

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.71105 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-2002-17-18 dated 28.03.2018 passed by Commissioner (Appeals) Customs & Central Tax, Noida)

M/s Pristine Facility &

Management Services Pvt. Ltd.,

.....Appellant

(Plot No.189, UK-II ECOTECH-III, Greater Noida,
Distt.-Gautam Budh Nagar U.P.-201306)

VERSUS

Commissioner of Customs,

Central Tax, Noida

....Respondent

(Renu Tower, C-56/42, Sector-62, Noida)

APPEARANCE:

Shri Abhas Mishra, Advocate for the Appellant

Shri S. T. Khairnar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

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

FINAL ORDER NO.- 70205/2024

DATE OF HEARING : 04 January, 2024

DATE OF DECISION : 01 May, 2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-002-APP-2002-17-18 dated 28.03.2018 passed by the learned Commissioner (Appeals) Customs & Central Tax, Noida.

2. The facts of the case in brief are that the Appellant is engaged in providing services mainly in respect of Housekeeping, Cleaning, Pantry etc. to various units located in Noida SEZ as well as to non SEZ units. The Officers of the Anti-Evasion Branch of Service Tax Commissionerate, Noida conducted search at the erstwhile premises of the Appellant located at C-104, 2nd Floor, Sector-10, Noida on 13.01.2015 and resumed certain records and documents vide Panchnama.

Statement of Shri Manoj Kumar, Manager "Operations" was also recorded. The Appellant informed the Department that earlier they were registered under "Maintenance and Repair Service", which was not correct; that they are in the process of obtaining registration for their new premises under "Cleaning Service". Show Cause Notice¹ was issued which the Appellant claimed that it was not received and therefore the Appellant neither could file any reply to the SCN nor could participate in the adjudication proceedings. The adjudication order was passed *ex-parte*. Adjudicating Authority confirmed the demand of Service Tax amounting to Rs.1,58,46,230/- as proposed in the SCN alongwith applicable interest and also imposed penalty of equal amount under Section 78, besides imposed penalties of Rs.10,000/- each under Sections 77(1) and 77(2) of the Finance Act, 1994.

3. Being aggrieved, the Appellant filed appeal before the First Appellate Authority and the learned Commissioner (Appeals) partly allowed the appeal and passed the following order:-

"(1) I hereby re-determine and confirm Rs.1,12,92,386.00 (Rupees One Crore Twelve Lakh Ninety Two Thousand Three Hundred and Eighty Six only) as differential Service Tax payable by the Appellant M/s. Pristine Facility & Management Services Private Limited, Plot No.189, UK-II, Echotech-III, Greater Noida, Gautam Budha Nagar, U.P. for the period from 2010-11 to 2014-15 (upto Dec-14), which is recoverable from them with Interest under proviso to Section 73(1) and 75 of the Finance Act, 1994.

(2) Penalty amounting to Rs.61,03,106.00 (Rupees Sixty One Lakh Three Thousand One Hundred and Six only) is imposed under proviso to Section 78 of the Finance Act, 1994.

(3) Penalties imposed under Sections 77(1)(a) and 77(2) of the Finance Act, 1994 are waived.

The instant appeal is disposed of in above terms."

¹ SCN

4. Being aggrieved, the Appellant has filed the present appeal before this Tribunal.

5. Heard both sides and perused the appeal records.

6. It is the case of the Appellant that there is no dispute that the services have been provided to SEZ units; SEZ units to whom services have been provided were duly authorized by UAC to receive certain services without payment of service tax for use in the authorized operations; SEZ units were issued duly approved list of specified services in proper prescribed form; there is no dispute that the services provided by the Appellant were used in authorized operations of recipient SEZ Units. It is also the case of the Appellant that since there was substantial compliance of substantive clause of the Notifications, the Appellant is entitled to exemption from payment of service tax in respect of services provided by the Appellant to SEZ Unit's/Developers. It is the case of the Department that on examination of financial year-wise statement, it was observed that almost all the enlisted recipients of services are engaged in the activities in the nature of business, commercial, residential, housing, social and recreational facilities. It is further held that SEZ Units are located in processing and non-processing area which is separately demarcated and units in non-processing area provide support/facilities to the units in processing area and permission is required from the Board of Approval (BOA)/UAC to be eligible for exemption. It is submitted by the Appellant that all the transactions were duly reflected in their Books of Accounts including Balance Sheet and being a private limited company is duly registered with the Registrar of Companies, their Balance Sheets are available on the website portal of Registrar of Companies (MCA). Accordingly, extended period of limitation is not invocable.

7. We find from the records that the Appellant has provided Housekeeping Services to M/s Unitech Realty Projects Ltd. at site SEZ, Tikri, Gurgaon, Haryana. The Appellant is a private limited company and their accounts are subject to statutory audit and

they have discharged the Service Tax liability wherever applicable.

8. We find that learned Commissioner has relied on the following Notifications for denying exemption to the services provided by the Appellant to SEZ units:-

- (i) 9/2009-ST dated 31.03.2009 [Effective upto 28.02.2011]
- (ii) 17/2011-ST dated 01.03.2011 [From 01.01.2011 to 01.07.2012]
- (iii) 40/2011-ST dated 20.06.2011 [From 01.07.2012 to 30.06.2013]
- (iv) 12/2013-ST dated 01.07.2013 [From 01.07.2013 onwards]

The learned Commissioner (Appeals) also relied on the CBEC Circular No.142/11/2011-ST dated 18.05.2011 and held that the exemption cannot be granted to the Appellant as none of the conditions of the aforesaid notifications has been fulfilled, which are:

(a) The SEZ unit or the developer of SEZ is to get approval of the Unit Approval Committee (UAC) in respect of list of services required for authorized operations;

(b) *Ab-initio* exemption shall be allowed subject to the following procedures.

- (i) A declaration shall be furnished in form A-1 verified by the specified officer of the SEZ along with list of specified services;
- (ii) On receipt of the declaration the authorization shall be issued by the jurisdictional Deputy/Assistant Commissioner of Central Excise to the SEZ unit or the Developer in Form A-2;
- (iii) SEZ unit or developer has to provide a copy of said authorization to the provider of specified services;
- (iv) On the basis of authorization the service provider shall provide specified services to the SEZ unit or Developer without payment of Service Tax;
- (v) SEZ unit or Developer has to file quarterly report in Form A-3 furnishing details of services received without payment of Service Tax;

(vi) An undertaking in Form A-1 is to be furnished by the SEZ unit or Developer that in case the specified services on which exemption has been claimed are not exclusively used for authorized operations, it shall pay to the Government an amount claimed by way of exemption from Service Tax including cesses with interest on delayed payment thereof.

(c) The units shall maintain proper account of receipt and use of such specified exempted services or on which refund is claimed.

9. We find that almost all the conditions of the Notifications are to be fulfilled by SEZ units and developers of SEZ. The only condition to be fulfilled by the service provider is that it should obtain A-1 Form i.e. approval of UAC, with list of approved services required to by SEZ units/Developer for use in the authorized operations. It is further submitted that the Appellant always procured Form A-1 from the SEZ units/Developers before providing services to them. It is the case of the Appellant that since all the documents were resumed by the Officers of Service Tax Department at the time of search of the premises of the Appellant on 13.01.2015, including A-1 Forms also, the Appellant could not produce the same before the learned Commissioner (Appeals). However, the Appellant have obtained copies of some A-1 Forms with approved list of services from some of the SEZ units to whom they provided services without payment of Service Tax claiming exemption under the aforesaid Notifications attached as Annexure A-7 series with the appeal paper book from pages 64-100.

10. We find that there is no dispute that the services have been provided to 'SEZ units'; 'SEZ units to whom services have been provided were duly authorized by UAC to receive certain services without payment of Service Tax for use in the authorized operations'; 'SEZ units were issued duly approved list of specified services in proper prescribed form'; there is no dispute that the services provided by the Appellant were used in authorized operations of recipient SEZ units.

11. We find that the Hon'ble Supreme Court has consistently held that the eligibility clause of exemption Notification has to be given strict meaning of which the Notifications should be interpreted in terms of its language and once an Assessee satisfies the eligibility clause, the exemption clause may be construed liberally. Thus, an eligibility criteria deserves a strict construction, although construction of a condition thereof may be given a liberal meaning. Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company reported as 2018 (361) E.L.T. 577 (S.C.) held thus:-

"16. The purpose of interpretation is essentially to know the intention of the Legislature. Whether the Legislature intended to apply the law in a given case; whether the Legislature intended to exclude operation of law in a given case; whether Legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids and external aids which are tools for interpreting the statutes.

25. We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a

tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

27. Now coming to the other aspect, as we presently discuss, even with regard to exemption clauses or exemption notifications issued under a taxing statute, this Court in some cases has taken the view that the ambiguity in an exemption notification should be construed in favour of the subject. In subsequent cases, this Court diluted the principle saying that mandatory requirements of exemption clause should be interpreted strictly and the directory conditions of such exemption notification can be condoned if there is sufficient compliance with the main requirements. This, however, did not in any manner tinker with the view that an ambiguous exemption clause should be interpreted favouring the revenue. Here again this Court applied different tests when considering the ambiguity of the exemption notification which requires strict construction and after doing so at the stage of applying the notification, it came to the conclusion that one has to consider liberally.

38. We will now consider another Constitution Bench decision in Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal, (2011) 1 SCC 236 = [2010 \(260\) E.L.T. 3](#) (S.C.) [hereinafter referred as 'Hari Chand case' for brevity]. We need not refer to the facts of the case which gave rise to the questions for consideration before the Constitutional Bench. K.S. Radhakrishnan, J., who wrote the unanimous opinion for the Constitution Bench, framed the question, viz., whether manufacturer of a specified final product falling under Schedule to the Central Excise Tariff Act, 1985 is eligible to get the benefit of exemption of remission of Excise duty on specified

intermediate goods as per the Central Government Notification dated 11-8-1994, if captively consumed for the manufacture of final product on the ground that the records kept by it at the recipient end would indicate its "intended use" and "substantial compliance" with procedure set out in Chapter 10 of the Central Excise Rules, 1944, for consideration? The Constitution Bench answering the said question concluded that a manufacturer qualified to seek exemption was required to comply with the preconditions for claiming exemption and therefore is not exempt or absolved from following the statutory requirements as contained in the Rules. The Constitution Bench then considered and reiterated the settled principles qua the test of construction of exemption clause, the mandatory requirements to be complied with and the distinction between the eligibility criteria with reference to the conditions which need to be strictly complied with and the conditions which need to be substantially complied with. The Constitution Bench followed the ratio in Hansraj Gordhandas case (supra), to reiterate the law on the aspect of interpretation of exemption clause in para 29 as follows -

"The law is well-settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is failure to comply with some requirements which are directory in nature, the non-

compliance of which would not affect the essence or substance of the notification granting exemption.”

12. In view of the above discussions, it is our considered view that since there was substantial compliance of substantive clause of the Notifications in question, the Appellant is entitled to exemption from payment of Service Tax in respect of services provided by the Appellant to SEZ units/Developers. Accordingly, the impugned order is set aside and the appeal filed by the Appellant is allowed.

(Order pronounced in open court on – **01st May, 2024**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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