.T.L. 489 (Tri-Del.), CESTAT Delhi has observed that the issue which falls for our consideration is whether the appellant is entitled to refund of service tax paid on various input services provided for authorized operations of its unit in the SEZ, Indore. The Tribunal held that as long as the operations by the Developer are authorized by the Board or, as the case may be, so long as the operations by the unit are authorized by the Development Commissioner, the exemption under Section 26 of the SEZ Act applies. Neither Section 26 nor Section 4 or Section 15 provide for authorization of the inputs or input services to be used in the operations. The only authorization required is of the operations of the Developer or the Unit i.e*.* what the Developer or the Unit does and not what inputs or input services are used by the Developer or Unit. Once this authorization is obtained, all inputs and input services which are used for such operations get exempted by virtue of Section 26.

4.1 The Tribunal has further held that while the SEZ Act itself provides for exemption from service tax as well as Central Excise duty and Customs duty, exemption Notifications were also issued by the Government under the respective laws. These exemption Notifications were also issued with some conditions. Thus, there is duplication inasmuch as the goods and services provided for authorized operations of Developers and Units in the SEZs are exempted from Customs duty, Central Excise duty and the Service Tax by the SEZ Act itself subject to the manner which may be prescribed and there are also exemption notifications under the respective tax laws which are also subject to some conditions. The exemption notifications in dispute in this case are service tax exemption Notifications ST-40/2012, dated 20.6.2013 and ST-12/2013, dated 1.7.2013. This contradiction and duplication of exemption under the two provisions viz., SEZ Act and Rules and the exemption Notifications under the Finance Act, 1994 were discussed at length by a Bench of the Tribunal in case of **DLF Assets**. Thus, the legal position is that SEZ Act overrides any other law because of Section 51 of the SEZ Act. Section 51 of the SEZ Act states that, the provisions of SEZ Act override any other provisions of other laws, it reads as follows:-

> "**Section 51(1):** 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."

4.2 Thus, insofar as supplies for authorized operations of SEZ Developers and Units are concerned, Section 26 of the SEZ Act overrides the charging sections in all the three Acts. The charging sections, having been overridden by the SEZ Act passed by the Parliament, no legal authority to levy and collect Central Excise duty, Customs duty or Service Tax for goods or services supplied for authorized operations of SEZ developers and units covered by Section 26 remains. Without such a legal authority, no tax or duty can be either levied or collected in view of Article 265 of the Constitution of India. Therefore, there is no need for any exemption Notifications under any of these three Acts nor is it necessary to fulfil any of the conditions laid down in exemption Notifications, if any, issued for the purpose. Thus, the charge of Excise Duty under Section 3 of the Central Excise Act, the charge of Customs Duty under Section 12 of the Customs Act and the charge of Service Tax under Sections 66, 66A and 66B of the Finance Act, 1994 will not apply to goods and services supplied to Developers and Units for authorized operations in the SEZ areas by virtue of the overriding provisions of the SEZ Act. Any exemption Notifications and conditions therein are therefore, redundant because, the Parliament itself has, through Section 51 of the SEZ Act, overridden the charge in the other laws.

4.3 The Tribunal has further held that the refunds in these appeals were also rejected by the impugned orders on the ground that either the approval of the UAC was not obtained for the services at all or that it was obtained after the invoice for which the refund was claimed. The approval of the UAC for the input services is a requirement under the exemption notifications. As we have found that the exemption Notifications themselves are redundant and that the exemption was available under Section 26 of the SEZ Act itself, this cannot be a ground for rejection of refund.

4.4 In **Inox India P Ltd** Vs. **C.C.E. Kutch (Gandhidham)** reported at 2024 (3) TMI 922- CESTAT Ahmedabad Tribunal has considered the issue involved in this appeal and decided as follows:-

"4.1. We also find force in the argument of the learned Advocate that the substantive benefit of the service tax exemption provided under Section 26 of the Special Economic Zone Act and Rule 31 of the Special Economic Zone Rules cannot be denied only on procedure requirement under Notification No. 9/2009 dated 03.03.2009 as amended by Notification No. 15/2009 dated 20.05.2009. Before proceeding further in this regard it will be relevant to have glance at the provision of Section 26 of Special Economic Zone Act.

*" **26.** (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely :-*

a) exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;

(b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India

(c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;

xx xx xx

(e) exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone"

From the reading of the above Section 26(1) (e) of the Special Economic Zone Act , 2005. We find that a substantive benefit of Service Tax exemption has been provided under the above Section 26 of the Special Economic Zone Act. Once the legislature by way of enactment has provided certain exemption we feel that any notification issued under any other enactment will not take away the right of the exemption from payment of the Service Tax to the appellant for the activity while falls under category of the authorized operations within a Special Economic Zone."

4.5 In **Adani Power Mundra Ltd** Vs. **Commissioner of C.E.-Ahmedabad-I** reported at 2025 (1) TMI 224-CESTAT Ahmedabad regarding the present issue, the Tribunal has held as follows:-

4.2 In view of above position of law consistently followed by this Bench, we find that the benefit of refund of service tax paid by the appellant cannot be snatched away on grounds of procedural and hyper technical infractions pointed out by the revenue in the impugned orders. It is no matter of dispute that the appellant including its erstwhile entity were duly approved and authorised as co-developer of Special Economic Zone in Mundra, Gujarat. Nowhere in the impugned order, we find challenge by the revenue as regards payment of service tax by the appellant to the concerned service providers. Also the revenue has chosen not to challenge anywhere that the services involved in the refund claims not covered by the provisions of Special Economic Zones Act, 2005. Thus, we do not find merit in the arguments and averments made by the appellate authority in impugned order to deny the benefits granted by the provisions of the Special Economic Zones Act and we find strong force in the submission of the appellant as regards eligibility for refunds in terms of the overriding provisions of Special Economic Zones Act.

4.6 In view of the law laid down in the above cases, it is settled legal position that services provided to SEZ are generally exempted as per Section 26 of the Special Economic Zone Act, 2005 and therefore, the substantive benefit of exemption provided under Section 26 of the Special Economic Zone Act and Rule 31 of the Special Economic Zone Rules cannot be denied due to procedural requirement under Notification No.17/2011-ST. As long as department does not dispute that the services of transport of goods through pipeline were received in the SEZ, the substantive benefit of refund of service tax paid cannot be denied merely because the appellant has received list of approved services after the date of filing refund claim and that the appellant has not furnished a declaration in Form A-l as per conditions of the Notification No. 17/2011-ST dated 01.03.2011. Therefore, considering the undisputed fact that the services were provided in the SEZ located in Pipalia, Vadodara, the amount which the appellant has paid towards receiving such services is exempt from payment of service tax by Section 26 of the SEZ Act, 2005. Hence, refund of Rs.4,75,116/- could not have been rejected on such technical grounds.

4.7 Learned Counsel for the appellant has also prayed that interest on the delayed refund may also be provided to them. He has relied upon **Ranbaxy Laboratories Ltd.** Vs. **Union of India** reported at 2011 (273) E.L.T. 3 (S.C.) in which Hon'ble Supreme Court of India has held that interest on delayed refund is payable under Section 11BB of Central Excise Act, 1944 on the expiry of period of three months from the date of receipt of application under Section 11B(1) and not from the date of order of refund or appellate order allowing such refund. Explanation to proviso to Section 11BB introduces a deeming fiction that where order for refund is not made by the Assistant Commissioner but by Appellate Authority such appellate order shall be deemed to be an order under Section 11B(2). This explanation does not postpone the date from which interest becomes payable under Section 11BB ibid.

4.8 Learned Counsel for the appellant also relied upon the order passed by Tribunal in **Jayanta Glass Ltd.** Vs. **Commissioner of Central Excise, Kolkata** reported at 2004 (165) E.L.T. 516 (Tri.-LB) in which Tribunal has held that as follows:-

> ***"3.*** *Interest is claimed by the applicant on the basis of the provisions contained under Section 11BB. The above Section provides that if any duty ordered to be refunded under Section 11B to any applicant is not refunded within 3 months from the date of receipt of application under sub-section (1) of that Section, there shall be paid to that applicant interest at such rate (not below five per cent) and not exceeding thirty per cent per annum as fixed from time to time by the Central Government by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of*

receipt of such application till the date of refund of such duty. Explanation to the above provision is relevant for the present case. The Explanation reads as follows :-

> *"Explanation. - Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the (Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of Section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."*

4.*In view of the above Explanation when this Tribunal passed Final Order on 6-12-2001 it would relate back to the date of the order passed under sub-section (2) of Section 11B. In view of the above we are of the view that the applicant is fully justified in contending that interest due to it is to be calculated on the basis of its application filed on 5-2-98. The decision of the Kolkata High Court relied on behalf of the respondent has no application to the present situation. That was a case of refund of pre-deposit. The Hon'ble High Court has held that the liability to pay interest would arise only after decision is taken by the final authority."*

4.9 In view of the law laid down in the above cases, I am of the view that the appellant is entitled to interest on the amount of refund for the period commencing after 3 months of the date of making application, irrespective of the reasons in which claim for refund was not paid within 3 months from the date of receipt of the application.

5. In view of the above discussion, the appeal is allowed with all consequential benefits and interest on the delayed payment of such refund as mentioned above.

(Operative portion dictated in the open Court)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

Bharvi