

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

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70657 of 2025

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-342-24-25 dated 13/02/2025 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s Matrix Design Works,
(E-84, Sector-41, Noida-201301)

.....Appellant

VERSUS

Commissioner of Central Excise &

CGST, Noida

....Respondent

(4th Floor, C-232A/2 to C-232A/3,
GST Bhawan, Sector 48, Noida-201305)

APPEARANCE:

Shri Utsav Sahgal, Chartered Accountant for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70843/2025

DATE OF HEARING : 01 December, 2025
DATE OF DECISION : 01 December, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APP-342-24-25 dated 13/02/2025 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida. By the impugned order following has been held:-

"Order

In view of the aforesaid discussions and findings, the instant appeal No.54/ST/Noida/APPL/NOI/2024-25 dated 03.05.2024 filed by M/s Matrix Design Works, E-84, Sector-41, Noida (U.P.)-201301 falls to succeed and consequently rejected. Order-in-Original

No.228/AC/ST/TPI/CGST/Div-I/Noida/2023-24 dated 29.02.2024 passed by the Assistant Commissioner, HQ, Technical, CGST Noida is upheld being legal and proper."

2.1 Appellant is registered with the Department under the Registration No.AFXPD9408HSD001 for providing taxable services as defined by Section 65B (44) of the Finance Act, 1994 read with Section 66B of the Act.

2.2 On the basis of third party information was received from Income Tax Department, discrepancies were noted on comparison of the ITR and ST-3 returns leading in payment of service tax as indicated in table below:-

Financial Year	Value of Services			Higher of b-d or c-d	Service Tax	
	ITR	26AS	ST3		Rate %	Payable
a	b	c	d	e	f	g
2015-16	9044608	9071728	804158	8267570	14/14.5	1198797
2016-17	7104150	7383880	1343098	6040782	15	906117
				14308352		2104914

2.3 Inquiries were made from the appellant and they were directed to furnish the details of payment of service tax along with copies of ST-3 returns & reason of difference of value as shown in service tax return & Income Tax return/Form 26AS. However, no response was received.

2.4 Show cause notice dated 26.03.2021 was issued to the appellant, asking them to show cause as to why:-

- a. *The Service Tax amounting to Rs.21,04,914/- (Rupees Twenty One Lakh Four Thousand Nine Hundred and Fourteen Only) should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 read with Section 142 and Section 174 of CGST Act, 2017.*
- b. *The due interest on the amount of Service Tax mentioned at (a) above should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 read with Section 142 and Section 174 of the CGST Act, 2017.*

- c. *Penalty should not be imposed upon them under Section 78 of the Finance Act 1994 for failure to pay service tax & suppressing the facts and value of taxable service with intent to evade payment of Service Tax.*
- d. *Penalty should not be imposed upon them under Section 77(1)(c) of the Finance Act, 1994 read with Section 142 and Section 174 of the CGST Act, 2017 for not maintaining proper records.*

2.5 The said show cause notice was adjudicated as per the Order-in-Original dated 29.02.2024 by holding as follows:-

"ORDER

- (I) *I confirm the demand of Service Tax amount of Rs.21,04,914/-((Rupees Twenty One Lakh Four Thousand Nine Hundred Fourteen Only) including Cesses, and order to recover the same from M/s.Matrix Design Works, E-84, Sector-41, Noida-201301 ~~M/s Kuldip Kumar Sabhaerwal, 263, Sector-37, Noida, Noida Complex, Gautam Budha Nagar, Uttar Pradesh-201301~~ under the proviso to Section 73(1) of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of the CGST Act, 2017.*
- (II) *I order to recover the interest as applicable under Section 75 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of the CGST Act, 2017 from the noticee on the above said amount of Service Tax as confirmed at (I) above.*
- (III) *I impose a penalty of Rs.21,04,914/- (Rupees Twenty One Lakh Four Thousand Nine Hundred Fourteen Only)and order to recover the same from the noticee under Section 78 of the Finance Act, 1994 read with Section 142, Section 173 and Section 174 of the CGST Act, 2017. If the amount as determined under Section 73 above is paid within 30 days from the date of receipt of the order along with the interest payable thereon as per Section 75,*

penalty will be only 25% of the service tax determined under Section 73. The benefit of reduced penalty shall be available only if the amount of penalty so determined is also been paid within the period of 30 days from the receipt of the order.

(IV) *I impose a penalty of Rs. 10,000/-(Rupees Ten Thousand Only) under Section 77(1)(c) of the Finance Act, 1944 read with Section 142, Section 173 and Section 174 of the CGST Act, 2017 upon them and also order for recovery of the same from the notice."*

2.6 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.7 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri Utsav Sahgal learned Chartered Accountant appearing for the appellant and Shri Santosh Kumar learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Issue involved in the matter is in respect of services provided by the appellant to a SEZ unit in the SEZ. The issue is squarely covered by various decisions of the Tribunal, specifically in the follow cases:-
 - Shapoorji Pallonji & Company Ltd. Vs CCE, Nagpur-I Final Order No.A/85265/2025 dated 25.02.2025;
 - Geo Dyanamics Vs CCE, Vadodara-I Final Order No.13174/2024 dated 12.12.2024;
 - Anjani Excavation Operation Vs CCE, Vadodara-II Final Order No.12623/2024 dated 08.11.2024;
 - EXL Service SEZ BPO Solutions (P) Ltd. Vs CCE, Noida Final Order No.70068/2023 dated 30.08.2023;
 - Metro & Metro Vs CCE, Kanpur Final Order No.72684/2018 dated 27.11.2018;
- Wherein it has been held that in view of the Section 26 and 51 of the Act, the procedural requirements of Annexure-A1 and A2 of the concern notification will not come in the way of availing the exemption.

- Further, the demand is time barred as it has been issued after normal period of limitation and by invoking the extended period of limitation without satisfying how the ingredients of that provision of Section 73(1) are satisfied.

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

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

4.2 For upholding Order-in-Original, impugned order records as follows:-

"6.2 I find the core issue for determination before me is- whether the demand and recovery of non-payment of Service tax against the services rendered by the respondent in the F.Y. 2015-16 & FY 2016-17, amounting to Rs.21,04,914/- under proviso to Section 73(1) along with interest under Section 75 and penalties under Section 78 & 77(1)(c) of the Act, as amended, is justifiable or not.

6.3 I observe that the department has confirmed the demand of service tax of Rs.21,04,914/- on the differential value of Rs. 1,43,08,352/- between the value of services shown in ITR and value of services provided in STR during the financial year 2015-16 & 2016-17.

6.4 I observe that the appellant has submitted in reply to the SCN that during the financial year 2015-16 & 2016-17, they had provided gross turnover of Rs.1,65,39,694/- which comprised of both taxable & exempted supply of services. Out of which an amount of Rs.35,39,694/-pertains to taxable value, on which service tax of Rs.5,15,339/- has been paid by them.

They further stated that they have made supply of exempted services to M/s HCL Technologies in SEZ of Rs. 1,30,00,000/- and sought exemption from payment of service tax in terms of Notification No. 17/2011-ST dated 01.03.2011 as amended by Notification 12/2013-ST dated 01.07.2013 Notification No.40/2012. and further No. vide

6.5 I also observe that for proper appreciation of the facts of the case it is necessary to first of all examine the statutory provisions related to Issue. I find that the relevant part of the

Notification No. 17/2011-ST dated 01.03.2011 as amended, is reproduced as under:-

"G.S.R. (E). In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance 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 in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 9/2009-Service Tax, dated the 3rd March, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R.146(E), dated the 3rd March, 2009, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in clause (105) of section 65 of the Finance Act, chargeable to tax under section 66 or section 66A of the Finance Act, received by a Unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

.....

3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely :-

(a) the Developer or Unit of a SEZ, who has paid the service tax under sections 66 of the Finance Act, shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;

(b) the Developer or Unit of a SEZ who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the

SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-2;

(c) the Developer or Unit of a SEZ who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-3;

(d) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the Developer or Unit of SEZ, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3;

(e) claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the refund claim shall be accompanied by the following documents, namely :-

(i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, document specified in 2(c), i.e. , declaration in Form A-1;

(ii) invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of Finance Act or rules made thereunder, in the name of the Developer or Unit of a SEZ, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;

(iii) a declaration by the Developer or Unit of SEZ, claiming such exemption, to the effect that—

(A) the specified services on which refund of service tax claimed, has been actually used for the authorized operations in the SEZ;

(B) proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;

(C) accounts or documents furnished by the Developer or Unit as proof of payment of service tax claimed as refund, based on the invoice, or bill, or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects;

(g) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

(i) the refund claim is complete in all respects;

(ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider,

shall refund the service tax paid on the specified services;

(h) a service provider, shall provide the specified services falling under 'wholly consumed' category, under exemption granted by this notification, to a Developer or Unit of SEZ, for authorised operations, subject to the production of documents specified in sub-para (b) of para 2 and in addition wherever applicable, documents specified in sub-para (c) para 2, i.e., declaration in Form A-1;

(i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service

tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is recovery of service tax erroneously refunded;

6.6 A plain perusal of the above provisions of statute reveals that the exemption from payment of service tax shall be available in compliance of the procedures and conditions given in the Notification No. 17/2011-ST as amended, the appellant was dated 01.03.2011 required to follow the procedures and conditions as detailed below.

6.7 The exemption on the specified services to SEZ Unit or the developer shall have to furnish a declaration In Form A-1, verified by the specified officer of the SEZ along with the list of specified services in terms of condition to the Jurisdictional Deputy Commissioner.

on the basis of the The Deputy Commissioner declaration shall issue an authorisation in Form A-2.

Then the SEZ Unit or the developer shall provide a copy of the said authorisation (A-2) to the provider of basis the On services. specified authorisation, the service provider shall provide the specified services to the SEZ Unit or the developer without payment of service tax. Thereafter the SEZ Unit or the developer shall furnish to the Jurisdictional of the said Superintendent of Central Excise a quarterly statement in Form A-3, furnishing the details of specified services received without payment of service tax. The SEZ Unit of the developer shall furnish an undertaking in Form A-1, in case if the specified services on which exemption has been claimed are not exclusively used for authorised operation.

6.8 appeal The appellant has contended in their grounds of that of of Notification the services were supplied Rs.1,30,00,000/- to SEZ Unit which was exempted from payment of service tax in terms No.17/2011-ST dated 01.03.2011 as amended, but failed to follow the procedure prescribed in the above submit any said Notification and also failed to reconciliation chart and proof of payment of service tax of Rs.5,15,339/- on the differential value of Rs. Rs.35,39,694/- as stated by the appellant in their grounds of appeal, that's why the adjudicating authority confirmed the demand of service tax for want of documentary evidences in support of the claim of the appellant in the matter.

6.9 I that without valid of the view am documentary evidence, exemption benefit cannot be extended to any person or party. I am of the opinion that the burden of proving applicability would be on the party to show that his case comes within the parameters of the exemption clause or exemption notification. The law relating to the Burden of Proof and its onus is given under the provisions of the Indian Evidence Act, 1872 in Chapter VII, Part-III. Under the Indian Law, until and unless an exception is created by law, the burden of proof lies on the person making any claim ascertaining any fact. In this context reliance is placed on the decision of Hon'ble Supreme Court of India in case of Ultratech Cement Ltd. vs. State of Rajasthan (MANU/SC/0530/2020) wherein it was held that: or "the burden of proving applicability would be on assessee to show that his case comes within the parameters of the exemption clause or exemption notification".

Similar view has been taken by the Apex court in the case of Commissioner of Central Excise, New Delhi vs. M/S. Hari Chand Shri Gopal &Ors. (2005)8 SCC 164, wherein five Member Bench of the Hon'ble Supreme Court held that:

"22. 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 of 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 conditions, the conditions have to be complied with".

6.10 I find that in the instant case, the respondent failed to provide any document/evidence which establishes the claim of the respondent that they have provided services to the SEZ Unit or developer in terms of Notification No. 17/2011-ST dated 01.03.2011. Due to failure of submission of desired documents and in absence of any such concrete evidence, I do not find any merit in the submission made by the respondent."

4.3 I find that the issue in the present appeal has been considered by various times and again by this Tribunal in the

decisions referred by the Counsel. In the case of Shapoorji Pallonji & Company Ltd. (supra) following has been held:-

"6.1 The issue involved in this appeal is to determine whether the appellants have rightly claimed exemption from payment of service tax against Construction Service other than residential complex, including commercial / industrial buildings or civil Structures, provided to developers / units of Special Economic Zone (SEZ), by observing various conditions laid down in the Notification No.12/2013-ST dated 01.07.2013 applicable during the relevant time, or is liable to pay service tax on said services provided to developer or units or SEZ.

"Special Economic Zones Act, 2005

[28 of 2005]

We also find that the provisions relating to Special Economic Zones (SEZ) was initially provided under the Customs Act, 1962 vide Chapter X-A under Sections 76A to 76N ibid, which was omitted with effect from 11.05.2007 under Section 90 of the Finance Act, 2007 (Act 22 of 2007), upon bringing a separate legislation governing the SEZs i.e., SEZ Act, 2005.

Customs Act, 1962

Chap. X-A (containing Sections 76-A to 76-N)

omitted by Act 22 of 2007,

Section 99 (w.e.f.11-5-2007). Prior to its omission, Chap. X-A read as under:"

******.*

8.2 On plain reading of the above said legal provisions of the SEZ Act,2005 and the Customs Act, 1962, it transpires that the Chapter X-A providing for special provisions relating to SEZ were omitted or removed from the Customs Act, 1962 consequent to the Parliament enacting a special legislation viz., SEZ Act, 2005. Moreover, in order to provide more clarity and purpose of such separate legislation for SEZ, a specific Section 51 of the said Act of

2005 has provided a non obstante clause stating that the provisions of SEZ Act, 2005 shall have the overriding effect, notwithstanding anything inconsistent therewith, if any, contained in any other law for the time being in force. Thus, if an exemption is provided under Section 26 of the SEZ Act, 2005, then the same cannot be taken away by prescribing certain conditions elsewhere in any other law or notification issued thereunder, which is contrary to the legal provisions made therein.

9.1 We find that the dispute in respect of similar issue relating to exemption from payment of service tax in respect of services provided to SEZ have been dealt with in the case of GMR Aerospace Engineering Limited (supra) by the Hon'ble Andhra Pradesh High Court by holding that standalone exemptions under Section SEZ law are not subject to provisions of any other law, including Finance Act, 1994, and therefore such exemption cannot be denied for mere non-filing forms, as these are not required under SEZ law. The relevant paragraphs of order of the Hon'ble High Court in the above case is extracted and given below:

"16. That takes us to the main contention revolving around the SEZ Act, 2005, SEZ Rules, 2006, Finance Act 1994 and the notifications issued by the Government. Before looking at the interplay of all these, it may be useful to first take note of the scheme of the Act. The broad scheme and the features of the SEZ Act, 2005 was taken note of by a Division Bench of the Madras High Court to which one of us (VRSJ) was a party, in Nokia India Sales Pvt. Ltd. v. the Assistant Commissioner (CT), Sriperumbudur Assessment Circle, Chennai - 2017 (101) VSP 361 (Mad).....

18. In the light of the above admitted facts, the only question that arises for consideration is as to whether the availability of exemptions under Section 26 of the SEZ Act would depend not only upon the

terms and conditions prescribed under Section 26(2), but also upon the terms and conditions prescribed in the notifications issued under various enactments such as Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1944, Central Excise Tariff Act, 1985, Finance Act, 1994 and Central Sales Tax Act, 1956 etc., enlisted in clauses (a) to (g) of sub-section (1) of Section 26 of the Act.

20. In order to find an answer to this question, one must understand in conceptual terms, what a Special Economic Zone is. As pointed out by the Madras High Court in Nokia India Sales, a SEZ (1) is a territory outside the Customs Territory of India for the purpose of undertaking authorized operations and (2) is deemed to be a port, in land container depot, land stations and land customs station under Section 7 of the Customs Act, 1962. This is by virtue of Section 53 of SEZ Act, 2005. Keeping this core concept in mind, let us now go to the provisions of the Act. Section 7 of the Act exempts from payment of taxes, duties or cess, under all enactments specified in the First Schedule, any goods or services exported out of or imported into or procured from Domestic Tariff Area, by a unit in a SEZ or a developer. But Finance Act, 1994 is not one of the enactments specified in the First Schedule. Therefore, Section 7 has no application to the case on hand.

21. However, Section 26(1) specifically allows exemptions, drawbacks and concessions to every developer and entrepreneur. These exemptions are confined to the enactments listed in clauses (a), (b), (c), (e), (f) and (g). Section 26 in its entirety reads as follows :.....

22. It may be noted that sub-section (1) of Section 26 begins with the words "subject to the provisions

of sub-section (2)". Sub-section (2) authorizes the Central Government to prescribe the manner in which and the terms and conditions subject to which exemptions shall be granted to the Developer or entrepreneur under sub-section (1).

23. As rightly pointed out by Sri S. Niranjan Reddy, Learned Senior Counsel appearing for the petitioner, the word "prescribe" appearing in sub-section (2) of Section 26 has to be understood with reference to the definition of the word "prescribed" appearing in Section 2(w) of the SEZ Act, 2005. Section 2(w) of the Act reads as follows :

"prescribed" means prescribed by rules made by the Central Government under this Act."

24. Therefore, the terms and conditions subject to which the exemptions are to be granted under sub-section (1) of Section 26 should be prescribed by the Rules made by the Central Government under the SEZ Act, 2005. Being conscious of this fact, the executive has incorporated Rule 22 in the SEZ Rules, 2006 issued in exercise of the power conferred by Section 55 of the SEZ Act. It is not necessary to extract Rule 22, since there is no dispute about the fact (1) that the petitioners have complied with the prescriptions contained in Rule 22 of the SEZ Rules, 2006 and (2) that Rule 22 of the SEZ Rules, 2006 does not stipulate the filing of forms A1 and A2 as prescribed in the three notifications issued under Section 93 of the Finance Act, 1994.

25. In other words, the 5th respondent does not dispute the fact that the petitioners have fulfilled the terms and conditions stipulated in Rule 22 of the SEZ Rules, 2006 and that if those Rules are considered on a stand alone basis, the petitioners would be entitled to the exemptions.

26. Having taken note of the provisions of the SEZ Act and Rules, let us have a look at the Finance Act and the relevant notifications. Section 93 of the Finance Act, 1994 reads as follows :.....

28. The SEZ Act, 2005 is also a parliamentary enactment issued later in point of time to the Finance Act, 1994 and Section 51 of the Act declares that the provisions of the SEZ Act, 2005 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. Section 51 reads as follows :

"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."

29. The contention of Smt. Sundari R. Pisupati, Learned Senior Standing Counsel is that there is no inconsistency between (i) the terms and conditions prescribed in the notifications issued under Section 93 of the Finance Act, 1994 and (ii) the terms and conditions prescribed in Rules 22 and 31 of the SEZ Rules, 2006, and that therefore, Section 51 of the SEZ Act, 2005 cannot be pressed into service. But this contention is unacceptable.

30. This is for the reason that Section 26(1) of the SEZ Act made the entitlement to certain exemptions subject to provisions of sub-section (2) of Section 26. Section 26(1) did not make the entitlement of a Developer to certain exemptions, subject to the provisions of something else other than the provisions of sub-section (2). Therefore, the 5th respondent cannot read Section 26(1) to mean that

the exemptions listed therein are (1) subject to the provisions of sub-section (2) of Section 26, and (2) also subject to the terms and conditions prescribed in the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Tariff Act, 1985 and the Finance Act, 1994. This is especially so, since the authority of the Central Government to prescribe the terms and conditions subject to which exemptions may be granted under Section 26(1), flows only out of sub-section (2) of Section 26. The word "prescribe" is verb. Generally no enactment defines the word "prescribe". But the SEZ Act 2005 defines the word "prescribe" under Section 2(w) to mean the rules framed by the Central Government under the SEZ Act, 2005. The space is also not left unoccupied, as the Central Government has issued a set of Rules known as "the Special Economic Zones Rules, 2006", wherein the Central Government has prescribed the terms and conditions for grant of exemptions under Rule 22. Therefore, there is no question of comparing the terms and conditions prescribed in Rule 22 with the terms and conditions prescribed in the notifications issued under any one of five enactments listed in Section 26(1) to find out whether there was any inconsistency.

31. Support can be drawn for the above interpretation, from Section 50 of the SEZ Act, 2005 also. Section 50 of the SEZ Act, 2005 enables State Governments to enact laws for the grant of exemption from state taxes, levies and duties. Since a Central Law cannot provide for exemption from the levy of State taxes, Section 50 merely enables the State Governments to enact laws.

32. A combined reading of Sections 7, 26 and 50 of the SEZ Act, 2005, would show that SEZ Act, 2005

speaks of three different types of exemptions. They are, -

(1) exemption from payment of taxes under the enactments specified in the First Schedule, in respect of goods and services exported out of, or imported into or procured from a DTA by a unit in a Special Economic Zone or a Developer under Section 7,

(2) exemption from payment of duties under the Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1994, Central Excise Tariff Act, 1985, Finance Act, 1994, Finance (No. 2) Act, 2004 and Central Sales Tax Act, 1956, covered by Section 26 (1); and

(3) exemption from payment of state taxes, levies and duties covered by Section 50, provided there is a state enactment to the said effect.

33. The word "prescribe" is used in the present tense in Section 26(2) and in the past tense in Section 7. Both will have the same meaning as assigned to the word under Section 2(w). The moment a set of rules is issued either in respect of matters covered by Section 7 or in respect of matters covered by Section 26(1), there is no scope for invoking any other law for imposing any other condition.

34. The benefit of exemptions granted under the notifications issued under Section 93 of the Finance Act, 1994, are available to any one and not necessarily confined to a unit in a special economic zone. Section 93 of the Finance Act, in that sense is a general power of exemption available in respect of all taxable services. But, Section 26(1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone. Therefore, the notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into

service for finding out whether a unit in a SEZ qualifies for exemption or not.....

42. But, we do not agree. Though the "section title" to Section 26 reads as "exemptions, drawbacks and concessions", clauses (a) to (g) except clause (d) speak only about exemptions. It is only clause (d) of subsection (1) of Section 26, which speaks about drawbacks and such other benefits. In so far as exemption is concerned, sub-section (1) makes the entitlement of a Developer to exemption, subject only to the provisions of sub-section (2) of Section 26. Sub-section (2) of Section 26 empowers the Central Government to prescribe both the manner in which as well as the conditions subject to which exemptions may be granted. Therefore, the area relating to exemption is completely occupied by the rules.

43. It is only the issues relating to refund, demand, adjudication, review and appeal, which were left unoccupied by the SEZ Act and the Rules framed thereunder. Realising the vacuum in respect of these specific areas, sub-rule (5) was inserted under Rule 47. Sub-rule (5) of Rule 47 makes a reference to the provisions of the three enactments namely Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 and the Rules made thereunder and the notifications issued thereunder. It is by virtue of this sub-rule (5) that the authorities can fall back upon the Rules and notifications issued under those three enactments. The very fact that sub-rule (5) was inserted would show, that but for its insertion, the respondents cannot fall back upon the Rules framed under the Customs Act etc., for dealing with a question of refund, demand, adjudication etc.

44. The issue can be looked at from another angle also. If sub-rule (5) of Rule 47 had also included the

In view of the detailed analysis and categorical decision of the Hon'ble High Court of Andhra Pradesh which was upheld by the Hon'ble Supreme Court, the issues under dispute in the present case is no more open to debate, and a different view cannot be taken by this Tribunal.

9.3. We also note that the Hon'ble Supreme Court had dealt with the issue of "What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?" in the case of Dilip Kumar and Company (supra). We find that in the present case, the question of ambiguity in interpretation are not the issue to be dealt, and therefore we do not find force in the argument of learned AR, that the same should apply to the present case.

10. We also find that the Co-ordinate Bench of the Tribunal in the case of Cummins Turbo Technology (supra) have held that there is 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 of the SEZ Act, 2005. Without such legal authority, no tax or duty can be either levied or collected in view of Article 265 of Constitution of India, 1950. Therefore, the Tribunal have held that there is no need for exemption notifications under Central Excise Act, 1944, Customs Act, 1962 and Finance Act, 1994, nor is it necessary to fulfil of conditions under exemption notifications, if any, issued. The relevant paragraph of the said order is extracted and given below:

"23. While the SEZ Act itself provided 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 to authorised 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 notification in dispute in this case is service tax exemption notification ST-40/2012 dated 20-6-2013.

24. 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 this bench in case of DLF Assets 2021 (45) G.S.T.L. 176 (Tribunal), the relevant extract of which is reproduced below :

"10. According to the appellant, as the aforesaid services were utilized for authorized operations by the recipient SEZ units, there was no necessity to pay any service tax. The Department, however, alleged that though the exemption provided under the SEZ Act is contained in the Notification dated March 3, 2009, but the appellant did not follow the conditions prescribed therein and, therefore, was liable to pay service tax on renting of immovable property services to SEZ units. The Department also alleged that since the appellant had classified signage as sale of space or time for advertisement, it was not entitled to claim exemption.

11. In order to appreciate the contentions advanced by learned Counsel for the appellant and the learned Authorized Representative of the Department, it will

be appropriate to refer to the relevant provisions. Section 26 of the SEZ Act deals with exemptions, drawbacks and concessions to every Developer and entrepreneur. The relevant provisions are reproduced below:

"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.—

(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) To (d) ** ** **

(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorized operations in a Special Economic Zone;

*(f) to (g) ** ** **

(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)."

12. Section 51 of the SEZ Act further provides overriding effect to the provisions of the SEZ Act and it is reproduced below:

"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."....

25. Thus, the legal position is that SEZ Act overrides any other law because of section 51 of the SEZ Act. The question is what part of the tax law have been overridden by the SEZ Act. To answer this question, we proceed to examine the requirement under the

Constitution of India to levy taxes and the relevant legal provisions of the Central Excise Act and Customs Act and Chapter V of the Finance Act, 1994 under which Service Tax is levied.

26. Taxes can be levied only as per article 265 of the Constitution of India which reads as follows: 265. Taxes not to be imposed save by authority of law.— No tax shall be levied or collected except by authority of law.

27. This authority of law to levy and collect taxes is in the form of charging sections of the Acts- such as section 3 of the Central Excise Act, 1944, section 12 of the Customs Act, 1962 and sections 66, 66A and section 66B of Chapter V of the Finance Act, 1994 (for collection of Service Tax). While section 66 provides for levy of service tax on forward charge basis by the service provider, section 66A provides for charge of service on reverse charge basis by the service recipient in case of certain services. Section 66B provides for levy of service tax on all services other than those in the negative list after 2012.

28. The levy and collection of these taxes and duties are further modified by some machinery provisions of these Acts, including those which enable the Government to issue exemption notifications. The contradiction is between these three charging sections under which duties or service tax are levied and section 26 of the SEZ Act as per which they are exempted. Section 51 of the SEZ Act overrides the provisions of the other Acts and therefore, service tax is always exempted for the services provided to developers and units in SEZ regardless of any provisions of the Finance Act, 1994. Section 26 of the SEZ Act 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

..

(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;

...

29. 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.

30. 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.

31. The charging sections, having been overridden by the SEZ Act, 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.

32. 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 the 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 the SEZ Act, overridden the charge in the other laws.

33. The status of exemption notifications which are issued when the tax that is sought to be levied is out of the ambit of charging section itself was considered by the Supreme Court in the case of Larsen & Toubro. The case before the Supreme Court, in brief, was as follows. Service tax was levied under Chapter

V of the Finance Act, 1994 under section 66 on taxable services. The list of taxable services was defined under section 65(105) and this list was expanded from time to time. If the taxable service was provided as a part of a works contract which involved both rendering the service and transfer or deemed transfer of goods, exemption notifications were issued by the Government towards abatement of the value of the goods used in the services. Later, on 1-6-2007, works contract service, itself was introduced as a service. The question before the Supreme Court was whether works contract service could have been taxed under various other heads prior to this date. The Supreme Court held that there was no charge on works contract service prior to 1-6-2007 because works contracts services were a separate specie of contract known to commerce and there was no levy on such contracts prior to 1-6-2007. It was pleaded on behalf of the Revenue that abatements were given through various exemption notifications prior to 1-6-2007. The Supreme Court held as follows:

43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that

whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.

34. In view of the aforesaid legal position, the exemption notifications issued under the Finance Act, 1994 are redundant because service tax was already exempted by the Parliament by section 26 of the SEZ Act. Any conditions in such notifications are also, therefore, irrelevant and need not be fulfilled. Any amount paid as representing service tax either in the services provided directly to the SEZ units under invoices issued by the service providers or indirectly through the ISD invoices issued by the input service distributor are merely deposits and need to be refunded. They are like the amount deposited during investigations or before succeeding in appeals against demands or fine or penalty which are subsequently set aside. The question is, therefore, answered in favour of the appellant and the appellant is eligible to refund of service tax."

11.1 We also find that the Tribunal in the case of Eclerx Services Ltd.(supra) have held that SEZ unit was eligible for exemption from service tax on services received by it and in view of the overriding effect of SEZ law, denial of exemption on the grounds of procedural infirmities is not sustainable. The relevant paragraphs of the said order is extracted and given below:

"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 subsection (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 subsection (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.

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.”*

11.2 We further find that in the Civil Appeal filed by the department against the aforesaid order of the Tribunal holding that exemption provided under Section 26 of the SEZ Act, 2005 has over riding effect and that the breach of conditions is procedural, the Hon'ble Supreme Court had dismissed the appeal filed by the department, by upholding the order of the Tribunal. The copy of the said judgement of the Hon'ble Supreme Court is extracted and given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 549 OF 2023
@ Dy. No. 42620 of 2022

THE COMMISSIONER OF CENTRAL GOODS AND
SERVICE TAX NAVI MUMBAI

.....Appellant(s)

Vs.

ECLERX SERVICES LIMITED

.....Respondent(s)

O R D E R

Delay condoned.

The judgment relied upon in "M/s GMR Aerospace Engineering Limited & Ors. Vs Union of India & Anr." (W.P. No. 12546 of 2018) decided on 27.12.2018 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 2018) which was dismissed by this Court on 26.07.2019. Following the said decision, this Court holds that there is no merit in the appeal. it is accordingly dismissed.

All pending applications are disposed of.

.....J.
(S. RAVINDRA BHAT)

.....J.
(C.T. RAVINUMAR)



NEW Delhi;
January 27, 2023.

12. In view of the foregoing discussions and analysis, and on the basis of the judgements delivered by the Hon'ble Supreme Court referred above, we are of the considered view that exemption benefits extended to taxable services provided to SEZ under Section 26 of the Special Economic Zones Act, 2005 cannot be denied on the ground that certain procedures have not been followed or certain conditions prescribed in the notification have not been fulfilled.

13. Therefore, the impugned order is liable to be set aside to the extent it had confirmed the adjudged demands proposed in the SCNs. Accordingly, by setting aside the impugned order dated 29.03.2016, the appeal filed by the appellants is allowed in their favour."

4.4 Accordingly, on the merits of the case itself, I find that the impugned order cannot be upheld. I also note that same view was taken by the Allahabad Bench in case of EXL Services SEZ BPO Solutions (P) Ltd. [Final Order No 70068/2023 dated 30.08.2023 in Service Tax Appeal No 56769 of 2023]

4.5 As the issue can be decided on merit, therefore, I am not giving any finding on the issue of limitation. Impugned order is set aside.

5.1 Appeal is allowed.

6.1 After conclusion of hearing on 01.12.2025 this order was pronounced in open court. However, it has been brought to my notice that appellant/appellant Counsel has vide e-mail dated 03.12.2025 filed an additional written submission. After pronouncement of order on conclusion of hearing, the Bench becomes functus officio cannot take these additional submissions on record. Thus, these submissions are summarily dismissed.

(Dictated and pronounced in open court)

**(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)**