**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI**

REGIONAL BENCH – COURT NO. IV

**Service Tax Appeal Nos.40182 and 40183 of 2020 - SM**

[arising out of Order-in-Appeal Nos.344 & 345/2019 (CTA-II), dated 29.11.2019 passed by Commissioner of GST & CE (Appeals-II), Chennai]

**M/s. Wabco India Ltd.** **Appellant**
AA8, Plant III, Central Avenue,
Auto Ancilliary SEZ,
Mahindra World City,
Chengalpattu 600 032.

*VERSUS*

**Commissioner of GST & CE,** **Respondent**
Chennai Outer, Newry Towers,
No.2054//1, II Avenue,
$12^{th}$ Main, Road, Anna Nagar,
Chennai – 600 040.

Appearance:

Shri R. Sai Prasanth, Advocate for the Appellant
Ms. Sridevi Taritala, Authorized Representative for the Respondent

**CORAM : HON'BLE Ms. Sulekha Beevi C.S, MEMBER (JUDICIAL)**

Date of Hearing : 22.06.2021
Date of Decision :22.06.2021

**FINAL ORDER Nos. 41611-41612 / 2021**

The appellant-Unit is functioning in SEZ area manufacturing brake systems and related parts of motor vehicles. During the impugned period, the appellant received various input services for use in the manufacture of their final product. They discharged service tax on these input services under reverse charge mechanism. As per section 26(1)(e) of SEZ Act, the appellant is eligible for tax exemption on the input services provided to them by service providers located in

DTA. They applied for refund claims on 13.09.2016 and 28.03.2018 for the respective periods as per Notification No.12/2013-ST, dated 01.07.2013. The original authority allowed part of the refund. Against the order of partial rejection of refund, the appellant filed appeals before the Commissioner (Appeals). The matter was for re-adjudication by Commissioner (Appeals). In *de novo* adjudication, the original authority held that the claims are beyond the period of limitation mentioned in the notification and rejected the refund claim. Against this order, the appellant again filed appeal before the Commissioner (Appeals), who vide order impugned herein upheld the decision of the original authority. The appellant is now before the Tribunal aggrieved by the order of rejection of refund claim holding that the claim is beyond the period of limitation.

2. The learned counsel Shri R. Sai Prasanth appeared for the appellant and argued the matter. He submitted that the only ground on which the refund is denied in the present case is that the refund claims were filed by the Appellant beyond the period of limitation prescribed in terms of Paragraph 3 (III)(e) of the impugned notification. For SEZ units like in case of the Appellant, Section 26(1)(e) of the SEZ Act grants exemption from payment of Service Tax on taxable services which are used to carry on authorized operations in a SEZ. In terms of Section 26(2) of the SEZ Act, such an exemption shall be subject to terms and conditions as the Central Government may prescribe. The term 'prescribed' is defined under Section 2(w) of the SEZ Act, to mean prescribed by the Rules made by the Central Government under the SEZ Act. Rule 22 of the Special Economic Zones Rules, 2006 ('SEZ Rules') prescribes the terms and conditions for availing exemptions for authorised operations. On a combined reading of Section 26(1)(e) and Rule 22 of the SEZ Rules it becomes clear that there is no limitation period prescribed in the SEZ Act. Further, in terms of Section 51 of the SEZ Act, the provisions of the SEZ Act shall have overriding effect over the provisions of any other law for the time being in force. Therefore, exemption from payment of Service Tax is subject to conditions specified under the SEZ Act and SEZ Rules only. Any additional conditions specified in the

impugned notification cannot be a ground to deny exemption from payment of Service Tax.

3. Further that, there is no dispute on the fact that the services were used to carry on authorized operations or any other condition specified under the SEZ Act read with SEZ Rules have not been fulfilled by the appellant. The refund has been denied on the only ground that the claim is beyond the limitation prescribed under the impugned notification. Therefore, the denial of exemption is clearly beyond the provisions of the SEZ Act read with the SEZ Rules. He relied on the decision in the case of M/s. *GMR Aerospace Engineering Ltd. v. Union of India, [2019 (31) GSTL 596 (AP)]* and submitted that the Hon'ble Andhra Pradesh and Telangana High Court was considering exemption under various notifications including the impugned notification. The Hon'ble High Court at Paragraph - 34 observed that the power to grant exemption under Section 93 of the Finance Act, 1994, (under which the impugned notification has been issued) is a general power of exemption available in respect of all taxable services; that Section 26(1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone; that therefore, the notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in a SEZ qualifies for exemption or not. Reliance is also placed on the decision of this Hon'ble Tribunal in the case of M/s. *ATC Tyres Pvt. Ltd. v. Commissioner of GST & Central Excise, [2021-VIL-106-CESTAT-CHE-ST].* wherein the exemption was denied *inter alia* on the ground that the claim was filed beyond the period of limitation prescribed in terms of Paragraph 3(III)(e) of the impugned notification (as recorded in Paragraph 2.1 and 6). The Hon'ble Tribunal relying upon the decision in the case of GMR Aerospace (supra) held in Paragraph-6 that the rejection of refund claim stating that the refund is time-barred cannot sustain and allowed exemption to the assessee. Thus, the issue in the present case is squarely covered by the aforesaid decision of this Hon'ble Tribunal. Reliance is also placed on the following decisions wherein the exemption which was denied on the ground that conditions of a notification issued under the Finance

Act 1994 was not fulfilled, was subsequently allowed by the Hon'ble Tribunals by relying upon the decision in the case of *M/s. GMR Aerospace:*

*a. M/s.DLF Assets Pvt. Ltd.v. The Commissioner, [2020 (11) TMI 35 - CESTAT NEW DELHI] (Paragraph-18, 19 and 21)*

*b. Lowe's Services India Pvt. Ltd. v. Commissioner of Central Tax, Bangalore, [2021 (3) TMI 230-CESTAT BANGALORE] (Paragraph-7)*

3.1 Reliance is also placed on the following decisions wherein it was held that the provisions of the SEZ Act overrides the notifications issued under Service Tax or provisions of Service Tax Law:

*a. SE Forge Ltd. v. CCE, [2019(365) ELT 560 (Tri.-Chennai)](Paragraph-5)*.

*b. Lanco Solar Pvt. Ltd. v. Commissioner, [2020 (4) RTMI-CESTAT NEW DELHI] (Paragraph-10)*.
*c. Intas Pharma Limited v. Commissioner of Service Tax, [2013 (7) TMI 703- CESTAT AHMEDABAD](Paragraph-10).*

*d. Cybecom Datamatics Information Solutions Ltd. v. Commissioner of Service Tax, [2017-VIL-1055-CESTAT-MUM-ST](Paragraph-6)*.

3.2 It is submitted by the counsel that the time limit prescribed in the impugned notification is not applicable to the present case where payment has been made under reverse charge. The impugned order has held that the refund claim ought to be filed within the time limit stipulated in Paragraph 3(III)(e)of the impugned notification, viz., within one year from the end of the month in which actual payment of service tax was made by SEZ Developer or Unit to the registered service provider.

4. The learned Authorised Representative Ms. Sridevi Taritala supported the findings in the impugned order.

5. The issue that arises for consideration is whether the refund claim filed by the appellant is time-barred. The Notification No.12/2013-ST, dated 01.07.2013 states that the refund has to be

filed within period of one year. In terms of section 26(1)(e) of SEZ Act, an assessee is eligible for exemption on taxes and duties. Such exemption can be availed *ab initio,* while procuring the input services or after the services are procured on payment of service tax by availing refund as per the Notification No.12/2013. The appellant has opted for applying for refund as per the notification. The department has rejected the refund claim stating that it is barred by limitation, as mentioned in the notification. The question as to whether the time-limit prescribed in the notification would prevail over sections 51 and 26(1)(e) of the SEZ Act was considered by the Hon'ble Telengana and Andhra Pradesh High Court in the case of *M/s. GMR Aerospace Engineering Ltd., Vs Union of India* reported in *2019 (8) TMI 748*. The Division Bench of the Tribunal in the case of *M/s. DLF Assets Pvt. Ltd. Vs Commissioner, Service Tax, Delhi –I* reported in *2020 (11) TMI 35 – CESTAT NEW DELHI.* It was held that the conditions of the notification cannot be pressed into application to deny the refund to a SEZ Unit. Para 21 of the said decision reads as under:-

> "Thus, what follows is that the Commissioner was not justified in examining whether the conditions set out in the Notification dated March 3, 2009 were satisfied or not for grant of any exemption from service tax Section 26(2) of the SEZ Act does provide that the Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions shall be granted to the Developer under sub-section(1) but what is important to notice, and as was also observed by the Andhra Pradesh High Court, the word "prescribe" would mean "prescribed by rules made by the Central Government under the SEZ Act," in view of the definition of "prescribed" under section 2(w) of the SEZ Act. The Notification dated March 3, 2000, which has been issued under section 93 of the Finance Act, therefore, has no application."

This Tribunal in the case of *M/s. ATC Tyres Pvt. Ltd., Vs Commissioner of GST & CE, Tirunelveli* reported in *2021 – VIL – 106 – CESTAT – CHE – ST* had considered the very same issue of limitation mentioned in the Notification No.12/2013-ST. It was held that section 51 of SEZ Act has an overriding effect and, therefore, the conditions mentioned in the notification cannot be applied so as to deny the refund when substantial conditions prescribed in the SEZ Act have been fulfilled.

6. From the discussions made above as well as following the decisions cited supra, I am of the view that the rejection of refund on

the ground of limitation cannot sustain. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

**(Sulekha Beevi C.S.)**
**Member (Judicial)**

**Ksr**

**ksr**