

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

Application(s) Involved:

**ST/Early Hearing/21068/2018, ST/Early Hearing/21069/2018,  
ST/Early Hearing/21070/2018 in ST/21684/2017-DB,  
ST/21686/2017-DB, ST/21687/2017-DB**

Appeal(s) Involved:

**ST/21684/2017-DB, ST/21686/2017-DB, ST/21687/2017-DB**

[Arising out of Order-in-Appeal No. 892-904/2017 dated  
06/09/2017 passed by Commissioner of Central Tax,  
BANGALORE-I( Appeal)]

**M/s. Societe Generale Global  
Solution Centre Pvt Ltd**

Voyager Building 10th Floor Whitefield Road  
Ascendas Itpb Sez International Tech Park  
BANGALORE - 560066  
KARNATAKA

Appellant(s)

**Versus**

**Commissioner Of Central Tax,  
Bengaluru East**

BMTC BUILDING  
OLD AIRPORT ROAD, DOMLUR,  
BANGALORE - 560071  
KARNATAKA

Respondent(s)

**Appearance:**

**Harish Bindumadhavan, Advocate**

1-8-384 & 385, 3RD FLOOR, GOWRA GRAND,  
S.P. ROAD, BEGUMPET,  
SECUNDERABAD - 500 003  
ANDHRA PRADESH

For the Appellant

**Mr. Pakshirajan, AR**

For the Respondent

Date of Hearing: 07/12/2018

Date of Decision: 07/12/2018

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 21864-21866 / 2018**

**Per : P. ANJANI KUMAR**

Heard both sides and perused the records of the case.

2. Briefly the facts of the present case are that the appellant is a registered unit under the provisions of SEZ Act, 2005 and are engaged in the provision of Information Technology Software Services (ITSS) and Business Auxiliary Services (BAS) to the clients located across the globe. During the relevant periods, the appellant for its authorized operation received specified services from suppliers registered under Service Tax laws. Being an SEZ unit, the appellant was eligible for exemption by way of refund in respect of services received by them for authorized operations by virtue of Notification No. 12/2013 dated 01.07.2013. The appellant filed various refund applications under said Notification from time to time. After following due process of law, the Original Authority had rejected the substantial part of the claim. Aggrieved by the said orders, the appellant filed appeals before the Commissioner (A) seeking refund on the ground that in terms of Section 51 of SEZ Act, the provisions of Section 51 of SEZ Act would have an overriding effect over any other law in India and the intention of the legislator was to exempt the services received by the SEZ unit from levy of Service Tax. The appellants have received the services for discharge of authorized

operations and have fulfilled all the required conditions under the relevant Notification and are accordingly eligible for refunds. The learned Commissioner (A) vide the Order dated 06.09.2017 has remanded back the appeals to the Original Authority with a direction that the relevant date for the purpose of determining the time limit under Section 11B has to be computed from last date of the quarter to each of the claim pertains and also to consider the nexus between the services rendered by the appellants and the services received by them. Aggrieved by the said order, the appellants filed present appeals.

3. The learned counsel for the appellants has submitted that the impugned order is liable to be set aside as the same has been passed without taking into consideration the facts and circumstances of the case and the legal provisions applicable. Moreover, the impugned order has been passed without giving an opportunity of being heard in violation of the principles of natural justice. In their support, he relied upon the following case laws:

**(i) Baraka Overseas Traders Vs. DGFT – 2006 (202) ELT 003 (SC).**

**(ii) Mardia Steel Ltd. Vs. CCE – 2000 (121) ELT 48 (Tri. Del.).**

**(iii) Madhumilan Syntex Pvt. Ltd. Vs. UOI – 1985 (19) ELT 329 (MP).**

3.1. The learned counsel also submitted that the refunds were to be considered under the provisions of Notification No. 40/2012-ST dated 20.06.2012 and Notification No. 12/2013-ST dated 01.07.2013.

4. After considering submissions of both sides and perusal of the material on record, We find that the learned Commissioner has not only violated the principles of natural justice in as much as he has not accorded any opportunity to be heard but also has gone tangentially decide the issue on a set of principles and provisions which are not at all applicable to the facts of the case. It is clear from the Order-in-Appeal that whereas the appellant has filed the refund claims under Notification No. 40/2012-ST dated 20.06.2012 and not under Notification No. 12/2013-ST dated 01.07.2013. The learned Commissioner has considered the refund claims under the provisions of Rule 5 of CCR read with Notification No. 05/2006 dated 14.03.2006 whereas the refund claim was not filed under Rule 5 of CCR.

5. We find that this Bench vide Final Order No. 20412-20418 dated 12.03.2018 has remanded similar set of appeals back to the Commissioner (A) for re-consideration. This appeal is also emanating from the same OIO therefore it will be in the fitness of things that these three appeals should also remand

back to the Commissioner (A) for considering the appeals afresh giving an opportunity to the appellants to be heard in the interest of natural justice. We also direct the Commissioner (A) to dispose the appeals under relevant provisions of law with reference to Notification No. 12/2013 dated 01.07.2013. It is also directed that the appeals shall be disposed of within three months of the receipt of this Order.

6. In view of the above, all the appeals are allowed by way of remand to the Commissioner (A) and all the Early Hearing applications are also allowed.

(Operative portion of the Order dictated  
in Open Court on **07/12/2018**)

**P. ANJANI KUMAR**  
**TECHNICAL MEMBER**

**S.S GARG**  
**JUDICIAL MEMBER**

PK...