CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No. 70985 of 2018

(Arising out of Order-In-Appeal-35-COMMR-MEERUT-2018, dated-20/04/2018 passed by Commissioner, Central Goods & Service Tax, Meerut)

M/s HCL Technologies Ltd., ...**Appellant**
(A-10 & 11, Sector 3
Noida, U.P. 201301)

VERSUS

Commissioner, CGST, Noida ....**Respondent**
(C-56/42, Sector 62, Noida, U.P.)

APPEARANCE:

Shri Atul Gupta, Advocate & Ms. Ushmeet Kaur Monga, Advocate for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70912/2024

DATE OF HEARING : 28.08.2024
DATE OF DECISION : 28.08.2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-In-Appeal-35-COMMR-MEERUT-2018, dated-20/04/2018 passed by Commissioner, Central Goods & Service Tax, Meerut.

2. The facts of the case in brief are that the Appellant is engaged in providing taxable services namely Information Technology Services, Maintenance and Repair Services, Technical Testing and Analysis Service and Business Support Services. The Appellant was also exporting Information Technology Software Services and Business Support Services and availing Cenvat Credit of the service tax paid on input service. The Appellant, in order to provide the said output

services procured various input services and paid service tax on the same.

3. The date-wise chronology of events resulting in passing of the impugned Order-In-Appeal is as under:-

S. No.	Dates	Events
1.	**29.08.2016 & 05.10.2016**	Refund Application filed for the relevant period under Notification No. 12/2013-ST for the services used in relation to the authorized operations in the SEZ Unit, as approved by the Approval Committee. The refund claim was rectified vide letter dated 05.10.2016 seeking a refund amounting to Rs. 17,11,76,070/-
2.	**13.01.2017**	After verification refund amounting to Rs 15,53,68,504/- was granted by the Ld. Adjudicating Authority vide refund order (Order-in-Original) dated 13.01.2017. Simultaneously, a Show Cause Notice was issued denying the refund of the remaining amount of Rs 1,58,07,566/- alleging that the Appellant has incorrectly claimed a refund of: ➢ Rs 1,45,41,775/- on the invoices raised to unregistered premises. ➢ Rs 6,14,764/- on missing original invoices ➢ Rs. 6,51,027/- on time-barred invoices.
3.	**07.02.2017**	The Appellant filed a reply to Show Cause notice, where the refund claim of Rs 3,68,783/- (Rs. 1,43,271/- relating to invoices raised to unregistered services and Rs. 2,25,512/- to missing invoices) was withdrawn. The Appellant submitted a detailed reply of the remaining claim amount along with all the relevant documents.
4.	**28.02.2017**	The Adjudicating Authority passed the Order-in-Original No. 164/R/DC/STD-1/2016-17 without properly considering the submissions or the documents attached by the Appellant. The

		Adjudicating authority set aside the submissions of the Appellant and rejected the refund claim of Rs. 1,54,38,783/-
5.		Appeal against Order-In-Original was filed before the Commissioner (Appeals), Customs, CE &ST, Meerut -I where various submissions were made including that: • The Appellant is a SEZ unit that using input services for exporting its output services. There was no dispute that the Appellant had paid service tax to the service providers on the strength of the invoices, which had been deposited with the Government Exchequer. Thus, the refund cannot be denied on mere technical infractions. • Since the Appellant is a SEZ unit it was entitled to receive services without payment of Service Tax as per Section 26 of the Special Economic Zone Act, 2005. • The Appellant is fulfilling the requirement of Notification No. 12/2013-ST. • There was no pre-requisite that a refund can be claimed only in respect of those invoices that are issued to the registered premises of the Appellant. In any case, the refund in respect of input services amounting to Rs. 1,36,31,118/- was claimed only after getting the premises registered. • The claim of refund of Rs. 7,67,386/- was with respect to invoices which had only minor variations with respect to the address. • A Refund of Rs. 6,51,027/- had been incorrectly rejected on account of the refund claim being time barred as the limitation period of Notification No. 12/2013-ST would apply and not of Section 11B of the Central Excise Act. • The Appellant was entitled to an extension of time, as was permitted under Notification No. 12/2013-ST at the discretion of the concerned

		Assistant Comm. of CE or the Deputy Comm. of CE, and • The refund should be allowed along with interest.
6.	**20.04.2018**	The Commissioner vide Order-in-Appeal No. 35/COMMR. /MEERU/2018 remanded the refund claim amounting to Rs. 1,47,87,756 and rejected the refund claim Rs 6,51,027/- The said amount is bifurcated as: ➢ Rs. 1,36,31,118/- amount related to invoices issued to unregistered premises where the premises were registered before claiming of the refund. ➢ Rs 7,67,386/- amount related to invoice which had minor variations ➢ Rs. 3,89,252/- amount related to photocopied invoices. ➢ Rs. 6,51,027/- amount related to time barred refund.

4. Aggrieved Appellant has filed the present appeal.

5. Learned Advocate appearing on behalf of the Appellant submits that SEZs are specifically delineated duty-free areas wherein units may be set up for specified purposes of manufacturing, trading or rendering services or providing warehouse facility for export. The Appellant, being an SEZ unit, has claimed exemption from payment of service tax by way of refund under Notification 12/2003-ST, on input services received by the SEZ unit that have been used for authorised operations as approved by the Approval Committee.

6. He further submitted that Section 26(1)(e) of the SEZ Act provides the exemption from service tax under Chapter V of the Act of Service provided to an 'entrepreneur' to carry on authorised operation. However, the exemption provided by said section is subject to subsection (2), which states that the exemption, concession drawbacks and other benefits provided

under subsection (1) shall be provided as per the manner 'prescribed' by the Central Government. As per Rule 31 of SEZ Rules, **whereby it is stated that exemption from payment of service tax shall be to any service provider for the authorised operations in the Special Economic Zone.**

7. Reliance is placed on the case of **Jindal stainless limited vs. Union of India 2017 (51) STR 130 (Delhi)**, wherein it was held that only condition that is required to be satisfied to avail the service tax benefit under the said provisions is that the services must be rendered for the purpose of carrying out "authorised operations in Special Economic Zone"

8. Reliance is placed on the case of **Cummins Technologies India Ltd. v. CCE & ST, Meerut, 2018 (5) TMI 565 – CESTAT New Delhi**, wherein it was held, that the exemption under section 26 of SEZ Act is an unconditional one and cannot be restricted by imposing unnecessary condition by way of notification issued under the Finance Act. Further reliance is placed on the decision of:

a. Reliance Ports and Terminals Ltd. vs. Comm. of CE & ST., Rajkot 2015 (40) STR 200 (Tri- Ahmd.)
b. EON Kharadi Infrastructure Pvt Ltd. vs. Comm. of C. EX., Pune -III 2015 (39) STR 267 (Tri- Mumbai)
c. Reliance Industries Ltd. vs. Comm. of C.Ex., Mumbai- I 2016 (41) STR 465 (Tri- Mum)
d. Cognizant Technology Solutions India Pvt. Ltd. v. Commissioner of Central Excise & ST, Chennai - 2021 (10) TMI 642-CESTAT Chennai.
e. Norasia Container Lines vs. CCE New Delhi 2011 (23) STR 295 (Tri Delhi)
f. DHL Lemur Logistics Pvt. Ltd. v. Comm. Of C.EX., Thane -I 2017 (47) STR 309 (Tri- Mumbai.)

9. Learned Departmental Authorized Representative has justified the impugned order and prayed that the appeal filed by the Appellant, being devoid of any merits, may be dismissed.

10. Heard both the sides and perused the appeal records.

11. We find that the present appeal is limited to the following categories:

S. No.	**Issue**	**Amount (in Rs.)**	**Findings**	**Order**
1.	Amount related to invoices issued to unregistered premises where the premises were registered before claiming of the refund.	1,36,31,118/-	Refund/credit would be allowed only if premises were registered before the date of the invoice/receipt of the input service	Remanded to verify
2.	Time Barred Refund	6,51,027/-	Refund would be rejected in cases where it was filed beyond one year from date of payment of tax as per section 11 B of the central excise act	Rejected, but original authority can allow refund on invoices on which credit was availed within the time limit under Sec. 11B

12. We find that the Commissioner has rejected or remanded the refund request on several technical grounds, such as issuing invoices to unregistered persons, not submitting original invoices and delayed filing. However, despite these technical issues the Appellant is still eligible for a refund under the express exemption provided in the notification. According to the notification, SEZ units are entitled to service tax exemption by way of a refund for input services used in their authorised

operations. Reliance is placed on the following cases which provide that exemption under Notification No. 12/20003- ST should not be denied only on account of procedural discrepancies:

a. Barclays Global Service Centre Pvt Ltd vs. Comm. Of Central Tax, Pune 2018 (6) TMI 1080- Cestat Mumbai

b. C.C.E. & S.T. -Rajkot Versus Reliance Industries Limited 2021 (12) TMI 848 - CESTAT AHMEDABAD

13. According to clause 3III(d) of the notification, a service tax refund is allowed if the invoice, bill or challan shows the value of service and the service tax amount, which must have been paid to the service provider. In the case of reverse charge, the claimant must have paid tax to the government. The notification does not specify additional details that must be included on the invoice for claiming a refund. However, to claim the refund, an application in format Form A-4 must be filed. The Appellant submits that they have provided all required information and documents to the department when filling out the refund application.

14. **The refund of Rs.1,36,31,118/- has been incorrectly denied in as much as it relates to premises already registered by the Appellant.** The notification states that refund will be granted based on a valid claim accompanied by relevant information. The information includes the SEZ Unit address, it's service tax registration and a valid invoice from the service provider. The Appellant submits that it has provided all the necessary information. The key requirement is that at the time of filing of refund application the premises where the services were received must be registered. In this case, the Appellant had already registered the premises, as reflected in the ST-3 certificate, at the time of filing of the refund application.

15. Courts have consistently ruled that Cenvat credit would be available to the assessee and that the department cannot impose additional conditions that credit should be taken only on those

invoices which are addressed to the assessee's registered premises, as this requirement is not specified under Rule 4A of Service Tax Rules. Hence, in the present case as well the department cannot impose an additional condition that the refund is only available if invoices are issued to the Appellants' registered premises.

16. The registration of a premise is not a pre-requisite for taking a refund or credit. Even without registration, credit/refund can be availed as the same is being used for providing Output services.

17. The total amount of Rs. 6,51,027/- was rejected on the ground that it was a time barred refund, the same can be further bifurcated into:

- **Rs 2,32,611**/- related to invoice on which refund was claimed within one year as per Section 11B of Excise Act.
- **Rs. 4,72,361/-** related to invoice on which refund was claimed within one year as per Notification No. 12/2003-ST.
- **Rs 1,78,666/-** related to invoices on which refund was claimed beyond prescribed under Notification No. 12/2003-ST.

18. The refund claim can be filed within one year from the last date of the month in which service tax was paid as per the Notification. On the contrary, Section 11 B of the Excise Act, provides that the limitation period would end on the expiry of one year from the date of payment of tax. In the present case, since the refund claim has been specifically filed under Notification No. 12/2003-ST, the limitation period of Notification will apply and not Section 11B. Hence, the refund claim of Rs 4,72,361 shall be allowed as it is a set principle of law that when a specific notification has been issued by the Govt. then the same will hold superiority over the general statutory provision. Reliance is placed on the decision of:

a. CCE, Pune vs. Sciformix Technologies Pvt. Ltd. 2019 (365) ELT 588 (Tri – Chennai)

b. CCE, Pune vs. Sciformix Technologies Pvt. Ltd. 2018 (4) TMI 905 CESTAT-Mum.

19. In relation to the refund claim of Rs. 1,78,666/- which was filed beyond the limitation period of both section 11B of the act and the Notification. It is submitted that as per the notification clause, the Assistant or Deputy Commissioner of the Central Excise is empowered to extend the limitation for filing the refund claim. In the present case, the Appellant had requested to extend the period for filing a refund claim.

20. The commissioner has neither discussed the provision under notification nor gave any justification of not extending the limitation. The commissioner had incorrectly applied Section 11B of the Excise Act to reject the entire refund amount without giving any justification as to why the limitation specified under the notification would not apply. In the case of **Suzlon Wind International Ltd. v. CCE (Appeals), Mangalore, 2016(43) STR 468(Tri. - Bang.)** Where it was held at the spirit of the impugned notification is that it requires a liberal approach and further no separate application for condonation of delay in filing refund under impugned notification is required as grounds mentioned on the main refund application are sufficient for condoning delay.

21. A mere procedural or technical irregularity is not sufficient to deny the benefit of a notification, especially when there has been a substantive compliance of law. This is a settled legal principle that has been upheld in various landmark decisions:

a. Mangalore Chemicals & Fertilizers Ltd. vs. Deputy Commissioner, 1991 (55) ELT 437 SC

b. CC, C. EX & ST, Noida vs. Schneider Electric Infrastructure Ltd. 2019 (370) ELT 1352 (Tri- All.)

c. IPF Vikram India Ltd. CCE, Ludhiana 2013 (295) ELT 421 (Tri-Del.)

d. Satyabharart Swaim vs. Comm. of CE, Meerut-I 2015 (316) ELT 106 (Tri- Del.)

22. In view of the above discussion, the impugned order cannot be sustained and is accordingly set aside. The appeal filed by the Appellant is allowed with consequential relief, as per law.

(Operative part of the order is pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Separate Concerning Order
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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<u>SANJIV SRIVASTAVA:</u>

23. I have gone through the order prepared by the landed Member (Judicial), however, I would like to record a separate order in the matter.

24. The issue involved in the present matter is with regards to admissibility of two refund claims i.e. (i) amounts related to invoices issued in the name of unregistered premises were registered before claiming of the refund amounting to Rs.1,36,31,118/-. (ii) Time barred refund amounting to Rs.6,51,027.

25. In respect of first issue matter is reminded back by the Commissioner (Appeals) to the Original Authority by observing as follows:-

> *"Accordingly, if the premises to which the said invoices were issued were registered as on the date of invoice/receipt of the said input services, I allow the credit/ refund to the appellant, otherwise not. As regards the contention of the appellant regarding invoices having minor variations in address mentioned on invoices, I, observe that intent of the law is to allow credit on inputs/input services which are received and used in providing the output services. If the invoices are not in the name and address of the registered premises, credit is not automatically allowed. Accordingly in cases where the variation is minor in nature, I allow the credit, subject to the satisfaction of original authority that payment for these invoices was made by the appellant and the credit is otherwise legally admissible.*
>
> *Accordingly, I remand the matter to original authority for verification of facts as discussed hereinbefore."*

26. In the remand proceedings appellant submits that refund has been allowed in respect of invoices which were received after registration of the premises and refund has been rejected in respect of invoices which were received prior to registration of the premises.

27. I find that the issue involved in the present appeal is no longer res-integra and has been considered and decided by this Tribunal in number of times holding that for the purpose of refund of credit of service tax paid in respect of input services registration of premises is not prerequisite. Reliance is placed on the following decisions-

- M/s Allspheres Entertainment Pvt. Ltd. Vs CCE, Meerut 2016 (41) STR 104 (Tri.-Delhi).
- M/s Toll (I) Logistics Pvt. Ltd. Vs CCE, Pune-I 2016 (41) STR 80 (Tri.-Mumbai)

28. In respect of other issue, the refund has been rejected on the issue of time bare. I find that amount of Rs.2,32,611/- was relation to invoice where refund was claimed within one year as per Section 11 B of the Act. Rs.4,72,361/- in respect of invoices on which refund was climbed within one year as per the condition of Notification No.12/2013-ST, as the notification is self contended notification and it is prescribed for limitation if any or filing the claim of refund. The said limitation would govern the said refund claims which have been held by the Tribunal in number of times. Reliance is placed on the following decisions-

- CCE, Pune Vs Sciformix Technologies Pvt. Ltd. 2019 (365) ELT 588 (Tri.-Chennai).
- CCE, Pune Vs Sciformix Technologies Pvt. Ltd. 2018 (4) TMI 905 CESTAT-Mum.

29. In relation to refund claim of Rs.1,78,666/- I am of the view that undisputedly appellant is an SEZ unit and is claiming refund of Service tax under Notification No.12/2013-ST subject to conditions prescribed by the said notification. Further, this Bench of the Tribunal has decided the present issue in the case of M/s Steria India Final Order No.70277-70280 dated 21 December, 2023 by holding as follows:-

"3.3 The issue in respect of applicability of the said condition for considering the application of refund made under the said notification is no longer res-integra and has been adjudged in a series of decisions of CESTAT. I reproduce the relevant paragraphs from the recent decision of the Allahabad Bench in the case of EXL Services SEZ BPO Solutions Pvt. Ltd. [2023-TIOL-852-CESTAT-ALL] on the issue:

> *4.4 Further, we find that the only issue for consideration in the present case is whether the claim for refund made in terms of the notification No 9/2009-ST dated 03.03.2009 can be denied just for the reason that the the taxable services in respect of the which the claim has been made, are not mentioned in the list of specified services approved by the SEZ authorities. The scheme of SEZ Act, provides for exemption from payment of all taxes to the developer of SEZ or the Units operating in the SEZ. Notification No 9/20009-ST does not provide for any further exemption but provides a mechanism for operation of the said scheme, where a service provider has provided the taxable services to the Unit located in SEZ, on payment of service tax. The conditions specified in the sad notification need to be read accordingly. Article 265 of the Constitution clearly lays down that "No taxes can be levied without the authority of law." When the developer of SEZ and units located in the SEZ have been given exemption from payment of all the taxes then any levy and collection of the taxes from such units is without any authority in law and thus contravenes the Article 265. In such a scenario, the amount so collected needs to be refunded to the person from whom such tax has been collected. The condition specified in proviso (a) to the notification only provides a manner for verification that the services in*

respect of which the refund claim has been made were received by the SEZ developer or the SEZ Unit. There can be many other ways by which the said claim with regards to the receipt of these services by the SEZ unit can be verified. Till the time the factum of receipt of these services by the SEZ unit is not disputed the denial of refund of service tax paid on any service received by such unit would be contrary to the provisions of Article 265 of the Constitution. In the present case revenue has not disputed the receipt of these services by the SEZ Unit, hence denial of the refund claim in respect of these three services for the reason that they did not find mention in the list of specified services approved by the SEZ authority cannot be upheld.

4.5 We also find that the issue involved in the present appeal is no longer res-integra. Similar view has been expressed by the tribunal in following cases

A. In case of Metlife Global Operations Support Center (P) Ltd. [2021 (46) GSTL 418 (T-Del)] = 2021-TIOL-10-CESTAT-DEL following has been held:

"40. This issue relates to proviso (a) of the notification dated March 3, 2009. It provides that the Developer or Units of SEZ shall get the list of services specified in Section 65(105) of the Finance Act as are required in relation to the authorized operations in the SEZ, approved from the UAC.

41. It has been pointed out by Learned Counsel for the appellant that the output services rendered by the SEZ unit of the appellant were only for authorized operations. The contention of the Learned Counsel for the appellant, therefore, is that not only does the impugned order not contain any specific finding or quantification, but even otherwise the requirement of grant of approval by the UAC cannot *be considered as a mandatory condition to override the exemption that has been granted under Section 26 of the SEZ Act and the SEZ Rules framed thereunder. It is, therefore, the contention that the Commissioner (Appeals) committed an illegality in rejecting the refund applications filed by the appellant.*

42. Learned authorised representative has, however, submitted that the appellant is not entitled to the refund.

43. The records indicate that the appellant had during the relevant period only one operating unit in the SEZ. All the input services were, therefore, used by the appellant for the authorized operations, namely, BPO (ITES) as per the specific condition prescribed under the SEZ Act for seeking exemption from service tax and the letter dated June 19, 2008. The output services rendered by the SEZ unit of the appellant is for authorized operations. It is not the case of the Department that the output services have been used for services other than authorized operations nor any finding to this effect has been recorded. Thus, the service tax paid on all input services used for rendition of such output services are available for claim of refund in terms of the substantive provisions of the SEZ Act.

44. In any case, the conditions imposed by the notifications issued under the provisions of the Finance Act are merely directory in nature.

45. This issue has been considered time and again. In Mast Global Business Services India Pvt. Ltd. v. Commissioner of Central Tax - 2018-TIOL-3115-CESTAT-BANG the Tribunal held that the SEZ Act had an overriding effect, in view of the provisions of Section 51 of the SEZ Act, over all other laws and, *therefore, the ground for rejecting the refund claims was not tenable in law and even otherwise, approval from UAC was only procedural in nature and not a mandatory condition. The relevant portion of the decision of the Tribunal is reproduced below :*

"The other grounds on which the refund 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 to SEZ which is a mandatory condition 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 of SEZ is not a mandatory requirement as the SEZ Act vide Section 51 of SEZ Act will have overriding effect over the provisions of any other law. Therefore, keeping in view, the intention of the Government in enacting the SEZ Act and giving special fiscal concessions to 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 hold that the SEZ Act has a overriding effect over other laws. Therefore, this ground on the basis of which refund claims have been rejected is not tenable in law."

(emphasis supplied)

46. In M/s. ONGC Mangalore Petrochemicals Limited v. Commissioner of Central Excise & Central Tax, Mangalore Commissionerate [2019-VIL-140-CESTAT-BLR-ST] = 2018-TIOL-1435-CESTAT-BANG, the Tribunal again held :

"6. After considering the submissions of both the parties and perusal of the material on record, I find

that the appellant being SEZ is entitled to refund of Service Tax paid on input service used for authorized operations. Further, I find that as per Notification No. 12/2013-S.T., dated 1-7-2013, the only requirement is that the appellant is required to file the list of approved services which have been used by them for authorized operations. Further, in this case, I find that the appellant has subsequently obtained the approval from the Unit Approval Committee of the SEZ and the said certificate is placed on record but the Commissioner (A) has held that the said approval was obtained from the competent authority on 25-10-2011 and therefore, after the approval, he has allowed the refund and prior to that he has rejected the same. Further, I find that in view of the settled legal position by various decisions relied upon by the appellant, conditions of approval from UAC is not a mandatory requirement as per SEZ Act vide section 51 of the SEZ Act which has an overriding effect over the provisions of any other law. Further, I find that it is only a procedural requirement to get the approval from the Unit Approval Committee and is not a mandatory condition as per the SEZ Act which has an overriding effect over other laws."

(emphasis supplied)

47. In SE Forge Ltd. v. Commissioner of Central Excise, Coimbatore [2019 (365) E.L.T. 560 (Tri. - Chennai)] = 2018-TIOL-2303-CESTAT-MAD, a Division Bench of the Tribunal observed that in view of the provisions of Section 26 of the SEZ Act, the notifications issued under the Finance Act cannot deprive a person from exemption of service tax. The Tribunal further held that the requirement for obtaining approval of UAC is only a procedural requirement for claiming the substantive benefit of exemption from service tax. The Department was, *therefore, not justified in rejecting the claim. The relevant portion of the decision is reproduced below :*

"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. The claim of Rs. 967/- being given up by appellant is not considered in this appeal."

(Emphasis supplied)

48. Thus, the Commissioner (Appeals) was not justified in rejecting the refund claims on this ground."

B. In case of SRF Ltd [2022 (64) GSTL 489 (T-Del)] tribunal held as follows:

"36. Special Economic Zones created under the SEZ Act are on a different footing because the SEZ Act itself exempts goods and services supplied for authorised operations to developers and units in the SEZs from the Customs Duty, Central Excise Duty and Service Tax. The provisions of SEZ Act prevail over any other law. Section 26(1) of the SEZ Act, 2005 reads 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 :-

(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;

37. Thus, Section 26(1) of the SEZ Act is inconsistent with the three charging sections viz., Section 3 of the Central Excise Act, 1944, Section 12 of the Customs Act, 1962 and Sections 66, 66A and 66B of Chapter V of the Finance Act, 1994. In addition to the general principle of a specific law (pertaining to SEZ) prevailing over the general law (levying customs, central excise or service tax) and the later enactment (such SEZ Act, 2005) prevailing over the earlier enactments (Central Excise Act, 1944, Customs Act, 1962 and Finance Act, 1994), in the SEZ Act, the Parliament has explicitly resolved this inconsistency between the laws. Section 51 of the SEZ Act states that the provisions of SEZ Act override any other provisions of other laws. It reads as follows :

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.*

38. Thus, insofar as supplies for authorised operations of SEZ developers and units are concerned, Section 26 of the SEZ Act overrides the charging sections in all the three Acts.

39. 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 authorised 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.

40. Therefore, there is no need for any exemption notifications under any of these three Acts nor is it necessary to fulfil any conditions of 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."

C. Mumbai Bench in case of ECLERX Service Ltd [2023 (72) GSTL 99 (T-Mum) = 2022-TIOL-811-

CESTAT-MUM Affirmed in 2023 (72) GSTL 4 (Supreme Court)] held as follows:

2. It was alleged that between June 2009 and February 2011, the appellant herein had rendered 'taxable service' valued at Rs. 80,16,46,587 on which the liability of Rs. 8,25,69,598 should have been discharged and, in accordance with Notification No. 9/2009-S.T., dated 3rd March 2009 and as amended by Notification No. 15/2009-S.T., dated 20th May 2009, claimed as a refund thereafter upon compliance with the conditions specified therein. Likewise, it was alleged that for the period from 1st March 2011 to 14th June 2011, the appellant herein had rendered taxable service valued at Rs. 16,86,45,901 on which tax liability of Rs. 1,73,70,528 should have been discharged and, in accordance with Notification No. 17/2011-S.T., dated 1st March 2011, should have been backed by Form A-1 which, upon scrutiny, was found to have been verified only on 14th June 2011. It is further alleged that the appellant herein, for the period from 1st July 2012 to 31st March 2013 had availed of exemption against form A-I which, having been dated only on 29th August 2012, precluded the privilege between 1st July 2012 and 28th August 2012 during which taxable service valued at Rs. 12,92,07,189 was rendered without discharging liability of Rs. 1,59,70,009. In sum, the recovery of Rs. 11,59,10,135 was ordered on account of breach of condition in the respective notifications embodying the procedure by which the appellant could have availed exemption from service tax on supply of services to units in Special Economic Zones (SEZ).

....

6. The issue to be decided on this appeal is plain and simple enough: whether the notifications relied upon by the adjudicating authority can invalidate exemption accorded under : '

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;

(d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;

(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;

(f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;

(g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

(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).

of Special Economic Zones Act, 2005. It is unquestionably clear from the

'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.'

of Special Economic Zones Act, 2005 that no other law can prevail over it.

7. It is on record that the required documentation was not available for the entire period of the dispute but, at the same time, it cannot be denied that at some point, the eligibility did exist. The procedural infirmities, for a shorter or longer time, does not in any way supplant the exemption accorded to the

> *impugned supply of services. Furthermore, the findings of the adjudicating authority do not arrive at a conclusion that, but for the said procedural infirmities, the eligibility of the appellant to render such services without payment of tax was in question. In the light of decision cited supra, the overriding nature of the exemption afforded by Section 26 of Special Economic Zones Act, 2005 and the breach of conditions being procedural, we have no hesitation in setting aside the demand pertaining to the rendering of services to M/s. Credit Suisse Service (India) Pvt. Ltd."*

3.4 I view of the above I do not find any merits in the impugned orders to the extent it seeks to deny CENVAT Credit/ Refund relying on this ground. Similar view has been expressed in the following decisions:

- *Tega Industries Ltd. {2022 (67) GSTL 81 (T-Ahmd)]*
- *Intas Pharmaceuticals Ltd. [2022 (64) GSTL 216 (T-Ahmd)]*
- *Divi's Laboratories Ltd. [2021 (54) GSTL 400 (T-Hyd)]*
- *Herman Connected Services Corporation India Pvt Ltd. [2021 (49) GSTL 11 (T-Bang)]*
- *SE Forge Ltd. [2019 (365) ELT 560 (T-Chennai)]*
- *Reliance Ports and Terminals Ltd. [2015 (40) STR 200 (T-Ahmd)]*

3.5 On the ground for rejection that certain invoices were addressed to some other premises of the Appellant which are outside the SEZ. I do not find any merits in the said ground. If it can be shown that the services covered by the said invoices were received and consumed by the appellant unit located in SEZ, then the CENVAT Credit/ Refund could not have been denied. In my view it is the place of receipt and consumption of service which shall determine the admissibility of CENVAT Credit/ Refund. If the appellant is able to establish that the services were received by them in their unit located in SEZ, CENVAT

Credit/ Refund as per these notifications shall be admissible to him. In case of SRF Ltd. [2022 (64) GSTL 489 (T-Del)] Delhi Bench has observed as follows:

> ***"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."*

3.6 On the ground that original invoices against which the CENVAT Credit/ Refund has been claimed have not be produced. I find that Kolkata bench has in the case Vedanta Ltd. [2021 (44) GSTL 99 (T-Kol)] observed as follows:

> ***"13.****It is my considered view that mere technical discrepancy in the invoices cannot be the ground for denying substantive benefit of refund available to SEZ unit. It is the policy of the Government to exempt or refund the input tax incurred by the SEZ unit. Keeping the policy of the Government in mind and specifically in the light of Section 7 and Section 51 of the SEZ Act, 2005, I find denial of refund claim on this ground is not sustainable. Regarding re-conciliation of Service Tax payment with evidence of challans, I find that the same was produced before the lower authority and also before me and the same is satisfactory.*
>
> *1. If the service recipient is a SEZ unit, they should pay Service Tax to the service provider and claim the refund of the amount. In the case in hand, the fact that the appellant is SEZ unit is not disputed and the receipt of the services is also not disputed as also the payment of Service Tax to the service*

provider. In the absence of any adverse findings on these issues, I find that the appellant herein is eligible for claiming refund of the Service Tax paid by the service provider which is in consonance with the law."

3.7 Thus I do not find merits in the impugned orders denying the CENVAT Credit/ Refund claims filed by the party in terms of the Notification No 40/2012-ST and 12/2013-ST on the grounds stated therein. However for determination of the refund claims in light of the above observations matter is to be reconsidered by the original authority."

30. In view of the above, I concur with the order part recorded by the Learned Member (Judicial).

(Operative part of the order pronounced in open court)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp