CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/80/2008-DB

[Arising out of Order-in-Appeal No. 68/2007 dated 27/11/2007 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin]

National Trades & Agencies NTA Chambers, Hina House, Willingdon Island, Kochi	**Appellant(s)**

Versus

Commissioner of Central Excise, **Customs and Service Tax** **Cochin** C.R Building, I.S Press Road, Ernakulam, Cochin – 682 018 Kerala	**Respondent(s)**

Appearance:

Shri Bharat Kumar, CA	For the Appellant
Dr Ezhilmathi, Joint Commissioner (AR)	For the Respondent

Date of Hearing: 08/02/2018
Date of Decision: 08/02/2018

CORAM:
HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20163 / 2018

Per : V. PADMANABHAN

The present appeal is filed against the Order-in-Appeal No. 68/2007 dated 27/11/2007. The dispute covers the period 2003-05. The appellant is a Custom House Agent and have provided the CHA service to units situated in Cochin Special Economic Zone without payment of service tax. They claimed the benefit of service tax exemption under Notification No. 17/2002 ST dated 21.11.2002 as well as the Notification No. 4/2004 ST dated 31.03.2004. It was a condition in these Notifications that the benefit from payment of service tax will be available to the services rendered to the Developer or Units situated within the SEZ Zone and further that the taxable service has been authorized to be rendered by the service provider by a Committee headed by the Chief Commissioner of Central Excise having jurisdiction over the Special Economic Zone. The appellant was not in possession of such authorization and hence, the service tax exemption was denied by Revenue and the applicable service tax was demanded by the authorities below.

2. In respect of period 2004-05 covered by Notification No. 4/2004, above condition, which was there in Notification No. 17/2002, did not find place in the successor Notification. Still the benefit was denied for the reason that the services were consumed within the SEZ. Aggrieved by the decision, the appellant has filed the present appeal.

3. With the above background, we heard Shri Bharat Kumar, learned consultant appearing on behalf of the appellant and Dr Ezhilmathi, DR.

4. It is the submission of the learned consultant that at the time of issue of the Notification 17/2002, since the SEZ units were being set up for the first time, there was no system in place for issue of an authorization by a Committee headed by the Chief Commissioner. This condition also stands

deleted in the subsequent notification. In this connection, he submits a copy of the clarification issued by the Development Commissioner, Cochin Special Economic Zone in the context of Notification No. 4/2004 in which it has been clarified as follows:

> *"You are hereby informed that in accordance with Notification No. 4/2004-Service Tax, dated 31.03.2004 (copy enclosed for reference) issued by the Ministry of Finance and Company Affairs, Units in the Special Economic Zone are entitled to service tax exemption provided the service is utilized within the Zone. As units in the Zone have been set up with the approval of the Development Commissioner, the need to certify the applicability of Service Tax exemption to a particular unit on a case to case basis, does not arise."*

He submits that the benefit may be extended to the appellant.

5. Learned DR justified the impugned order and submits that the benefit will not be allowable for not satisfying all the conditions of the respective Notifications.

6. After perusal of the relevant Notifications, we note that initially Notification No. 17/2002 was issued. Even though there was a requirement of an authorization to be given by a Committee headed by Chief Commissioner, it has been submitted that such Committee was never set up and hence, there was no opportunity for obtaining such a certificate. We also note that the said condition stands deleted in the subsequent Notification No. 4/2004. The clarification issued by the Development Commissioner,

Cochin Special Economic Zone also clarifies the issue. We also note that the appellant has rendered the CHA service to units within the Special Economic Zone and hence, the services may be considered as having been utilized within the zone.

7. There is no dispute on the fact that such services have been rendered by the appellant to the Developer or units which are situated within SEZ and hence we are of the view that denial of the benefit of the two exemption Notifications for minor procedural violation is not justified. Hence, we set aside the impugned order and allow the appeal.

(Order Dictated in Open Court on **08/02/2018**)

(V. PADMANABHAN)	**(JUSTICE (DR.) SATISH CHANDRA)**
TECHNICAL MEMBER	**PRESIDENT**

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