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

Appeal(s) Involved:

ST/21646/2018-SM

[Arising out of Order-in-Appeal No. MLR-EXCUS-000-APP-MSC-084-2018-19 dated 03/08/2018 passed by Commissioner of Central Tax , BELGAUM (APPEALS)]

M/s Mangalore SEZ Ltd
3rd Floor Muda Building Ashok Nagar Urwa Stores
MANGALURU
KARNATAKA
575006

Appellant(s)

Versus

C.E, S.T-Commissioner Of Central Excise & Central Tax, Mangalore Commissionerate
7th Floor, Trade Center, Bunts Hostel Road
Mangalore
Karnataka
575003

Respondent(s)

Appearance:

Mr. Rajesh Kumar, CA
HIRAGANGE & ASSOCIATES
#1010, 1st floor
(Above Corp.Bank) 26th Main,4th T Block, Jayanagar,
Bangalore
Karnataka
560041

For the Appellant

Mr. Rama Holla, Superintendent, AR

For the Respondent

Date of Hearing: 01/08/2019
Date of Decision:08/08/2019

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

Final Order No.20624/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated

03.08.2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant had filed a refund claim for Rs.3,16,204/- on 08.12.2017 for the quarter October-December 2016 being the Service Tax paid towards specified services received by them for authorized operations in the SEZ as per Notification No. 12/2013-ST dated 01.7.2013. On verification of the claim, it was observed that:

i) The claim is time barred since as per Notification No.12/2013-ST dated 01.07.2013 the claim should have been filed within one year from the end of the month in which actual payment of Service Tax was made by such developer of SEZ unit to the registered service provider. Thus, all payment of Service Tax with respect to input services made during October and November 2016 as corroborated from bank statements are hit by time bar.

ii) MSEZ has declared in the claim that the refund of Service Tax claimed is used exclusively for authorized operations in SEZ but actually has been used in common between SEZ and DTA. Further, the claim is not made in proportion to value of authorized operations to total turnover and also value of operation in DTA is not furnished.

2.1. After following the due process, the original authority rejected the claim of the appellant under Section 11B of the Central Excise Act, 1944 in terms of Notification No. 12/2013-ST dated 01.07.2013. Aggrieved by the said order, the appellant filed appeal before the Commissioner who rejected the said appeal.

3. Heard both the parties and perused the records.

4. Learned Consultant appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that both the authorities have wrongly interpreted the terms of the Notification No. 12/2013-ST dated 01.07.2013. He further submitted that previously for the period from January to March 2015, the Learned Deputy Commissioner, Mangalore allowed the refund vide Order-in-Original dated

23.11.2015 and in Para 7 of the said Order-in-Original, it was held "*I find that MSEZ is a SEZ developer and also they do not have any other unit in Domestic Tariff Area, therefore Para 3(III)(a) of the Notification is not applicable in this case*." He further submitted that the said decision of the Deputy Commissioner allowing the refund after considering the conditions in Para 3(III)(a) of the Notification has not challenged by the Revenue and has become final. He also submitted that in the impugned order, the Commissioner (Appeals) differed with the decision of the Commissioner, Mysore who sanctioned the refund vide OIA No. MLR-EXCUS-000-APP-GVK-17/18-19 dated 29.06.2018 on similar issue. He further submitted that the appellant do not have any DTA unit and instead; they are making supply to a DTA unit and the impugned order has not considered the distinction between operating out of a DTA unit and making a supply to a company/entity located in DTA unit. The impugned order clearly records the fact of supplying water and repair services to M/s Mangalore Petrochemicals Ltd., which is a separate legal entity from them in a DTA. He further submitted that the conditions in Para 3(III)(a) would be applicable only when the assessee has the units in both SEZ and DTA whereas in the present case, the appellant has unit only in SEZ and makes supply from SEZ to DTA unit that is clearly recorded in the impugned order. He further submitted that the supply of water is an authorized operation and the supply of water in the DTA need not be mentioned explicitly. In support of his submission, he relied upon the decision in the case **of *Adani Powers Ltd. Vs Commissioner reported in 2016 (44) STR 146 (Tri. Ahmd.).*** He further submitted that the refund of Rs.49,711/- for the period from October 2016 to November 2016 has been rejected on time bar. Learned Consultant referred to the conditions in Para 3(III)(e) and 3(III)(f) of the Notification and submitted that from the combined reading of the conditions prescribed in (e) and (f), it is clear that the time limit prescribed in condition 3(III)(e) is one year from the end of the month in which payment is made to the service provider. However, the condition 3(III)(f) prescribes that the SEZ unit or developer are required to file refund claims quarterly only. Therefore, according to the Learned Consultant, the time limit of one year is to be applied based on the quarterly basis as there is clear condition to file the refund application on quarterly basis. For this submission, he relied upon the decision of the Larger Bench in the case of ***CCE Vs Span Infotech India Pvt. Ltd. – 2018-TIOL-516-CESTAT-BANG-LB*** wherein it is held that time limit should be considered from the end of the quarter.

5. On the other hand, Learned AR defended the impugned order and submitted that in the present case, the refund is filed under Notification No. 12/2013-ST dated 01.07.2013 and therefore, the refund will be governed by the conditions contained in the said Notification and the said Notification has to be interpreted strictly. He further submitted that as per the said Notification, the appellants are not entitle to the refund, part of which is time barred.

6. After considering the submissions of both the parties and perusal of the material on record, I find that in the present case refund for the quarter October 2016 to December 2016 amounting to Rs.3,16,204/- has been rejected on the ground that the input services are commonly used for both SEZ and DTA operations. Further, the part of the refund amounting to Rs.49,711/- was rejected being barred by limitation. Further, I find that the appellant has submitted that in their own case for the period January to March 2015, Deputy Commissioner, Mangalore has allowed the refund claim on identical facts and the same has not been challenged by the Revenue and has attained finality. Further, I also find that the Commissioner, Mysore has also sanctioned the refund vide Order-in-Original dated 29.06.2018 in the appellants own case. Further, I find that the appellant does not have any DTA unit, they are only making supply to a DTA unit whereas the conditions of Para 3(III)(a) would be applicable only when the assessee has units in both SEZ and DTA whereas in the present case, the appellant has unit only in SEZ and make supply from SEZ to DTA unit and therefore the said condition of Para 3(III)(a) is not applicable in the present case. Further, the ratio of the ***Adani Powers India Pvt. Ltd***. (supra) relied upon by the appellant is also applicable to the facts of the present case because if we apply the rationale of the ***Adani Powers India Pvt. Ltd***. then we will find that there is a marked difference between operation out of a DTA unit and making a supply to DTA. In view of this, I hold that denial of refund to the

appellant is not sustainable in law and therefore the findings of the impugned order is set aside. Further, with regard to the refund of Rs.49,711 being barred by limitation, I find that the combined reading of Para 3(III)(e) and 3(III)(f) of the Notification clearly shows that the refund claim were within time limit and further the ratio of the Larger Bench decision in the case of ***Span Infotech*** relied upon by the appellant cited supra is also applicable. Therefore, I hold that denial of refund on time barred is also not sustainable.

7. In view of my discussion above, I am of the considered view that the impugned order in its entirety is not sustainable in law and therefore, I set aside the same by allowing the appeal of the appellant with consequential relief, if any.

(Order was pronounced
in Open Court on **08/08/2019**)

S.S GARG
JUDICIAL MEMBER

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