CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 192 of 2012

(Arising out of Order-in-Appeal No. 406 & 407/2011 dated 31.10.2011 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

M/s. Infosys Limited
(Formerly known as Infosys Technologies Limited)
44 & 97A, 3rd Cross,
Electronics City, Hosur Road,
Bangalore – 560 100.

Appellant(s)

VERSUS

The Commissioner of Central Excise (Appeals-II)
No.16/1, 5th Floor,
S.P. Complex,
Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

WITH

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APPEARANCE:

Shri N. Anand, Advocate for the Appellant.

Shri Rajesh Shastry, Superintendent (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A.AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20784 - 20785/2025

DATE OF HEARING: 30.05.2025
DATE OF DECISION: 30.05.2025

PER: R. BHAGYA DEVI

These two appeals are filed by the appellant M/s. Infosys Ltd. against Order-in-Appeal Nos. 406 & 407/2011 dated 31.10.2011 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

2. The common issues to be dealt in this appeal is eligibility of refund claim on specified input services used in relation to the authorized operations in their SEZ units. The Commissioner has rejected the refund on the ground that the amended Notification No.15/2009 dated 20.05.2009 allowed refund only in all cases except for services consumed wholly within the special economic zone. Aggrieved by these orders, the appellant is in appeal before us.

3. The Learned Counsel submits that there is no dispute about the fact that all the taxable services in respect of which refund claims were filed by the appellant are used for authorized operations in a SEZ, hence, the question of rejecting the refund does not arise. It is further submitted that the issue is no longer *res integra* by following decisions:

- **Infosys Ltd Vs. CST, 2017 (10) TMI 504 – CESTAT Bangalore.**
- **Intas Pharma Ltd. Vs. CST, 2013 (7) TMI-CESTAT Ahmedabad.**
- **Zydus BSV Pharma Pvt. Ltd. Vs. CST, 2018 (8) TMI-CESTAT Ahmedabad.**
- **Tata Consultancy Services Ltd Vs. CCE, 2013 (29) STR 393 (Tri.-Mum).**
- **Sears IT & Management Services (I) Pvt. Ltd. Vs. CCE, 2018 (8) GSTL 425 (Tri-Mum).**

4. The Authorized Representative reiterated the findings of the authorities to submit that as per the Notification No.15/2009 dated 20.05.2009, the Commissioner (Appeals) had rightly rejected the refund claim. We find that in appellant's own case as reported **Infosys Ltd Vs. CST, 2017 (10) TMI 504 – CESTAT Bangalore**, this Tribunal after considering the amended provisions of the Notifications and various other provisions has categorically held that appellant is eligible for the refund. The observations of the Tribunal are reproduced below:

> "6. After having carefully considered the facts on record and the submissions of both sides, it appears that the appellant is entitled to the subject refund claims as per relevant provisions of the applicable laws/Notifications. The case laws also support the principle that units operating in Special Economic Zones (SEZs) are not to be charged any duties of Central Excise/Customs or other taxes and wherever any such taxes/duties have been paid, they would be entitled to the refund of the same. The said provisions of law are mentioned below.
>
> 6.1 Section 26(e) and Section 51 of Special Economic Zone Act, 2004 are reproduced below:

CHAPTER VI

Special Fiscal Provisions for Special Economic Zones

Exemptions, drawbacks and concessions to every Developer and entrepreneur

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.

Act to have overriding effect

51. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

6.2 The Notification No.9/2009 dated 3.3.2009 gives the exemption to taxable services from the whole of the service tax leviable under Section 66 of Finance Act, 1994 to the taxable services provided to a developer or unit of a Special Economic Zone. The relevant parts of the said Notification are reproduced herein below:

Notification No. 9 / 2009 ST dated 3.3.2009

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue), No. 17/2002-ServiceTax, dated the 21st November, 2002, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 21stNovember, 2002, vide, G.S.R.777(E), dated the 21st November 2002, except as respects things done or omitted to be done before such supersession , the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service of any description as defined in clause (90) of sub-section (1) of section 65 of the said Act provided to a developer of Special Economic Zone or a unit (including a unit under construction) of Special Economic Zone by any service provider for consumption of the services within such Special Economic Zone, from the whole of service tax leviable thereon under section 66 of the said Act, subject to the following conditions, namely:-

Provided that-

(a) the developer or units of Special Economic Zone shall get the list of services specified in clause (105) of section 65 of the said Finance Act as are required in relation to the authorised operations in the Special Economic Zone, approved from the Approval Committee (hereinafter referred to as the specified services);

(b) the developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

(c) the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

(d).....
(e).....
(f)......

2 ....

3. The exemption contained in this notification shall apply only in respect of service tax paid on the specified services on or after the date of publication of this notification in the Official Gazette.

6.3 The Notification No.15/2009-ST dated 20.5.2009 amends the Notification No.9/2009. The relevant parts of this Notification are given herein below:

Notification No. 15/2009-Service Tax dated 20-May-2009

Exemption to taxable services provided to a developer or unit of Special Economic Zone Notification No.9/2009-S.T., amended

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following further amendments in 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 which was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 146(E), dated the 3rd March, 2009, namely:-

In the said notification:-

(A) in paragraph 1, in the proviso,
the sub-paragraph (c), the following shall be substituted, namely:-
"(c) the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone except for services consumed wholly within the Special Economic Zone;"

(2) for sub-paragraph (d), the following shall be substituted, namely:-
"(d) the developer or units of Special Economic Zone claiming the exemption, by way of refund in accordance with clause (c), has actually paid the service tax on the specified services;"

6.4 The Government of India has also issued instructions vide Circular No.114/8/2009-ST dated 20.5.2009 on the subject of refund. The relevant parts of the same are reproduced herein below:

Circular No. 114/8/2009-S.T., dated 20-5-2009

F. No. 354/163/2006-TRU
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Refund of service tax paid on taxable services taxable services which are provided in relation to the authorised operations in a Special Economic Zone - Regarding.

Notification No. 9/2009-Service Tax, dated 3-3-2009 was issued to provide refund of service tax paid on taxable services specified in section 65(105) of the Finance Act, 1994 which are provided in relation to the authorised operations (as defined under SEZ Act, 2005) in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ.

2. Notification No. 15/2009-Service Tax, dated 20-5-2009 has been issued to amend the aforesaid Notification 9/2009-S.T., dated 3-3-2009 to provide unconditional exemption to services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. The exemption by way of refund would be limited to situations only when taxable services provided to SEZ are consumed partially or wholly outside SEZ.

3 to 10 ....

6.5 Further, various decisions of the Tribunal gives support to the admissibility of the refund claims filed by the appellant. These decisions also make reference to the relevant provisions of law, consequent to which the appellant is entitled to the subject refund claims. The tribunal in the case of Reliance Industries Ltd. vs. CCE, Mumbai: 2016 (41) STR 465 (Tri.-Mumbai) has inter alia observed as under:

"3.10 The two notifications, in conjunction, have given effect to the statutory promise by devising two methods for availing the exemption - by upfront exemption when the service is rendered within the geographical boundaries of the Special Economic Zone and by the refund route where the physical performance of service is not within the boundaries but is intended for the authorized operation of the developer or unit. A pre-approval and verification system was also established in the same notifications - necessitated by the potential for wrongful availment arising from the intangibility of services.

3.11 - 3.14 …………

3.15 Later decisions of the Tribunal on dispute that arose, notwithstanding the notification of the elaborate procedures of 2009 and in the face of the rigid attitude of the refund sanctioning authorities, concerned as they were with the temptation to deny eligible exemptions, expounded on the intent of Section 26 of the Special Economic Zones Act, 2005 and the need for a harmonious construction of the relevant notifications of 2009 and, in doing so, accorded a primacy to the statutory provisions. Accordingly, in re Tata Consultancy Services, the eligibility for refund, even where the procedure was susceptible to be resorted to for denial of exemption, under Section 11B of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 was laid down. Accordingly, we refer to the decision therein:

"6.2 Coming to the next question, whether in respect of the services which were wholly consumed and which were fully exempt from payment of duty, whether the appellants can be granted refund under Notification No. 9/2009-S.T., dated 3-3-2009 as amended by Notification No. 15/2009-S.T., dated 20-5-2009 through which amendment a condition was inserted stating that the refund procedure prescribed under the said Notification shall apply only in the case of services used in relation to the authorized operations in the SEZ except for services consumed wholly within the SEZ. This view of the department is also incorrect. Notification No. 9/2009-S.T. exempts the taxable services specified in Clause (105) of Section 65 of the Finance Act, 1994 which are provided in relation to the authorized operations in a SEZ and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ, from the whole of the service tax leviable thereon under Section 66 of the Finance Act, 1994. The refund procedure given below for operationalising the exemption applies to services which are procured from outside in respect of which the service tax liability has to be discharged first and the refund claim subsequently. In the case of services which are wholly consumed within the SEZ, there is no necessity to discharge the service tax liability ab initio. That does not mean that in a case where service tax liability has been discharged, the appellant is not eligible or not entitled for refund of the service tax paid under the provisions of Section 11B of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. If the appellant is eligible for refund under Section 11B, then the same cannot be denied on the ground that the claim was made under Notification No. 9/2009-S.T. In this case, there is no dispute that the services were provided in relation to the authorized operations of the appellant within the SEZ. From the records it is seen that the appellant has filed the refund claim within the time period provided for in Section 11B and the appellant has borne the incidence of taxation.

6.3 Services provided to a SEZ or unit in the SEZ is deemed as export as per the provisions of Section 2(m)(ii) of the SEZ Act, 2005 and as per Rule 31 of the SEZ Rules, 2006, the appellant is entitled for exemption from payment of service tax on the services which are used or provided to a unit in the SEZ. As per Section 51 of the said SEZ Act, the said provisions prevail over the provisions contained in any other law for the time being in force. It is the avowed policy objective of the Government of India that exports should not bear the burden of taxes. If this policy objective has to be sub-served and the objective realized broader view of the provisions relating to refund has to be taken. Therefore, even if the appellant was not eligible for refund under Notification No. 9/2009-S.T., dated 3-3-2009, the appellants were certainly eligible for refund under Section 11B of the Central Excise Act, 1944. In this view of the matter, rejection of service tax refund is not sustainable in law."

3.16 In re Intas Pharma Ltd., the very same principle was reiterated while deciding on the refund withheld by lower authorities because of a view that upfront exemption brought into force through Notification 15/2009-S.T. precluded eligibility for refund. The Tribunal held therein that:

"11. On true and fair construction of Notifications 9/2009 and 15/2009 issued under Section 93(1) of the Act, considered in the light of the overarching provisions of Sections 7 and 26(e) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor 15/2009 disentitle immunity to service tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009 and 15/2009 merely contour the process by which the benefit of exemption/immunity to tax is operationalised. Notification Nos. 9/2009 and 15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of claiming refund of service tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a SEZ. On this harmonious construction, the immunity to service tax provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be eclipsed the procedural prescriptions of Notification No. 9/2009 or 15/2009. These Notifications are calibrated to enable recipients of taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the service tax, wherever assessed and collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the substituted provisions, of clause/sub-paragraph C of Notification No. 15/2009 cannot be inferred to have imposed any disability on the recipient of services consumed wholly within the SEZ, from seeking refund of service tax remitted on such transactions, by the providers of such services."

3.17 This was followed by the Tribunal again in re Reliance Ports & Terminals Ltd. as below:

6. The appellant has further relied upon the judgment of Intas Pharma Ltd. v. CST, Ahmedabad (supra) holding that in view of the provisions of Sections 7, 26 and 51 of 2005 Act [SEZ Act, 2005], exemption to services provided to a SEZ were always (available and Notifications No. 9/2009-S.T. and No. 15/2009-S.T. have only operationalized the exemption provided. Para 11 of the above judgment is reproduced below :

"11. On true and fair construction of Notifications 9/2009 and 15/2009 issued under section 93(1) of the Act, considered in the light of overarching provisions of Sections 7 and 26(e) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor 15/2009 disentitle immunity to service tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009 and 15/2009 merely contour the process by which the benefit of exemption/immunity to tax is operationalized. Notification Nos. 9/2009 and 15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of claiming refund of service tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a SEZ. On this harmonious construction, the immunity to service tax provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be eclipsed the procedural prescriptions of Notification No. 9/2009 or 15/2009. These notifications are calibrated to enable recipients of taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the service tax, wherever assessed and, collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the substituted provisions, of clause/sub-paragraph C of Notification No. 15/2009 cannot be inferred to have imposed any disability on the recipient of services consumed wholly within the SEZ, from seeking refund of service tax remitted on such transactions, by the providers of such services."

It is also relevant to quote the provisions contained in Sec. 26(1)(e) and Sec. 51 of the SEZ Act, 2005 as reproduced below:

"26(1)(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 Special Economic Zone.

51. 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.

7. From the provisions contained in Section 26(1)(e) of the SEZ Act, read with Rule 30(10) of the SEZ Rules, 2006, it can be seen that no service tax is payable on the services provided by a service provider to a SEZ unit. Further, Sec. 51 of the SEZ Act also makes an overriding provision that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No. 9/2009-S.T. and amended Notification No. 15/2009-S.T. have been only issued to operationalize the exemption/immunity available to SEZ unit under Sec. 26(1)(e) of the SEZ Act, 2005."

3.18 Following the principle, we hold that the provisions of Section 26 of Special Economic Zones Act, 2005 are conferred with a primacy that cannot be denied, diluted or denigrated owing to delay in devising a facilitative mechanism that was agreeable to Revenue. Disregard of parliamentary intent to levy a tax or exempt a tax cannot be brooked under any circumstance. A harmonious construction of the exemption Notification 4/2004-S.T., dated 31st March, 2004 that preceded the Special Economic Zones Act, 2005 with that Act must perforce be the facilitative mechanism in the absence of any other. A misconceived notion, as entertained by the lower authorities about that distinction between the corporate office address and the site address, should not be allowed to hold sway when confronted with the factual matrix of its exclusive existence in a Special Economic Zone; consequently, there can be no doubt that the services provided by M/s. NSDL was for the authorized operations in a Special Economic Zone.

3.19 For the above reasons, the appeal is allowed and the appellant is entitled to refund of service tax as claimed by them."

7. Considering the provisions of law mentioned earlier and the Tribunal s decision in the case of Reliance Industries Ltd. (supra), the impugned order is set aside and the appeals are allowed with consequential relief to the appellant".

5. In view of the above, the issue is no longer *res integra;* accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced
in open court on conclusion of hearing)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv