IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.41773 of 2015

(Arising out of Order in Appeal No.MAD-CEX-000-APP-038-15 dated 19.5.2015 passed by the Commissioner of Central Excise (Appeals – I) Coimbatore @ Madurai)

M/s. ATC Tires Pvt. Ltd. **Appellant**
Gangaikondan
Tirunelveli – 627 352.

Vs.

Commissioner of GST & Central Excise **Respondent**
Central Revenue Building
Tractor Street, NGO – A Colony
Tirunelveli – 627 007.

APPEARANCE:

Shri Raghav Rajeev, Advocate for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40544/2025

Date of Hearing : 09.04.2025
Date of Decision: 28.05.2025

This appeal arises of Order in Appeal No. 38/2015 dated 19.5.2015 passed by the Commissioner of Central Excise (Appeals – I), Madurai.

2. Brief facts of the case are that the appellant a unit Special Economic Zone (**SEZ**) filed refund claim as per Notification No. 40/2012-ST dated 20.6.2012 and No. 12/2013-ST dated 1.7.2013 for refund of service tax totaling to Rs.2,83,80,722/- being the Service Tax paid on the specified services used in relation to the authorized operations in the SEZ during the period from 01.10.2013 to 31.12.2013. Show Cause Notice was issued to the appellant denying

the refund claim. The refund sanctioning authority after due process of law sanctioned refund of Rs.2,73,00,873/- and rejected the balance amount of Rs.10,79,849/-. Aggrieved against the rejection of the part of the refund claim, the appellant preferred appeal before Commissioner (Appeals) who vide the impugned order rejected the appeal. Hence the present appeal.

3. Shri Raghav Rajeev, learned counsel appeared on behalf of the appellant and Shri N. Satyanarayanan, learned Authorize Representative appeared for the respondent-department.

3.1 Aggrieved by the rejection of refund claimed, the Ld. Counsel Shri Raghav Rajeev has summarised the issues involved as below.

S.No	Reason for rejection	Amount	Appellant's Submission
1	Misdeclaration of service, Xerox copy of invoice, incomplete address.	2,32,380	OIO and OIA is beyond the Show Cause Notice.
2	Wrong Description of taxable service [Services shared with DTA]	5,54,078	The description proposed by the Department are mentioned in letter dated 26.11.2013 issued by UAC, MPEZ. Hence, refund is eligible.
3	Wrong Description of taxable service [Professional Service]	50,448	Services are in the nature of Management or Business Consultancy Services. Refund is eligible as it is a specified service used for authorised operations.
4	Wrong Description of taxable service [CWIP – Plant & Machinery]	1,729	Services are in the nature of Business Support Services. Refund is eligible as it is a specified service used for authorised operations.
5	Wrong Description of taxable service [Inspection charges]	5,062	Services are in the nature of Technical Inspection & Certification Services/ Technical Testing & Analysis services. Refund is eligible as it is a specified service used for authorised operations.
6	Wrong Description of taxable service [Inward Freight]	3,449	Services are in the nature of Transport of Goods by Road Service. Refund is eligible as it is a specified service used for

			authorised operations.
7	Bank Charges - Name of taxable service not mentioned by Banks.	1,68,921	There is no finding in the Order-in-Original for partially rejecting the refund claim. The services are in the nature of Banking and Financial Services, which is a specified service. Hence, refund is eligible.
8	Tax paid for Mumbai RC holder [Legal Consultancy Services]	3,090	It is not disputed that service received and used for authorised operation by the Appellant. Hence, refund cannot be rejected.
9	Alleged non-submission of documents [Online Information & Data base services]	34,557	The finding is erroneous as documents were submitted *vide* Reply dated 27.11.2014. [Page No. 62 of the Appeal]
10	Alleged non-submission of documents [GTO/ Legal Consultancy]	26,135	The finding is incorrect as invoices pertaining Chakiat Agencies were produced by the Appellant. [Page No. 98 of the Appeal]
	Total	**10,79,849**	

He stated that in **M/s. ATC Tires Private Limited Vs Commissioner of GST and Central Excise**, Final Order No. 40664/2023 dated 10.08.2023, which is the appellants own case it was held that exemption from payment of Service Tax granted by the SEZ Act cannot be denied on the ground that a procedural requirement under Service Tax Exemption Notifications. He prayed that the impugned order may be set aside.

3.2 The learned AR has taken us through the impugned order and reiterated the points given therein. He prayed that the appeal be rejected.

4. I have gone carefully through the appeal papers and have heard the rival parties. Prima facie I find that there have been around 16 issues raised by revenue in the SCN dated 14.10.2014, relating to

their refund claim. It shows a wide spread noncompliance with the rules and procedures. The main plank of the appellants reply is that as per Final Order No. 40664/2023 dated 10.08.2023 in **M/s. ATC Tires Private Limited**, which is the appellants own case it was held that exemption from payment of Service Tax granted by the SEZ Act cannot be denied on the ground that a procedural requirement under Service Tax Exemption Notifications was not full filled.

4.1 Section 26 of the SEZ Act 2005, provides exemption from payment of service tax on taxable services levied under **section 65 of the Finance Act, 1994** (32 of 1994). The said section is reproduced below for ease of refrence.

> **26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.–**
>
> (1)Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:–
>
> > (a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;
> >
> > (b) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;
> >
> > (c) exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;
> >
> > (d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the

service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;

(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;

(f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 (23 of 2004) in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;

(g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 (74 of 1956) if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

(2)The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

4.2 The above mentioned section came to be examine by the Hon'ble Telangana High Court in **GMR Aerospace Engineering Limited Vs Union of India & others** [2019-VIL-489-TEL] / 2019 (31) G.S.T.L. 596 (A.P.) / [2019] 111 taxmann.com 103 (A.P.). It held as under;

37. Even if apply the parameters indicated in Girnar Traders [*Girnar Traders* **v.** *State of Maharashtra* - 2011 (3) SCC 1], the case on hand would pass the test. **Section 26(1) of the SEZ Act** indicates (1) persons who are entitled to exemptions; (2) the duties in respect which exemption is available; (3) the circumstances under which exemption is available and (4) the provisions of law subject to which the exemptions are available. To put it in simple terms, Section 26(1) identifying the persons, who are eligible for exemption. They are the Developer and entrepreneur. Section 26(1) identifies the duties from which exemption is available. They are the duties under the Customs Act, Customs Tariff Act etc. Section 26(1) also indicates the circumstances under which the exemptions are available. These circumstances vary from clause to clause under Section 26(1). This can be best understood by providing a tabulation as follows :

Duty exempted	Circumstances under which exempted
(1) Duty under Customs Act, 1962	(1) on goods imported into or services provided in a special economic zone or a unit to carry on the authorised operations by

	the Developer or entrepreneur
(2) Duty under the Customs Tariff Act, 1975	(2) All goods exported from or services provided from a SEZ or from a unit to any place outside India.
(3) Duty of excise under the Central Excise Act, 1944 or Central Excise Tariff Act, 1985	(3) All goods brought from DTA to a SEZ or unit to carry on the authorised operations by the Developer or entrepreneur
(4) Service tax	(4) on taxable services provided to a developer or unit to carry on the authorised operations in a SEZ
(5) Securities transaction tax leviable in Finance (No. 2) Act, 2004	(5) If the taxable securities transactions are entered into by a non-resident through the international financial service centre.
(6) Taxes under the Central Sales Tax Act, 1956	(6) If such goods are meant to carry on authorised operations by the Developer or entrepreneur.

> 38. **Thus, the SEZ Act clearly indicates the persons who are entitled to the benefit of exemptions. The Act also lists out the duties from which exemption is granted. The Act enlists the operations or activities in respect of which exemption is available**. (emphasis added)

It is hence clear that not every taxable activity within the SEZ enclave is exempted from duty and like any other exemption it is for the appellant to show compliance. The exemption as per the SEZ Act is restricted to the persons, duties, operations and activities and as per the conditions mentioned in the section apart from its territorial jurisdiction.

4.3 Section 53(1) of The Special Economic Zones Act, 2005, states that a SEZ shall, be **deemed** to be a territory **outside the customs territory** of India **for the purposes of undertaking the authorised operations**. The complexity of this deeming fiction is seen in that Section 53(2) of the said Act states that a SEZ shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, **under section 7 of the**

Customs Act, 1962. The operation of the SEZ Act hence at times leads to situation of complexity. For example, a Division Bench of this Tribunal at Chennai, [speaking through, M. Ajit Kumar, Member (Technical)] in Final Order Nos. 40564-40575/2024, dated: 30.05.2024 in the case of **M/s. RPP Infra Projects Ltd. Vs Commissioner of GST & Central Excise**, at para 15.3.1, has examined the issue relating to the exemption granted to SEZ from indirect taxes. The issue pertains to when the services provided by units from the DTA are utilized by the Developer or Unit **outside the SEZ enclave**, which is a penumbra area for the application of the SEZ Act and there is a possibility of misuse of the exemption, due to territorial jurisdiction issues of levy, supervision etc. The Act and Rules hence need to be interpreted strictly.

4.4 Both section 26 and 53 of the SEZ Act came to be examined by the Principal Bench of this Tribunal in **M/S PRESTIGE POLYMERS PVT. LTD., Vs COMMISSIONER OF CUSTOMS, INDORE (M.P.) [2025 (3) TMI 15 - CESTAT NEW DELHI].** Relevant portionof the Order is extracted;

> 18. Section 51 of the SEZ Act overrides any contrary provisions in the other laws. It reads as follows:
> Section 51. Act to have overriding effect.
> The provisions of this Act shall have effect notwithstanding anything inconsistent therewith. contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
> 19. Evidently, section 51 of SEZ Act does not negate all laws of the land within the SEZ. By virtue of section 51, SEZ Act overrides other laws only to the extent there is any inconsistency between the SEZ Act and other laws. If the other laws are not inconsistent with SEZ Act, they will continue to be operational.

> 20. Thus, section 51 read with section 53 of the SEZ Act makes it clear that to the extent of authorised operations, SEZ will be treated as 'outside the Customs territory of India'- no more and no less. **Thus, the Commissioner of Customs will not have jurisdiction only to the extent of the authorised operations within the SEZ.** The words of both section 51 and 53 are fully in consonance with the object of the Act as is. evident from its long title- to promote exports. **SEZ cannot be treated as outside the Customs territory of India to carry on unauthorised operations and activities.** In case of such activities, SEZ itself will be treated as Customs port, airport, ICD, etc. under section 7 of the Customs Act. Sub-section (2) of Section 53 makes this position explicit.
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> 21. Similarly, **Section 26** of the SEZ Act exempts goods imported into the SEZ for authorised operations from duties of Customs. It reads as follows:
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> *****. *****. *****
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> 22. **Evidently, if goods are imported into the SEZ but not to carry on any authorised operation, insofar as such goods are concerned, neither the exemption from duty under section 26 of SEZ Act nor the stipulation under section 53 of SEZ Act that SEZ shall be treated as outside the Customs territory of India would apply. Customs Act and its provisions would apply in such cases.** (emphasis added)

4.5 The SEZ Act is a Special Act formulated for promoting export-led growth. In line with the aforesaid objective the SEZ enclave is deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations and not otherwise. Hence the reference to it as a 'foreign territory' is not accurate. In certain circumstances the Customs Act, including the levy of Customs duty, would operate.

4.6 In such a situation reading Order No. 40664/2023 dated 10.08.2023 in **M/s. ATC Tires Private** as a *carte blanche* to override procedural violations would be a mistake. Appellate Authorities do view procedural violations where there has been substantial compliance, sympathetically in the larger interest of justice to an aggrieved appellant, knocking at its doors. But this should not open the door for unscrupulous persons to evade taxes, even otherwise such non-compliance should not become a habit as this laxity may permeate to other branches of the appellants organisation. Hence it is for the parties concerned to ensure that their activity comply with the provisions of law. Procedural violations if any should be an exception on unavoidable grounds and not become the rule, purportedly sanctified by judgments rendered considering the peculiar facts of a case. Furter as stated in **RPP Infra Projects Ltd.** (Supra);

> "15.3.3 . . . . there is some force in the contention of Revenue that the discretion of Government to regulate the manner in which the tax exemption is availed cannot be held to be redundant. Regulation helps ensure that the exemption achieves its intended goal. It also ensures that no injury is caused to the trade in the domestic tariff area (DTA), due to inadvertence or by wrongful acts of the beneficiaries of the exemption in the SEZ enclave and is founded upon the fundamental principle of justice and good sense. The presumption in law is that Government makes policy for general good and does not seek to cause harm for one section of trade while extending benefit to another. In a competitive world the impugned exemption notification affects not only those who are eligible to avail its benefit directly i.e. the SEZ units but also units in the DTA who face competition from similar goods sold by SEZ in the DTA as permitted by policy. Any undue cost advantage to the SEZ units/ developers as a consequence of the unregulated availing of exemption could impact DTA units."

5. The complexity involved in implementation of the SEZ Act as discussed above requires a diligent adherence to the provisions and procedures of the said Act and Rules so that there is no leakage of revenue. The burden of proving applicability of an exemption notification and that his case comes within the parameters of the exemption clause or exemption notification is on the assessee. [See: Judgment of a **Constitutional Bench** of 5 Judges in **Commissioner of Customs (Import) Vs M/s Dilip Kumar and Company & Ors.** [AIR 2018 SUPREME COURT 3606 / AIRONLINE 2018 SC 73].

5.1 Further the issue of 'substantial compliance' was examine by a Constitutional Bench of 5 judges in **Commissioner Vs Hari Chand Shri Gopal** [2010 (260) E.L.T. 3 (S.C.)].

> "Doctrine of substantial compliance and 'intended use' :
> 24. **The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements.** Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non- compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. **The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not**

> **strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential."** (emphasis added)

6. Considering the detailed verification to be done for a large number of objections raised by revenue with the records and explanation now being provided in the appeal, I deem it fit to, set aside the impugned order and remand the matter to the Original Authority to re-examine the issue afresh, in the interest of justice. The judgments above have laid out the principles that have to be adhered to. The Original Authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receipt of this order. The appeal is disposed of accordingly. The appellant is eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 28.05.2025)

(**M. AJIT KUMAR**)
Member (Technical)

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