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

Appeal(s) Involved:

ST/20508/2018-SM

[Arising out of Order-in-Appeal No. 47/2018 CT dated 16/01/2018 passed by the Commissioner of Central Tax, Bangalore-II (Appeals)]

Lowe's Services India Pvt. Ltd.
L-2, Willow, Manyata Embassy Business Park, Special Economic Zone, Outer Ring Road
Bangalore – 560 045
Karnataka

Appellant(s)

Versus

Commissioner of Central Tax, Bangalore North
No.59, HMT Bhawan
Ground Floor, Bellary Road
Bangalore – 560 032
Karnataka

Respondent(s)

Appearance:

Mr. Ravi Raghavan & Mr. Sudeshna, Advocates
World Trade Centre No.404-406, 4th Floor, South Wing Brigade Gateway Campus No.26/1, Dr. Rajkumar Road,
Bangalore - 560 055
Karnataka

For the Appellant

Mr. K.B. Nanaiah, Assistant Commissioner (AR)

For the Respondent

Date of Hearing: 31/12/2018
Date of Decision: 31/12/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21959 / 2018

Per: S.S GARG

The present appeal is directed against the impugned order dated 16.01.2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has allowed the refund of Rs. 22,620/- (Rupees Twenty Two Thousand Six Hundred and Twenty only) on Chartered Accountancy Services and rejected the claim of Rs. 1,54,522/- (Rupees One Lakh Fifty Four Thousand Five Hundred and Twenty Two only) and partly allowed the appeal of the appellant. Briefly the facts of the present case are that the appellants are registered with Service Tax Department for providing Business Support Services and Information Technology Software Services. The appellant is also a registered SEZ unit under the Special Economic Zone scheme for providing the IT enabled services. For rendering the above services, the appellant had received and used various input services on which service tax was paid. The appellant had filed refund claims, seeking refund of service tax paid on the specified input services used for the services exported by them during the period from January 2016 to March 2016 under Notification No. 12/2013-ST dated 01.07.2013. The jurisdictional Assistant Commissioner, after following the due process of law, sanctioned an amount of Rs. 63,332/- (Rupees Sixty Three Thousand Three Hundred and Thirty Two only) of the refund claim and rejected an amount of Rs. 1,77,142/- (Rupees One Lakh Seventy Seven Thousand One Hundred and Forty Two only) vide the Order-in-Original 29(R)/2017 dated 06.04.2017 citing various reasons. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner who also partly allowed the refund to the tune of Rs. 22,620/- (Rupees Twenty Two Thousand Six Hundred and Twenty only) and rejected the refund of Rs. 1,54,522/-

(Rupees One Lakh Fifty Four Thousand Five Hundred and Twenty Two only). Hence the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating and considering the facts, law and evidence. He further submitted that in the present case the Department has overlooked the intention of the Government in enacting the SEZ Act and giving special fiscal concession to SEZ. Section 26 of the Special Economic Zones Act 2005 read with Rule 31 of Special Economic Zone Rules, 2006 along with Section 51 of SEZ Act 2005 which states that SEZ Act has overriding impact over other laws and accordingly SEZ units are exempt from payment of service tax. He further submitted that Courts have consistently held that the benefit of SEZ Act shall have overriding impact as long as input services are consumed within the SEZ. For this submission, he relied upon the following decisions:

a. *Tata Consultancy Services Ltd. V. CCE & ST, Mumbai – 2013 (29) S.T.R. 393 (Tri.-Mum.)*
b. *Reliance Ports & Terminals Ltd. V. Commr. of C.E & S.T., Rajkot – 2015 (40) S.T.R. 200 (Tri.-Ahmd.)*
c. *Mylan Laboratories Ltd. V. Commissioner of Service Tax, Hyderabad – 2017-TIOL-3512-CESTAT-HYD.*

3.1. He further submitted that the immunity provided from service tax paid cannot be taken away by the procedural prescriptions of Notification. For this

submission, he relied upon the decision in the case of Mast Global Business Services India Pvt. Ltd. V. Commr. of Central Tax, Bangalore 2018-TIOL-3115-CESTAT-BANG. wherein on similar set of facts, this Tribunal held that even if the services are not mentioned in the Unit Approval Committee's list, refund is to be sanctioned. He also relied upon the Photon Infotech Pvt. Ltd. Final Order Nos. 22867 – 22690/2017 dated 25.10.2017 wherein the Tribunal has held that non-inclusion of services in the list of services approved by the Development Commissioner for authorized operations is just procedural lapse which cannot be considered as a ground for rejection of refund claim.

4. On the other hand the learned AR defended the impugned order and submitted that approval of the list of taxable services from Unit Approval Committee is mandatory and the said input services have not been approved by the Unit Approval Committee of SEZ. He further submitted that Business Auxiliary Service and Management and Business Consultancy Service are not included in approved list of services and therefore the refund has been rightly rejected.

5. After considering the submission of both the parties and perusal of the material on record, I find that the appellant is a SEZ unit and as per Section 26 read with Rule 31 of SEZ Rules 2006 along with Section 51 of SEZ Act, the SEZ Act has overriding impact over other laws and SEZ units are exempt from payment of service tax for any service which is used for their authorized operations. This issue is no more res integra and has been settled by various decisions of the Tribunal. Further I find that in the case of Mast

Global Business Services India Pvt. Ltd., this Tribunal on identical facts has held in para 6.1. as under:

"6.1. After considering the submissions of both sides and perusal of material on record, I find that the show-cause notices were issued on two grounds viz. certain input services are not covered in the definition of input service under Rule 2(l) of Cenvat Credit Rules and hence not eligible and secondly non-submission of documents required to process the claims. Further I find that Order-in-Original as well as impugned order, both have rejected the refund claims on other grounds which are not taken in the show-cause notices and therefore they have travelled beyond the show-cause notices which is not legally permissible in view of various decisions cited supra by the appellant. Further I find that the impugned order also violates the principles of natural justice because the appellant has not been given the reasonable opportunity to defend himself on the ground on which the refund claims have been rejected. 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 of 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 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 an overriding effect over other laws. Therefore, this ground on the basis of which refund claims have been rejected is not tenable in law."

5.1. Further I find that in the case of Photon Infotech Pvt. Ltd. cited supra, this Tribunal has held in para 7 as under:

"7. After considering the grounds of appeals and written submissions, I find that the adjudicating authority has not disputed the fact of receipt of these services in the SEZ unit and the same are consumed by the appellant unit and further the issue is squarely covered in favour of the appellant by the decision in the case of Zydus Hospira Oncology Pvt. Ltd. Vs. CCE, Ahmedabad [2013 (30) STR 487 (Tri.-Ahmd.)]. Further I also find that non-inclusion of the services in the list of services approved by the Development Commissioner for authorized operations is just a procedural lapse which cannot be considered as a ground for rejection of refund claim. In view of my discussion above and the decision relied upon, the impugned orders are not sustainable and the same are set aside by allowing the appeals of the appellant with consequential reliefs, if any."

6. In view of my discussion above, I am of the considered view that the ratio of the decision cited supra are applicable in the present case and

therefore, by following the ratios of the said decisions I am of the view that the impugned order is not sustainable in law and therefore the same is set aside by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **31/12/2018**)

(S.S GARG)
JUDICIAL MEMBER

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