CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Early Hearing Application No.70185 of 2024
(On behalf of the Appellant)
In
Service Tax Appeal No.70483 of 2024

(Arising out of Order-In-Appeal No.NOI-EXCUS-002-APP-416-23-24, dated - 13/12/2023 passed by Commissioner (Appeals) CGST, Noida)

M/s Anil Kumar Agarwal **.....Appellant**
(House No 327, Krishna Nagar
Bulandshahr, Uttar Pradesh 203001)

VERSUS

Commissioner, Central Tax & Central Excise, Noida
....Respondent
(GST Bhawan, Ircon Building,
Plot No.-C-232,A/2-A/3,Sector-48,
Gautam Budh Nagar,Noida-201301)

APPEARANCE:

Shri Anil Kumar Agarwal in person for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70430/2024

DATE OF HEARING : 27.06.2024
DATE OF DECISION : 27.06.2024

SANJIV SRIVASTAVA:

The Miscellaneous Application (Early Hearing) has been filed by the Appellant/assessee praying for out of turn hearing of the appeal.

2. Considering the submissions made by the learned counsel for the Appellant, the prayer for Early Hearing of the appeal is accepted. Accordingly Early Hearing Application filed by the

Appellant is allowed and with the consent of both the sides appeal itself is taken up for hearing today itself.

3. This appeal is directed against the Order-In-Appeal No. NOI-EXCUS-002-APP-416-23-24 dated 13.12.2023 passed by the Commissioner (Appeals) CGST, Noida. By his order he has held as under:-

> *"In view of the above discussion and findings I partially allow the Appeal No.129/ST/NOIDA/APPL/GBN/2023-24 dated 07.07.2023 filed by M/s Anil Kumar Agarwal, House No. 327, Krishna Nagar, Bulandsahar-203 001 (U.P.) in above terms and the Order-in-Original No.88/AC/DIV- BSR/GBN/2022-23 dated 31.03.2023 passed by Assistant Commissioner CGST Division Bulandshahar is partially modified to the extent that imposition of late fee u/s 70 of the Act is set aside. However, confirmation of the demand of Service tax of Rs.93,104/ u/s 73(1) of the Act along with interest u/s 75 of the Act and equal penalty u/s 78 of the Act is upheld as just, legal and proper."*

4.1 The Appellant is an engineering professional providing consulting engineering services to M/s Petrofac Engineering Services India Pvt. Ltd. and SEZ unit located in DLF Cyber City, SEZ, DLF City, Sector 24 & 25A, Gurugram.

4.2 On receipt of information from the Income Tax department to effect that TDS deduction of the appellant for the F Y 2016-17 is Rs 24,63,886/- range officer after making necessary enquiries proceeded to issue a show cause notice dated 21.10.2021 to the Appellant asking him to show cause as to why:-

> *"(i) The Service Tax of Rs. 3,69,583/- (Rupees Three Lac Sixty Nine Thousand Five Hundred and Eighty Three only) for the F.Y.2016-17, should not be demanded and recovered from them under Proviso of Section 73(1) of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.*
>
> *(ii) Interest should not be recovered/ demanded from them under Proviso of Section 75 of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.*

(iii) Penalty should not be imposed upon them under Proviso of Section 78 of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.

(iv) Penalty for non-filing of ST-3 return, should not be imposed upon them under Proviso of Section 70 of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017."

4.3 The Show Cause Notice was contested and after considering the submissions made by the Appellant the Assistant Commissioner decided vide his Order-In-Original No.88/AC/D-BSR/GBN/2022-23 dated 31.03.2023 as follows:-

"1. I drop the demand of service tax of Rs.2,76,479/- (inclusive of cess) (Rupees Two Lakh Seventy Six Thousand Four Hundred Seventy Nine only) towards the services provided for consideration during the fiscal 2016-17 as detailed and discussed in the foregoing paras.

2. I confirm the Service Tax demand of Rs.93,104/- (including Cess) [Rupees Ninety Three Thousand One Hundred Four Only) for the above said period and order its recovery from M/s Anil Kumar Agarwal under Section 73(1) of the Finance Act, 1994 along with Interest payable on the aforesaid amount under Section 75 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017

3. I impose penalty of Rs.93,104/-(Rupees Ninety Three Thousand One Hundred Four Only) upon M/s Anil Kumar Agarwal under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 and order its recovery from them.
4. I confirm the demand of Late Fee/penalty of Rs. 17,800/- (Rupees Seventeen Thousand Eight Hundred only) upon M/s Anil Kumar Agarwal under Section 70(1) of the Finance Act, 1994 read with Section 174 of CGST Act, 2017 and order its recovery from them."

4.4 Aggrieved Appellant filed appeal before the Commissioner (Appeals) which has been decided as per the impugned order.

4.5 Aggrieved Appellant has filed this appeal.

5.1 We have heard Shri Anil Kumar Agarwal, Appellant in person and Shri Sandeep Pandey, learned Authorized Representative for the Revenue.

5.2 Arguing for himself Appellant submits that

- He is an engineering professional who retired from the unit located in SEZ referred above.
- Subsequent to his retirement he was appointed as consultant by the said unit and he was providing his service to the same unit as consultant.
- The appellant had received permission in Form A1 & Form A2, Authorization for procurement of services by a SEZ Unit valid till 21.06.2016.
- Demand against him has been confirmed for the period after 21.06.2016 and benefit of exemption notification No 21/2013-ST was given to him for the period prior to 21.06.2016.
- It is a settled position in law that in respect of the services provided to SEZ Unit, the provisions of SEZ Act, are applicable and in terms of Section 51 of the said act, this act would have an overriding effect over all other statutes in matters relating to SEZ units.
- All supplies of goods and services to an SEZ unit or developer are non taxable as per the said Act.
- demand made contrary to provisions of SEZ Act is bad in law and needs to be set aside.

5.3 Learned Authorized Representative reiterates the findings in the impugned order.

6.1 We have considered the impugned order along with the submissions made in the appeal and during the course of argument.

6.2 Section 26 and 51 of the SEZ Act, 2005 provides as follows:-

> ***"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: -***
>
> ***....***
>
> *(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;

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

51. Act to have overriding effect.—

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."

6.3 In terms of above provisions all the services provided to an SEZ Unit are exempt from payment of service tax subject to any conditions/ restrictions that may be imposed by way of Notification issued under Section 26 (2) of the SEZ Act. Notification No 12/ 2013-ST has been issued in terms of **"sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section 3 of section 95 of Finance(No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007 (22 of 2007)",** and could not restrict the exemption granted by Section 26 (1) of the SEZ Act, 2005 in view of the provisions of Section 51. Section 51 provides that the provisions of SEZ Act are having an overriding effect and no other act including the Finance Act, 1994 can be applied to demand such service tax in respect of services provided to an SEZ unit.

6.6 Similar view has been expressed in the case of Reliance Ports And Terminals Ltd [2015 (40) S.T.R. 200 (Tri. - Ahmd.)] in following words:

"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."*

"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."

6.5 Mumbai Bench has in case of eClerx Services Limited [(2023) 4 Centax 89 (Tri. - Bom.)] observed as follows:-

> *"8. The next issue concerns the finding that the services had been rendered in India and consumed in India.*
>
> *The definition of '(m) "export" means –*
> *(i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or*
> *(ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or*
> *(iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;'*
> *in Special Economic Zones Act, 2005 is substantially different from that in the rules which delineate 'exports' from 'domestic supply' in the scheme of service tax law and, in view of section 51 of Special Economic Zones Act, 2005, have to be read in the context of the exemption afforded by section 26 of Special Economic Zones Act, 2005 and not in terms of Finance Act, 1994. Consequently the prism through*

> *which the adjudicatory perception has been enunciated does not apply to the facts of the service rendered by the appellant. Accordingly, the demand for allegedly rendering of services within India does not sustain."*

Appeal filed by the revenue against this decision has been dismissed by the Hon'ble Supreme Court as reported at [2023 (72) G.S.T.L. 4 (S.C.)] observing as follows:

> ***"2.*** *The judgment relied upon in "M/s GMR Aerospace Engineering Limited & Ors. v. Union of India & Anr." (W.P. No. 13546 of 2018) decided on 27-12-2018 [2019 (31) G.S.T.L. 596/[2019] 111 taxmann.com 103 (Andhra Pradesh and Telangana) by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh was challenged under Article 136 (in a SLP(C) Dy. No. 22140 of 2019) which was dismissed by this Court on 26-7-2019. Following the said decision, this Court holds that there is no merit in the appeal. It is accordingly dismissed."*

6.5 In case of SE Forge Ltd. [2019 (365) E.L.T. 560 (Tri. - Chennai)] following has been observed:

"5. *The issue that arises for consideration is whether the appellant is eligible for refund of service tax paid on Renting of Immovable Property Service. The original authority has rejected the refund on the ground that on the date of filing of the refund claim, the said services, viz; Renting of Immovable Property Services were not approved by the Development Commissioner, as required under Notification No. 9/2009 as amended. As per the notification, exemption is allowed in relation to authorised operations in SEZ, provided the developer or units of SEZ shall get the list of services which are required in relation to the authorised operations approved from the Approval Committee. The appellant although requested for approval of 106 services initially, the Assistant Commissioner had approved only 37 services which was only default list or rather a general list applicable to all SEZ. It is seen that Development Commissioner* *has approved the list including Renting of Immovable Property Services vide letter dated 15-9-2009. It is not disputed that Renting of Immovable Property Service was availed by the appellant for the disputed period. The invoices shows the payment of service tax on such services. The Approval Committee has approved such services vide their letter dated 15-9-2009. The requisite for obtaining approval is only a procedure to be complied with, for the substantive benefit of exemption from payment of service tax. When the services have been approved, the benefit of exemption cannot be denied. Section 26 of the SEZ Act, lays down provisions for exemption from duties and taxes. Section 51 of the said Act provides for overriding effect. Therefore the immunity provided from paid service tax cannot be taken away by the procedural prescriptions of Notification No. 9/2009 or 15/2009. These notifications are calibrated to enable recipients of taxable services of SEZ, etc., to get benefit of exemption of the service tax. In any case, since the appellants have obtained approval for the said services, we find that the error would only be a procedural infraction which can be condoned. The substantive benefit cannot be denied for a procedural lapse...."*

6.6 Accordingly, we do not find any merit in the impugned order. Demand is set aside.

7.1 The appeal is allowed with consequential relief as per law.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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