CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20890 of 2019

[Arising out of Order-in-Appeal No. 189-202/2019 dated 19/06/2019 passed by Commissioner of Central Tax , BANGALORE-I(Appeal)]

Societe Generale Global Solutions Centre Pvt Ltd
Voyager Building 10th Floor Whitefield Road
Ascendas Itpb Sez International Tech Park
BANGALORE
KARNATAKA
560068

Appellant(s)

VERSUS

Commissioner Of Central Tax, Bengaluru East
BMTC BUILDING
OLD AIRPORT ROAD, DOMLUR,
BANGALORE
KARNATAKA
560071

Respondent(s)

With

a. **Service Tax Appeal No. 20891 of 2019**
b. **Service Tax Appeal No. 20892 of 2019**
c. **Service Tax Appeal No. 20893 of 2019**
d. **Service Tax Appeal No. 20894 of 2019**
e. **Service Tax Appeal No. 20895 of 2019**
f. **Service Tax Appeal No. 20896 of 2019**

[Arising out of Order-in-Appeal No. 189-202/2019 dated 19/06/2019 passed by Commissioner of Central Tax , BANGALORE-I(Appeal)]

Appearance:

Shri HARISH BINDUMADHAVAN, ADVOCATE
PRESTIGE TRADE TOWER,
LEVEL 14, 46 FLOOR, PALACE ROAD, HIGH GROUNDS,
BANGALORE
KARNATAKA
560001

For the Appellant

Smt. D.S. Sangeetha, Jt. Commissioner(AR) — For the Respondent

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

Date of Hearing: 23/10/2019
Date of Decision:31/01/2020

Final Order No. 20079-20085 /2020

Per : S.S GARG

Appellant has filed these 7 appeals against the common impugned order No.189-202/2019 dt. 19/06/2019 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has partly allowed the refund claims filed by the appellant and remanded the matter to the original authority for conducting verification. Since all the appeals have arisen from the common impugned order and the facts are identical, all the appeals are taken up together for discussion and disposal.

2.1. Briefly the facts of the present case are that the appellant is a registered unit under the provisions of Special Economic Zone Act, 2005 (SEZ Act, for short) and are engaged in the provision of Information Technology Software Services (ITSS) and Business Auxiliary Services (BAS) to their clients located across the globe. During the relevant period, the appellant for its authorized operation received specified services from suppliers registered under Service Tax laws. Being a SEZ unit, the appellant was eligible for exemption by way of refund in respect of services received by them for authorized operation by virtue of Notification No.12/2013-ST dt. 01/07/2013. Appellant filed various refund applications under the said Notification from time to time. After following due process of law, the original authority has rejected the substantial part of the claim. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) on the ground that in terms of Section 51 of the SEZ Act, the provision of Section 51 would have a overriding effect over any other law in India and the intention of the legislature was to exempt these services received by a SEZ unit from levy of service tax.

Appellant has received the services for discharge of authorized operations and have fulfilled all the required conditions under the relevant notification and are accordingly eligible for refund. The learned Commissioner(Appeals) vide the impugned order dt. 19/06/2019 has partly allowed the appeals.

2.2. The details of all the appeals regarding the amount of refund, category of service and the reason for rejection are stated herein below appeal-wise:-

Appeal No.	**Period**	**Refund Rejected (in INR)**	**Category**	**Reasons for rejection**
ST/20890/2019	January 2013 to March 2013	14,482	Business Support Service	Services not covered in the default list of Services **(Para 18 of OIA)**
		20,000	Library Service	Services not covered in the default list of services **(Para 18 of OIA)**
		58,738	Real Estate Service	Services not covered in the default list of services **(Para 18 of OIA)**
		3,319	Technical Testing & Analysis Service	Services not covered in the default list of services **(Para 18 of OIA)**
		44,530	Professional Charges	Services not covered in the default list of services **(Para 18 of OIA)**
		11,296	Storage and warehouse services	Services not covered in the default list of services **(Para 18 of OIA)**
		24,720	Advertising Services	Reasons not specified in the OIA
		309	Clearing & Forwarding Service	Reasons not specified in the OIA
		5,933	Consumer Testing	Reasons not specified in the OIA
		8,158	Convention Service	Reasons not specified in the OIA
		5,13,545	Maintenance of Repair Service	Reasons not specified in the OIA
		3,090	Membership Service	Reasons not specified in the OIA
ST/20891/2019	April 2013 to June 2013	16,78,260	Import of Service	Invoice Copy not made available (Invoice No.5434) **(Para 38 of the OIA)**
		8,082	Cargo Handling Service	Not covered in the default list of services. No mention in the OIA
		13,225	Club & Association Service	Not covered in the default list of services No mention in the OIA
		28,135	Advertising Services	Not covered in the default list of services No mention in the OIA
ST/20895/2019	April 2015 to June 2015	1,19,443	Import of service	Time Barred (Para 32 of the OIA)
		11,604	Telecommunication Services	Non availability of Invoices
ST/20896/2019	October 2015 to December 2015	4,04,746	Management Consultants Service	Services not received from the specified vendor as per the Development Commissioner's Approval letter **(Para 26 of the OIA)**
		23,911	Business support service	Invoices not submitted **(Para 39 of the OIA)**
		22,026	Telecommunication Service	Invoices not submitted **(Para 39 of the OIA)**
ST/20892/2019	January 2017 to March 2017	4,35,544	Business Auxiliary Services	Services not received from the specified vendor as per the Development Commissioner's Approval letter **(Para 26 of the OIA)**
		3,80,160	Management Consultants Service	Services not received from the specified vendor as per the Development Commissioner's Approval letter **(Para 26 of the OIA)**
		2,666	Calibration Service	Not covered in the default list of services **(Para 26 of the OIA)**
		9,750	Club & Association Service	Not covered in the default list of services **(Para 26 of the OIA)**

ST/20893/2019	October 2016 to December 2016	4,35,544	Business Auxiliary Services	Services not received from the specified vendor as per the Development Commissioner's Approval letter **(Para 26 of the OIA)**
		93,021	Management Consultants Service	Services not received from the specified vendor as per the Development Commissioner's Approval letter **(Para 26 of the OIA)**
		9,750	Club & Association Service	Not covered in the default list of services **(Para 26 of the OIA)**
		4,060	Business Support Service	Reasons not specified in the OIA
ST/20894/2019	July 2016 to September 2016	9,48,968	Business Auxiliary Services	Services not received from the specified vendor as per the Development Commissioner's Approval letter **(Para 26 of the OIA)**
		1,08,515	Management Consultants Service	Services not received from the specified vendor as per the Development Commissioner's Approval letter **(Para 26 of the OIA)**

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order rejecting the refund on various grounds as stated in the impugned order is not sustainable in law as the same has been done without properly appreciating the facts and the law. He further submitted that as far as appeal No.ST/20890/2019 is concerned, refund has been rejected on the ground that out of all the input services involved in that case, input services viz. Business Support Service(BSS), Library Service, Real Estate Service, Technical Testing & Analysis Service, Profession Charges and Storage and warehouse services are not covered in the default list of services. To counter this, the learned counsel submitted that this finding of the Commissioner(Appeals) is factually wrong. He further submitted that input services viz. storage and warehousing services, BSS, testing and analysis, real estate service, renting of immovable properly service, Clearing and Forwarding service, consumer testing service, maintenance or repair service are specifically included in the approved list of services issued by the Development Commissioner, ITPL, SEZ, Cochin. He further submitted that with respect to other services viz. advertising services, convention service and membership service, the said services were used for authorized operation of the company and accordingly eligible for refund. He also submitted that Section 26 of the SEZ Act exempts services from levy of service tax with respect to services provided to a SEZ unit or developer to carry on the authorized operation. Accordingly any services provided to a SEZ unit and used for authorized operations are exempt from levy of service tax. He also submitted that Section 51 of the SEZ Act had a overriding effect on the provisions of any other law. He further submitted that it is a settled legal position that approval from UAC is not mandatory as the SEZ Act has overriding effect over the provisions of any other law. In support of this submission, he relied upon the following decisions:-

i. Mast Global Business Services India Pvt. Ltd. Vs. CCT, Bangalore [2018 (ACR) 369 CESTAT Bangalore]
ii. Lowes Services India Pvt. Ltd. Vs. CST, Bangalore [Final Order No.20219-20222/2019 dt. 28/02/2019]
iii. Mangalore Refineries & Petrochemicals Ltd.Vs. CCE&CT, Mangalore Vs. [2019(2) TMI 588 CESTAT Bangalore]
iv. State through CBI Vs. Parmeshwaran Subramani & anr. [Order dt. 11/09/2009 in Criminal Appeal No.1758 of 2009]

4.2. As far as appeal No.ST/20891/2019, learned counsel submitted that with respect to import of services, refund has been rejected on the ground that the invoice copy was not made available. Learned counsel submitted that in fact this finding is also factually incorrect. The appellant has submitted the copy of invoice with the office of the Commissioner of Service Tax. Though the appellant has once again submitted the same along with copy of the challan, evidencing the payment of service tax on RCM basis. With respect to cargo handling service, the appellant submitted that the same is duly listed in Entry No.2 (services performed inside the zone) of letter dt. 20/03/2012. With respect to other services, the appellant submitted that the said services were used for authorized operation of the company and accordingly eligible for refund in view of Section 26 and Section 51 of the SEZ Act, 2005 cites supra. He relied upon the following decisions:-

i. Mast Global Business Services India Pvt. Ltd. Vs. CCT, Bangalore [2018 (ACR) 369 CESTAT Bangalore]
ii. Lowes Services India Pvt. Ltd. Vs. CST, Bangalore [Final Order No.20219-20222/2019 dt. 28/02/2019]
iii. Mangalore Refineries & Petrochemicals Ltd.Vs. CCE&CT, Mangalore Vs. [2019(2) TMI 588 CESTAT Bangalore]
iv. State through CBI Vs. Parmeshwaran Subramani & anr. [Order dt. 11/09/2009 in Criminal Appeal No.1758 of 2009]

4.3. With regards to appeal No.ST/20895/2019, he submitted that the refund has been rejected on import of services on time bar as contained in para 32 of the Order-in-Appeal. Learned counsel submitted that the subject invoice on which service tax was applicable on RCM basis was remitted by the appellant on 06/03/2015 and the refund application was filed on 31/03/2016. He also submitted that as per the relevant evidence, the time limit to claim refund from one year from the end of the month in which the actual payment of service tax was made by unit located in a SEZ or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise as the case may be shall permit. In this case, the appellant has already submitted to the Commissioner(Appeals) the invoice and the Notification No.12/2013.

4.4. With regard to appeals No.ST/20892/2019, ST/20893/2019, ST/20894/2019 and ST/20896/2019, learned counsel submitted that the provisions of Section 26 of SEZ Act exempts the services from levy of service tax with respect to the services provided to a SEZ unit or developer to carry on the authorized operations. Hence any service provided to a SEZ unit and used for authorized operations of the SEZ unit, is exempt from levy of service tax. He further submitted that the Department has erred in overlooking the intention of the Government in enacting SEZ Act and giving special fiscal benefits to SEZ units. Section 26 of the SEZ Act, 2005 read with read with Rule 31 of the SEZ Rule, 2006 along with Section 51 of the SEZ Act, 2005 which clearly states that SEZ Act has overriding effect over other laws and accordingly the SEZ units are exempt from payment of service tax. He further submitted that consistently various courts have held that the provisions of SEZ Act shall have overriding effect as long as the input services are consumed within the SEZ unit, the refund has to be sanctioned to the assessee. He further submitted that the immunity provided from service tax paid cannot be taken away by the procedural requirement prescribed by Notification. For this submission, he relied upon the following decisions:-

a) Mast Global Business Services India Pvt. Ltd. Vs. CCT, Bangalore [2018 (ACR) 369 CESTAT Bangalore]
b) Lowes Services India Pvt. Ltd. Vs. CST, Bangalore [Final Order No.20219-20222/2019 dt. 28/02/2019]
c) Mangalore Refineries & Petrochemicals Ltd.Vs. CCE&CT, Mangalore Vs. [2019(2) TMI 588 CESTAT Bangalore]
d) State through CBI Vs. Parmeshwaran Subramani & anr. [Order dt. 11/09/2009 in Criminal Appeal No.1758 of 2009]

4.5. He also cited the decision in the case of Photon Infotech Pvt. Ltd. Vs. CCE, Bangalore [2012 (12) TMI 1012 CESTAT Bangalore] wherein this Tribunal has held 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.

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

6.1. After considering the submissions 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 other SEZ units are exempt from payment of service tax for any service which is used for authorized operations. This issue is no more res integra and has been settled by various decisions of the Tribunal relied upon by the appellant cited supra. Further I find that in the case of Mast Global Business Services India Pvt. Ltd. cited supra, 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 a 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 authorised 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.*

6.2. Further I find that in the impugned order, refunds have been rejected on the ground that some of the services are not covered in the default list of services whereas factually those services are very much covered in the approved list of services issued by the office of the Development Commissioner which has been placed on record. Further I find that those services which are not specifically approved but the said services are used for authorized operation of the company, appellant still be eligible for the refund in view of the Section 26 and Section 51 of the SEZ Act and the case laws cited supra. Further in respect of certain appeals, refund claims have been rejected on the ground that the appellant has not produced copy of the invoices whereas the appellant has submitted that they have submitted the copy of the invoices and subsequently also, the appellant produced copy of the invoices again but the same has not been considered by the Commissioner(Appeals). further I find that in appeal No.ST/20895/2019, refund amounting to Rs.1,19,443/- on import of service has been rejected on time bar whereas as per Notification No.12/2013 dt. 01/07/2013, the claim is within limitation and has wrongly been rejected on time bar.

7. In view of my discussion above, by following the ratio of the decisions cited by the appellant in support of his claim, I am of the considered opinion that the impugned order is not sustainable in law

and therefore the same is set aside by allowing the appeals of the appellant. After allowing the appeals of the appellant, the matter is remanded to the original authority to verify the invoices allegedly not produced before the authorities earlier. For this limited purpose of verification, the matter is remanded to the original authority otherwise , the appellants are entitled to the refund in view of the catena of decisions cited supra squarely in favour of the appellant.

(Order was pronounced
in Open Court on **31/01/2020**)

(S.S GARG)
JUDICIAL MEMBER

Raja...