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

Appeal(s) Involved:

ST/21647/2018-SM

[Arising out of Order-in-Appeal No. MLR-EXCUS-000-APP-MSC-074-2018-19 dated 31/07/2018 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.20625/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated

31.07.2018 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.4,82,207/- on 13.03.2017 for the quarter July-September 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) 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. Amount involved is Rs.4,82,207/- as per Para 3(III)(a) of Notification No. 12/2013-ST dated 01.7.2013.

ii) In respect of Service Tax paid Rs.2,23,875/- and Rs.9,450/- claimant has not obtained prior approval of the said services viz., Management Consultancy Services and Health Insurance Services, as required under Para 3(I) of Notification No. 12/2013-ST dated 01.7.2013.

iii) In respect of Rs.3,237/-, the payment towards the service received has not been made to respective service provider by the claimant, as required under Para 3(III)(d) of Notification No. 12/2013-ST dated 01.7.2013.

iv) Rs.54/- Excess claimed;

v) In respect of Rs.8,008/- the services related to rent-a-cab, not used for authorized operations, as required under Para I of Notification No. 12/2013-ST dated 01.7.2013.

2.1. On these allegations, a SCN dated 05.05.2017 was issued to the appellants proposing to reject the refund claim under Section 11B of the Central Excise Act, 1944. After following the due process, the Assistant Commissioner vide its order dated 24.05.2017 rejected the Service Tax refund claim of Rs.4,54,088/- 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 same.

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 the following issues are involved in the present case:

i) Eligibility of refund on input service of Rs.4,54,088/- alleged to be common service for both SEZ and DTA unit (Mere supply to DTA).

ii) Eligibility of refund of Rs.2,33,325/- received prior to default list of service.

iii) Eligibility of refund of Rs.8,008/- with respect to rent-a-cab service.

iv) Eligibility of refund of Rs.3,237/- with respect to accommodation service.

4.1. He further submitted that as far as issue number one relating to eligibility of refund of Rs.4,54,088/- is rejected by stating that the input services are commonly used for both SEZ and DTA operations, 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).***

4.2. With regard to second issue regarding eligibility of refund of Rs.2,33,325/- received prior to the default list of service, Learned Consultant submitted that this issue is no more res integra and has been settled in appellants own case by this Tribunal vide its Final Order No. 20490/2019 dated 17.06.2019 wherein the refund has been allowed on identical facts. He further submitted that the impugned order has not disputed the nature of services received and it is mentioned in the list of specified services or Service Tax paid on the same or consumption of the services in a SEZ unit. Denying the refund of Service Tax paid when the appellant was eligible for ab-initio exemption merely on a procedural lapse is not sustainable. He also relied upon the following decisions:

- ***Wardha Power Company Ltd. Vs Commissioner – 2013 (30) STR 520 (Tri.)***
- ***Mangalore Chemicals Fertilizers Ltd. Vs Deputy Commissioner – 1991 (55) ELT 437 (SC).***

4.3 As regards the eligibility of refund of Rs.8,008/- with respect to rent-a-cab service and Rs.3,237/- with respect of accommodation service, Learned Consultant submitted that the only ground for rejection of the refund for these two services is that the appellants have used the said services commonly for SEZ and DTA operations as covered in the first issue. He further submitted that this finding is also not sustainable because the appellant does not have DTA unit and he has made supply to DTA unit only.

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 liable to the refund part of which is time barred.

6. After considering the submission of both the parties and perusal of the material on record, I find that in the present case refund for the quarter July 2016 to September 2016 amounting to Rs.4,54,088/- has been rejected on the ground that the input services are commonly used for both SEZ and DTA operations. 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, therefore I hold that denial of refund to the appellant is not sustainable in law and therefore this finding of the impugned order is set aside.

Further, I find that with regard to eligibility of Rs.2,33,325, this issue is squarely covered in favour of the appellants in their own case by this Tribunal vide Final Order No. 20490/2019 dated 17.06.2019.

6.1. Further, I find that with regard to refund of Rs.8,008/- and Rs.3,237/-, I hold that refund has been wrongly rejected on the ground that the said services are commonly used for SEZ and DTA operations whereas in view of my finding of issue no. 1 wherein I have held that the appellant does not have DTA, they have only made supply to a DTA unit and therefore there is no violation of the conditions of the Notification and therefore I hold that the rejection of refund claim on these two services is wrong and not sustainable in law.

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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