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

Appeal(s) Involved:

ST/21543 - 21546/2017-SM

[*Arising out of No. 87-90/2017 dated 25/07/2017 passed by Commissioner of Central Tax, Bangalore North, BANGALORE-I (Appeal).*]

M/s. Lowes Services India Private Limited
L-2, Willlow,
Manyata Embassy Parks
Special Economic Zone,
Outer Ring Road,
BANGALORE - 560 045.
KARNATAKA

Appellant(s)

Versus

The Commissioner of Service Tax Bangalore Service Tax-II
4TH FLOOR, T.T.M.C. -B.M.T.C. BUS STAND BUILDING,
OLD AIRPORT ROAD
BENGALURU - 560 071
KARNATAKA

Respondent(s)

Appearance:

Mrs. Sandhya Sarvode, Advocate
LAKSHMI KUMARAN & SRIDHARAN
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. Madhup Sharan,
Asst. Commissioner (AR)

For the Respondent

Date of Hearing: 25/02/2019
Date of Decision: 28/02/2019

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 20219 - 20222 /2019

Per : S.S GARG

Appellants have filed these four appeals against the impugned order dated 25.7.2017 passed by the Commissioner (A) whereby the Commissioner (A) has partly allowed the refund and partly rejected the same. Since the issue involved in all the four appeals is identical, therefore, all the four appeals are taken up together for disposal. The details of various refund claims are given herein below:

Appeal No.	**Period**	**Order-in-Appeal**	
		Refund sanctioned	**Refund disallowed**
ST/21543/2017	Oct – Dec. 2014	Rs.1,44,818/-	Rs.70,683/-
ST/21544/2017	Jan. – Mar. 2015	Rs.1,22,371/-	Rs1,43,057/-
ST/21545/2017	Apr. – June 2015	Rs.2,64,113/-	Rs.2,83,724/-
ST/21546/2017	July – Dec. 2015	Rs.4,49,229/-	Rs.12,50,052/-

2. Briefly the facts of the present case are that the appellants are registered with the 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 (SEZ) 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 impugned period under Notification No.12/2013-ST dated 1.7.2013. The jurisdictional Deputy/Assistant Commissioner, after following the due process of law, sanctioned portion of the refund claims and rejected the balance amount. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner (A), who also allowed the refund partially and rejected partially as shown in the table above.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law and the same has been passed without properly appreciating the facts and the provisions of SEZ Act and the binding judicial precedent on the same issue. She further submitted that the Department has erred in overlooking the intention of the Government in enacting the SEZ Act and giving special fiscal concessions to SEZ. Further, as per Section 26 of the SEZ, 2005 read with Rule 31 of SEZ Rules, 2006 along with Section 51 of SEZ Act, 2005 which clearly states that SEZ Act has overriding effect over other laws and accordingly, SEZ units are exempt from payment of service tax. She further submitted that consistently various courts have held

that benefit of SEZ Act shall have overriding impact and as long as the input services are consumed within the SEZ, the refund is to be sanctioned to the assessee. For this submission, she relied upon the following decisions:

- ***Reliance Ports & Terminals Ltd. vs. CCE: 2015 (40) STR 200 (Tri.-Ahmd.)***
- ***Mylan Laboratories Ltd. vs. CCE: 2017-TIOL-3512-CESTAT-HYD.***

4.1 She also submitted that the immunity provided from service tax paid cannot be taken away by the procedural prescriptions of Notification. On this submission, she relied upon the following decisions:

- ***Lowes Services India Pvt. Ltd. vs. CCT, Bangalore: 2019 (1) TMI 180-CESTAT-Bangalore***
- ***Mast Global Business Services India Pvt. Ltd. vs. CCT, Pune: 2018 (9) TMI 258-CESTAT-Bangalore.***
- ***ONGC Mangalore Petrochemicals Ltd. vs. CCE: 2019 (2) TMI 588 – CESTAT-Bangalore.***
- ***Barclays Global Service Centre Pvt. Ltd. vs. CCE: 2018 (6) TMI 1080-CESTAT-Mumbai***

4.2 She also submitted that in appellant’s own case cited supra, this Bench of the Tribunal has held that intention of SEZ is to provide exemption from payment of service tax of all services which have been used in their authorized operations and that the SEZ Act has an overriding effect over all other laws. Further, in the case of ***Photon Infotech Pvt. Ltd. vs. CCE, Bangalore:***

2017 (12) TMI 1028-CESTAT-Bang., this Tribunal has held that non-inclusion of services in the list of services approved by the Development Commissioner for authorized operation is just procedural lapse which cannot be considered as a ground for rejection of refund claim. Further, she submitted that in appeal No.ST/21544/2017, she does not contest the amount of Rs.20,518/-. Further, as far as Rs.17,723/- is concerned, she submitted that the lower authority has rejected the claim on the ground that the GAR-7 amount does not match and also the service tax paid does not pertain to the claim period and the figures also do not match with the invoices. In this regard, she further submitted that the appellant has made the payment of Rs.43,012/- towards service tax under Reverse Charge Mechanism vide challan No.1861 dated 5.2.2015 and the copy of which is also enclosed and the breakup of this amount of service tax is also given and out this payment, the appellant has been granted a refund of Rs.25,190/- as per the Order-in-Original dated 21.4.2016 and the balance amount of Rs.17,877/- was rejected by the adjudicating authority. This submission of the learned counsel has a force in view of the challans and the break-up details given in the annexure and submitted that the rejection of refund of Rs.17,723/- is wrong and the appellant is entitled to refund of this amount also.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the record, I find that this issue is no more *res integra* and has been settled by this Tribunal in appellant's own case cited supra. Besides, this Tribunal has consistently held that the benefit under the SEZ Act shall have an overriding effect as long as the input services are consumed within the SEZ and refund has to be sanctioned in favour of the assessee. Further, I find that in the appellant's own case for the previous period cited supra, this Tribunal in para 5 and 5.1 has held as under:

> *"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:*
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> > *"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 ST/20508/2018-SM 6 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."

6.1 Further, I find that the rejection of refund claim to the extent of Rs.17,723/- paid under Reverse Charge Mechanism by the Commissioner (A) is wrong because the appellant in all has paid service tax amounting to Rs.43,012/- and out of the total amount of Rs.43,012/-, a sum of Rs.25,190/- was granted to the appellant and the balance of Rs.17,723/- which was paid through the same challan was rejected. Further, I find that as far as amount of Rs.20,518/- is concerned, the assessee in appeal ST/21544/2017 does not contest the same. In view of my findings above, by following the ratios of the above said decisions, I allow all the appeals with consequential relief, if any, on the above terms.

(Order was pronounced in Open Court on **28.02.2019.)**

S.S GARG
JUDICIAL MEMBER

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