CUSTOMS, EXCISE & SERVICE TAX APPELLATETRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70376 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1485-19-20 dated 26/02/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Steria India Ltd., ...Appellant

(Seaview Special Economic Zone,
Building No.4, Plot No.20 & 21,
Sector-135, Noida-201301)

VERSUS

Commissioner of Central Excise&

CGST, Noida ....Respondent

(E-23 (B), Sector-8, Noida)

WITH

Service Tax Appeal No.70380 of 2020

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1408-19-20 dated 18/02/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Steria India Ltd., ...Appellant

(Seaview Special Economic Zone,
Building No.4, Plot No.20 & 21,
Sector-135, Noida-201301)

VERSUS

Commissioner of Central Excise&

CGST, Noida ....Respondent

(E-23 (B), Sector-8, Noida)

<u>APPEARANCE:</u>

Shri Aditya Prakash, Chartered Accountant &
Shri Vikas Jha, for the Appellants
Shri A.K. Choudhary, Authorised Representativefor the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70158-70159/2024

DATE OF HEARING : 27 March, 2024
DATE OF DECISION : 27 March, 2024

SANJIV SRIVASTAVA:

I have heard Shri Aditya Prakash learned Chartered Accountant appearing for the appellant and Shri A.K. Choudhary learned Authorised Representative appearing for the revenue. Learned Chartered Accountant submits that the issue involve in these two appeals are as follows:-

Brief Summary of the issue in Appeal	Appeal No	Amounts
1. Denial of claim for refund made in terms of the notification No.9/2009-ST dated 03.03.2009 on the allegation that, Services are not mentioned in the list of specified services approved by the SEZ authorities.	ST/70531/2020	27,915/-
	ST/70529/2020	1,05,802/-
2. Denial of claim for refund against invoices which contains has been addressed to Appellant's Unit outside the SEZ but has been consumed within the SEZ	ST/70529/2020	4,62,425/-

1.2 He further submits that the issue is decided by this Tribunal in their own case by Final Order Nos.70277-70280/2023 dated 21 December, 2023. The Tribunal has considered both the issues involved in the matter and the second matter was remanded back to the Original Authority to decide the matter in the light of observations as made in the said order.

1.3 Learned Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

2.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

2.2 I find that the issue is squarely covered by the Final Order Nos.70277-70280/2023 dated 21 December, 2023 passed by this Tribunal.

2.3 In para no.3.3 & 3.4 the first issue whether refund should be admissible in respect of the services which are consumed by the SEZ unit but may be incorporated or not in the list of the services for authorized services, for use by a SEZ unit or a developer discussed. After relying on various decisions cited below it has been held that such refund is admissible:

- EXL Services SEZ BPO Solutions Pvt. Ltd. [2023-TIOL-852-CESTAT-ALL]
- Tega Industries Ltd [2022 (67) GSTL 81 (T-Ahmd)]

> ***4.2*** *From the above approved list, it is clear that the Business Support Service is clearly included in the list approved by the approval committee. I also find that even if it is assumed that the service falls under marketing service and same is not included in the approval list even then for this being a procedure lapse refund cannot be denied. This has been held in various judgments as cited by the Learned Counsel. In the case of Mast Global Business Service India Pvt. Ltd. (Supra), the CESTAT Bangalore has passed the following order :-*
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> *The other grounds on which the refund "6.1... claims have been rejected by the impugned order is that the appellant has not produced the approved list of specified input services from the UAC SE2 which is mandatory and as per the Commissioner (Appeals). In reply to this argument, the Learned Counsel submitted that in view of the settled legal position by various decisions relied upon by him, condition in respect of approval from UAC not a mandatory requirement as the SEZ Act vide Section 51 of SEZ Act will have overriding effect over the provisions of other law. Therefore keeping in view of the intention of the Government in enacting the SEZ Act and giving special fiscal concessions SEZs, I am of the considered opinion that this is only a procedural and is not a*

mandatory condition as held by the Commissioner (Appeals). Further the decisions relied upon by the appellant clearly held that the SEZ Act has an overriding effect over other laws. Therefore this ground on the basis of which refund claims have been rejected is not tenable in low."

- Intas Pharmaceuticals Ltd. [2022 (64) GSTL 216 (T-Ahmd)]

"4. I have considered the rival submissions. I find that in the appellant's own case vide order reported in 2013 (32) S.T.R. 543 (Tri. - Ahmd.), the benefit of refund has been allowed in respect of services not listed as a specified services approved by the approval committee. In Para 11 of the said order, following has been observed :-

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.*

It is seen that identical decisions have been made in the following decision of Tribunal :-

- *Makers Mart v. CCE & ST - 2016 (43) S.T.R. 309 (Tri. - Del.)*
- *Zydus Hospira Oncology Pvt. Ltd. - 2013 (30) S.T.R. 487 (Tri. - Ahmd.)*
- *Harman Connected Services Corporation India Pvt. Ltd. v. CCT - 2021 (49) G.S.T.L. 11 (Tri. - Bang.)*
- *Mahindra Engineering Service Ltd. v. CCE - 2015 (38) S.T.R. 841 (Tri. - Mum.)*

4.1 On the contrary, Learned AR has relied on the decision in the case of Kolland Developers Pvt. Ltd. (supra). It is seen that in the said case, the decisions of Division Bench on identical issues were not cited and therefore, that decision was passed without taking note of the fact that the issue was covered by decisions of the Division Bench in many cases listed by Learned Counsel.

4.2 In view of the above, I find that the appellants are entitled to refund in respect of services received by them for the authorized operations even if, such services are not listed as a specified services in the list approved by the Approval Committee."

- Divi Laboratories Ltd. [2021 (54) GSTL 400 (T-Hyd)]
- Herman Connected Services Corporation India Pvy Ltd. [2021 (49) GSTL 11 (T-Bang)]
- SE Forge Ltd. [2019 (365) ELT 460 (T-Chennai)]
- Reliance Ports and Terminals Ltd. [2015 (40) STR 200 (T-Ahmd)]

2.4 On the second issue the matter was remanded for consideration whether these services for which invoices are addressed to the premises of the appellant which fall outside the SEZ unit would be admissible as refund amount. After taking note to the various decisions and law it has been held that such refund shall be admissible subject to the appellant, satisfying the Original Adjudicating Authority with regards to receipt as consumption of services within SEZ unit. Reliance has been placed on following decisions:

- SRF Ltd. [2022 (64) GSTL 489 (T-Del)]

*"**46.**Refund has been denied in one case on the ground that the address of the SEZ unit was not on the invoice. However, Learned Counsel for the appellant has demonstrated to us with the corresponding Bill of Lading and other documents that the service was, indeed rendered for the SEZ unit only. Therefore, refund cannot be denied on this count.*

3.1 Taking note of the above decision these two appeals are also allowed by way of remand to be decided on the basis of the observations as made above and also according to the Final Order dated 21 December, 2023.

3.2 As the matter is quite old, Original Authority is directed to finalize the refund claims in remand proceedings within three months from the receipt of this order.

(Dictated and pronounced in open court)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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