CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal Nos . 41456 to 41459 of 2015
Service Tax Appeal Nos. 41461 to 41462 of 2015

(Arising out of Orders-in-Appeal Nos. 96-101/2015 (STA-I) dated 30.03.2015 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, II Avenue, 12th Main Road, Anna Nagar, Chennai – 600 040)

M/s. Hexaware Technologies Limited **...Appellant**
Plot No. H5, SIPCOT Information Technology Park,
Navallur Post, Siruseri,
Kanchipuram – 603 103.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai I Commissionerate,
Newry Towers, No. 2054/1,
II Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

APPEARANCE:

For the Appellant : Shri H. Kumar, Advocate
For the Respondent : Shri M. Selvakumar, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40672-40677 / 2025

DATE OF HEARING : 23.01.2025
DATE OF DECISION : 26.06.2025

Per Mr. VASA SESHAGIRI RAO

M/s. Hexaware Technologies Limited, Siruseri, Chennai (hereinafter referred to as 'Appellant') has filed these 6 appeals directed against the Orders-in-Appeal Nos. 96-101/2015 (STA-I) dated 30.03.2015 passed by

Commissioner of Service Tax (Appeals-I), Chennai upholding the Orders-in-Original passed by Assistant Commissioner of Service Tax, Division III, Chennai partly sanctioning but partly rejecting the refund claims filed by the Appellant as per the details tabulated below: -

S.No.	Appeal Nos.	Appellant	Respondent	OIO No. / date	OIA No. / date	Period Involved	Refund Claimed	Refund Rejected
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	ST/41456/2015	M/s. Hexaware Technologies Limited	The Commissioner of GST and Service Tax	65/2011(R) dt. 28.02.2011	96-101/2015 (STA-I) dt. 30.03.2015	Oct'09 to Dec'09	66,47,964/-	52,81,564/-
2	ST/41457/2015			87/2011(R) dt. 31.03.2011		Apr'09 to Sep'09	2,29,343/-	2,29,343/-
3	ST/41458/2015			153/2011(R) dt. 04.07.2011		Jun'10 to Sep'10	51,47,580/-	1,85,464/-
4	ST/41459/2015			152/2011(R) dt. 04.07.2011		Apr'10 to Jun'10	16,54,506/-	1,45,763/-
5	ST/41461/2015			151/2011(R) dt. 26.06.2011		Jan'10 to Mar'10	79,38,629/-	5,92,253/-
6	ST/41462/2015			181/2011(R) dt. 13.09.2011		Oct'10 to Dec'10	68,39,525/-	2,37,848/-

As the issue for determination is common in all these appeals i.e., rejection of part of refunds filed for the period from October 2009 to December 2010, these are taken up together for disposal by this common order.

2.1 The relevant facts briefly stated are that the Appellant having registered office at Navi Mumbai have obtained Service Tax Registration for their SEZ Unit at Siruseri mainly under the category of 'Information Technology Software Service'. The Appellant is also engaged in providing various other taxable services *viz.,* Management

Consulting Services, Business Support Services, Sponsorship Services, Internet Telecommunication Services, Commercial Training and Coaching Services, Renting of Immovable Property Services, *etc.* The Appellant has filed these 6 refunds under the Notification No. 09/2009-ST dated 03.03.2009 as amended claiming the service tax paid in respect of taxable services received by them for consumption in their unit. The Assistant Commissioner of Service Tax while processing the above refund claims has partly rejected the amounts as mentioned in Column No. (9) of the Table *supra* on the grounds that invoices relating to Tour Operators, Rent-a-Cab services, Business Support Services used for conducting sports events, outdoor catering and invoices categorized as outdoor catering but did not fall under that service are not required to used for authorized operations and also in respect of invoices where payment was made more than 6 months before filing of the refund claim.

2.2 The Notification No. 09/2009-ST dated 03.03.2009 as amended by Notification No. 15/2009-ST dated 20.05.2009 grants exemption by way of refund to services which are received by SEZ and are used in its authorized operations. This Notification provides exemption from payment of service tax for specified services which are provided in relation to authorized operations in a SEZ by way of refund. Following conditions are required to be satisfied to be eligible for claiming the refund of the service tax paid on these input services: -

i. The SEZ unit should use these specified services in relation to authorized operations and

ii. These services should be approved by the Approval Committee.

iii. No CENVAT Credit of service tax paid to be taken under CCR, 2004.

iv. The SEZ unit must have paid the service tax and

v. The refund claim shall be filed within 6 months from the date of payment of service tax to the service provider. The Notification has prescribed a detailed procedure for claiming the refund of service tax paid on approved services and used for authorized operations in an SEZ.

For ease of reference, the Notification No. 09/2009-ST dated 03.03.2009 referred above is extracted below: -

"NOTIFICATION NO. 09/2009-SERVICE TAX,
Dated: March 3, 2009
Superceded vide Notification no. 17/2011 ST dated 1.3.2011

Exemption to Services Provided in relation to authorized operations in a Special Economic Zone (SEZ) and received by a developer or units of a sez

G.S.R. 146(E). - *In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), and in supersession of the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 4/2004-ServiceTax, dated the 31st March, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 31st March, 2004, vide, G.S.R.248(E), dated the 31st March, 2004, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in clause (105) of section 65 of the said Finance Act, which are provided in relation to the authorised operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax leviable thereon under section 66 of the said Finance Act:*

Provided that-

(a) the developer or units of Special Economic Zone shall get the list of services specified in clause (105) of section 65 of the said Finance Act as are required in relation to the authorised operations in the Special Economic Zone, approved from the Approval Committee (hereinafter referred to as the specified services);

(b) the developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

[1][(c) the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone except for services consumed wholly within the Special Economic Zone;]

[2][(d) the developer or units of Special Economic Zone claiming the exemption, by way of refund in accordance with clause (c), has actually paid the service tax on the specified services;]

(e) no CENVAT credit of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004;

(f) exemption or refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone shall not be claimed except under this notification.

[3][(g) the developer or unit of a Special Economic Zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.]

2. The exemption contained in this notification [4][except for services consumed wholly within the Special Economic Zone, shall be subject to the following conditions], namely:-

(a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the developer or units of Special Economic Zone and used in relation to the authorised operations in the Special Economic Zone, and such person shall not be eligible to claim exemption for the specified services:

Provided that where the developer or units of Special Economic Zone and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

(b) the developer or units of Special Economic Zone shall claim the exemption by filing a claim for refund of service tax paid on specified services;

(c) the developer or units of Special Economic Zone shall file the claim for refund to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;

(d) the developer or units of Special Economic Zone who is not registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form annexed hereto with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;

(e) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the developer or units of Special Economic Zone within seven days from the date of receipt of the said Form;

<u>(f) the claim for refund shall be filed, within six months 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, from the date of actual payment of service tax by such developer or unit to service provider;</u>

(g) the refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services required in relation to the authorised operations in the Special Economic Zone, as approved by the Approval Committee;

(ii) documents for having paid service tax;

(iii) a declaration by the Special Economic Zone developer or unit, claiming such exemption, to the effect

that such service is received by him in relation to authorised operation in Special Economic Zone.

(h) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used in relation to the authorised operations in the Special Economic Zone, refund the service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

(i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

3. The exemption contained in this notification shall apply only in respect of service tax paid on the specified services on or after the date of publication of this notification in the Official Gazette.

4. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a Special Economic Zone."

2.3 Thus these six refund claims have been filed by the Appellant in terms of the above Notification which exempts taxable services provided in relation to authorized operations in an SEZ by way of refund to the developer or the unit in the SEZ. The Notification *interalia* provides the developer / the units of SEZ shall get the list of services specified in clause 105 of Section 65 of the Finance Act, 1994 as are required for authorized operations in the SEZ and use the specified services in relation to the authorized operations in the SEZ to be approved by the Approval Committee. The refund is subject to the condition *interalia* that the claim should be filed within 6 months from the date of actual payment of service tax by the unit or the developer to the service provider. Further, the exemption is applicable only in respect of service tax paid of the specified services on or after the date of publication of Notification which is 03.03.2009.

3.1 The Ld. Advocate Mr. H. Kumar has appeared for the Appellant and submitted a list of invoices along with the date, amount of service tax paid, type of service and whether filed within 6 months or not as extracted below. The reasons for rejection of the amount of service tax claimed as refund by the unit on the following grounds: -

i. Invoices for which service tax has been paid to the provider before 03.03.2009.
ii. Invoices relating to Tour Operators / Outdoor Catering.
iii. Invoices categorized as 'Outdoor Catering', but which may not fall under that service and
iv. Invoices for which payments have been made more than six months before filing the refund claim.

Sr.No.	Date of pay	ST	ED	Total	Type of service	6 months from the date of ST payment	Filing compliance	Remarks	Reasons for Rejection
1	25-07-2008	1,731	52	1,783	Outdoor caterer	NA	Prior to 03-03-2009	This is forgone in appeal	I, II, III & IV
2	06-08-2008	1,595	48	1,643	Outdoor caterer	NA	Prior to 03-03-2009	This is forgone in appeal	I, II, III & IV
3	03-11-2008	3,350	100	3,450	Outdoor caterer	NA	Prior to 03-03-2009	This is forgone in appeal	I, II, III & IV
4	04-11-2008	899	27	926	Outdoor caterer	NA	Prior to 03-03-2009	This is forgone in appeal	I, II, III & IV
5	04-12-2008	432	13	445	Outdoor caterer	NA	Prior to 03-03-2009	This is forgone in appeal	I, II, III & IV
6	02-12-2008	480	14	494	Consulting engineer	NA	Prior to 03-03-2009	This is forgone in appeal	I & IV
7	12-08-2008	11,340	340	11,680	Outdoor caterer	NA	Prior to 03-03-2009	This is forgone in appeal	I, II, III & IV
8	12-10-2009	8,932	268	9,200	Tour operator	12-04-2010	Filed after 6 months	Disallowed. Not for authorised operation	I, II & IV
9	12-10-2009	8,120	244	8,364	Tour operator	12-04-2010	Filed after 6 months	Disallowed. Not for authorised operation	I, II & IV
10	12-10-2009	1,380	42	1,422	Tour operator	12-04-2010	Filed after 6 months	Disallowed. Not for authorised operation	I, II & IV
11	06-10-2009	6,37,853	19,136	6,56,989	IT/ITES	06-04-2010	Filed after 6 months		IV
12	06-10-2009	2,156	65	2,221	IT/ITES	06-04-2010	Filed after 6 months		IV
13	06-10-2009	81,435	2,443	83,878	IT/ITES	06-04-2010	Filed after 6 months		IV
14	06-10-2009	9,80,431	29,413	10,09,844	IT/ITES	06-04-2010	Filed after 6 months		IV
15	06-10-2009	1,11,794	3,354	1,15,148	IT/ITES	06-04-2010	Filed after 6 months		IV
16	06-10-2009	8,35,692	25,071	8,60,763	IT/ITES	06-04-2010	Filed after 6 months		IV
17	06-10-2009	7,901	237	8,138	IT/ITES	06-04-2010	Filed after 6 months		IV
18	06-10-2009	6,66,786	20,004	6,86,790	IT/ITES	06-04-2010	Filed after 6 months		IV
19	06-10-2009	6,368	191	6,559	IT/ITES	06-04-2010	Filed after 6 months		IV
20	06-10-2009	6,42,416	19,272	6,61,688	IT/ITES	06-04-2010	Filed after 6 months		IV
21	06-10-2009	-682	-20	-702	IT/ITES	06-04-2010	Filed after 6 months		IV
22	06-10-2009	5,89,977	17,700	6,07,677	IT/ITES	06-04-2010	Filed after 6 months		IV
23	06-10-2009	392	12	404	IT/ITES	06-04-2010	Filed after 6 months		IV
24	06-10-2009	4,50,436	13,513	4,63,949	IT/ITES	06-04-2010	Filed after 6 months		IV
25	06-10-2009	364	11	375	IT/ITES	06-04-2010	Filed after 6 months		IV
26	03-11-2009	6,612	198	6,810	Tour operator	04-05-2010	Filed after 6 months	Disallowed. Not for authorised operation	II & IV
27	03-11-2009	8,120	244	8,364	Tour operator	04-05-2010	Filed after 6 months	Disallowed. Not for authorised operation	II & IV
28	03-11-2009	96	3	99	Tour operator	04-05-2010	Filed after 6 months	Disallowed. Not for authorised operation	II & IV
29	03-11-2009	232	7	239	Tour operator	04-05-2010	Filed after 6 months	Disallowed. Not for authorised operation	II & IV
30	03-11-2009	80	3	83	Tour operator	04-05-2010	Filed after 6 months	Disallowed. Not for authorised operation	II & IV
31	03-11-2009	5,400	162	5,562	Commercial training	04-05-2010	Filed after 6 months		IV
32	06-11-2009	403	12	415	Outdoor caterer	07-05-2010	Filed after 6 months	Disallowed. Not for authorised operation	II, III & IV
33	06-11-2009	403	12	415	Outdoor caterer	07-05-2010	Filed after 6 months	Disallowed. Not for authorised operation	II & III
34	16-11-2009	200	6	206	Tour operator	17-05-2010	Filed in time	Disallowed. Not for authorised operation	II
35	16-11-2009	1,493	45	1,538	Tour operator	17-05-2010	Filed in time	Disallowed. Not for authorised operation	II
36	16-11-2009	8,120	244	8,364	Tour operator	17-05-2010	Filed in time	Disallowed. Not for authorised operation	II
37	16-11-2009	500	15	515	Tour operator	17-05-2010	Filed in time	Disallowed. Not for authorised operation	II
38	18-11-2009	11,600	348	11,948	Tour operator	19-05-2010	Filed in time	Disallowed. Not for authorised operation	II
39	25-11-2009	13,800	414	14,214	Commercial training	26-05-2010	Filed in time		Eligible
40	26-10-2009	1,000	30	1,030	Commercial training	26-04-2010	Filed after 6 months		IV
41	14-12-2009	12,180	365	12,545	Tour operator	14-06-2010	Filed in time	Disallowed. Not for authorised operation	II
42	14-12-2009	100	3	103	Tour operator	14-06-2010	Filed in time	Disallowed. Not for authorised operation	II
43	17-12-2009	1,548	46	1,594	Tour operator	17-06-2010	Filed in time	Disallowed. Not for authorised operation	II
44	17-12-2009	8,932	268	9,200	Tour operator	17-06-2010	Filed in time	Disallowed. Not for authorised operation	II
45	22-12-2009	8,932	268	9,200	Tour operator	22-06-2010	Filed in time	Disallowed. Not for authorised operation	II
46	22-12-2009	200	6	206	Tour operator	22-06-2010	Filed in time	Disallowed. Not for authorised operation	II
47	04-12-2009	13,12,414	39,372	13,51,786	ITSS	04-06-2010	Filed in time		Eligible
48	04-12-2009	389	12	401	ITSS	04-06-2010	Filed in time		Eligible

3.2 In respect of invoices relating to tour operators, the Ld. Advocate has submitted that for its business purposes, conducting of client meetings & incurring expenditure on food delivered at their office have to be treated as being used for authorized operations. In respect of tour operator service, he submits that it is related to bus services provided to their employees as the place where the office of the Appellant is located is very far from the city necessitating the Appellant arranging bus facility for smooth commutation of employees for coming to the office and back. As such, the services provided have to be treated as in relation to authorized operations as these are essential for the functioning of the unit. He has further submitted that tour operators' service and outdoor catering service are covered in the list of approved services by the Development Commissioner, SEZ. He would submit that the refund claims were not filed under the provisions of the CENVAT Credit Rules, 2004 but under the Notification No. 09/2009-ST dated 03.03.2009 where the only requirement is that the services for which refund is claimed should be included in the list of specified services approved by the Developer Commissioner and are to be used for the authorized operations. The Original Authority and as well as the Appellate Authority have erred in rejecting their refunds on the ground that, the services are not used for the authorized operations or having not been qualified as input services under CENVAT Credit Rules, 2004 relying on the decisions in the case of *Vision Pro*

Event Management Vs. Commissioner of Central Excise & Service Tax, Chennai [2019 (365) ELT 555], wherein the Tribunal, Chennai Bench held that once the input services are approved by the Development Commissioner, the Department cannot contend that the said input services are not eligible for refund or these are not consumed within SEZ and also in the case of *Symantec Software and Services India Pvt. Ltd. Vs. Commissioner of GST & CE, Chennai South [Service Tax Appeal no. 40050 of 2019],* wherein the Tribunal, Chennai Bench held that once the input services are approved by the approval committee as services for authorized operations, the Department cannot reject the refund claim stating that these are used only for facilitation of employees and not for authorized operations.

3.3 He has also submitted that the other ground for rejection of refund is that certain invoices received by the Appellant from its vendors classifying services covered under those invoices as outdoor catering service but actually could not be considered as such. He has argued that it is a settled position in law that classification of service adopted by the vendor cannot be challenged at the Recipient's end i.e. at the Appellant's end. Once the Revenue has accepted the classification of service as outdoor catering at the service provider's end, the jurisdictional officer of the Appellant who is the recipient of the service, cannot question such classification. For this proposition the Appellant relies upon the following cases: -

i. *Commissioner of Central Excise & Customs vs. MDS Switchgear Ltd, [2008 (229) E.L.T. 485 (S.C.)], wherein the Hon'ble Supreme Court held that quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be con tested or challenged by the officers in charge of the recipient unit.*

ii. *Commissioner of Central Excise, Ahemdabad III vs. Nahar Granites, [2014-TIOL-582-HC-AHM-CX), wherein the Hon'ble Gujarat High Court held that, once classification has not been disputed at the manufacturer's end, then Cenvat credit on such duty cannot be declined to the purchaser of the goods who otherwise fulfilled all conditions for availing Cenvat Credit thereof.*

3.4 Further, he has contended that another ground for rejection of the refund claims is that the Appellant has filed the refund claims after six months from the date of payment to the vendor. In this regard, it is submitted that at the time of filing the application itself, *vide* Letter dated 14.05.2010, the Appellant had provided the reason which caused delay in filing its refund applications and sought condonation of such delay. The Notification grant discretion to the Adjudicating Authority to consider the reason and condone the delay in filing the refund application. Without examining the reason provided by the Appellant, the refunds are rejected, by both the Lower Authorities in a non-speaking manner which is not permitted in law. Without prejudice to the above, the intention of the exemption provided is to effectuate the larger objective of the SEZ Act, 2000, specifically, Sections 51 and 26 thereof which grants exemption to all the services that are used by the SEZ Unit. SEZ Act, 2000 has an over-riding effect over the other Acts including the Finance Act, 1994. Therefore, in a situation where the notification itself grants discretion to the officer to condone the delay, which is procedural in nature, denial to exercise such discretion is arbitrary and prayed to set aside. He has further informed that in the Appellant's own case for the period January 2010 March 2010, the refund processing authority *vide* Order-in-Original dated 29.06.2011 had exercised its discretion and condoned the delay in filing of the refund application for the said period.

4.1 The Ld. Authorized Representative Mr. M. Selvakumar representing the Revenue has argued that the Appellant is not eligible for filing the refund claims of service tax paid on those invoices which were dated earlier to the issuance of the Notification No. 09/2009-ST dated 03.03.2009. He has drawn our attention to the findings of the Original Adjudicating Authority that tour operator services and outdoor catering services are not services that can be considered as having been used in the authorized operations of the unit but are staff welfare / entertainment measures. He has referred to the findings of the Original Adjudicating Authority in Orders-in-Original to press the point that these services could not be considered to have been used in connection with authorized operations.

4.2 He has referred to paragraph 9 of the Order-in-Original No. 65/2011 (R) dated 28.02.2011, wherein the Adjudicating Authority has observed that 'Tour Operator services' and 'Outdoor Catering Services' are not services that can be considered as having been used in the 'authorized operations' of the unit but are staff welfare/entertainment measures. To highlight that such services cannot be considered as having been consumed for the authorised operations, in some of the invoices issued by Sabari Inn Private Limited and Quality Inn MGM Resorts which have been included in the category of 'Outdoor Catering' by the unit, that the items billed includes Wine, Vodka, Rum etc. Further, the charges also include Banquet Hall charges / Restaurant charges / Music System / Room service etc., which shows that the invoices do not relate to 'outdoor catering' but for in-house services of the hotels.

4.3 The Ld. Authorized Representative has further pointed that an excess amount of Rs.3,06,113/- was paid which cannot be treated as relating to taxable services. Further, in respect of one challan dated 16.10.2009, an amount of Rs.1,64,320/- which was paid towards the interest and delayed payment of service tax was included for claiming refund of service tax paid which cannot be categorized to have been used for authorized operations. He prayed for rejection of the appeals filed as the Lower Authorities have examined all the documents relating to their eligibility for service tax refund.

5. We have heard both sides and perused the records and also the case laws relied upon.

6. The only issue that is required to be determined in these appeals is whether rejection of refund claims is justified or not?

7. The Appellant has filed 6 refund claims as detailed in the above table *supra* for the period from October 2009 to December 2010 under the Notification No. 09/2009-ST dated 03.03.2009 as amended. The Original Adjudicating Authority after going through all the invoices furnished by the Appellant have sanctioned part of the refund claims while rejecting other part for various reasons which are categorized as given below: -

i. Invoices for which service tax has been paid to the provider before 03.03.2009.
ii. Invoices relating to Tour Operators / Outdoor Catering.
iii. Invoices categorized as 'Outdoor Catering', but which may not fall under that service and
iv. Invoices for which payments have been made more than six months before filing the refund claim.

8. The details of the invoices along with date and type of invoices and the amount of service tax involved *etc.,* are given in the Annexure to the Show Cause Notice as tabulated in paragraph 3.1 *supra.* To avail the benefit of exemption of the above Notification, the Appellant is required to pay service tax on the services utilized in connection with the authorized operation and also the services should be

approved by the Approval Committee for their use for authorized operations in SEZ.

9. The said Notification providing for a refund of service tax paid on input services has come into effect from 03.03.2009. As such, invoices listed at Sl.Nos. 1-7 in the above table on which the Appellant has claimed refund are not eligible as the Appellant has included these invoices for which payment has been made before 03.03.2009, the date on which said Notification came into effect. The Appellant is not eligible for exemption as can be made applicable only in respect of service tax paid after that date i.e., 03.03.2009. The Appellant during the submissions before the Tribunal has categorically indicated that they have foregone these amounts even before the Appellate Authority. In respect of other invoices, the claim for service tax refund has been rejected which are pertaining to tour operator and outdoor catering, commercial training and information technology services for the reason that these are not filed within 6 months from the date of payment of service tax as prescribed under 2(f) of the aforesaid Notification. The other grounds raised for rejecting the refund claims filed are that in respect of outdoor catering and tour operator services could not be treated as utilized for authorized operations.

However, the Ld. Advocate has relied upon decisions in the cases of *Vision Pro Event Management Vs. Commissioner of Central Excise & Service Tax, Chennai [2019 (365) ELT 555]* and also *Symantec Software and Services India Pvt. Ltd. Vs. Commissioner of GST & Central Excise, Chennai South [Service Tax Appeal No. 40050 of 2019]* wherein the Tribunal held that once the input services are approved by the Approval Committee as services for authorized operations, the Department cannot reject the refund claim stating that these are used only for facilitation of employees and not for authorized operations. The Appellant has also submitted that they are used for conducting the client meetings which is an important function and definitely relating to the authorized operations and refund cannot be rejected on this pretext and the tour operator service is essential for carrying the employes 'to and fro' to the unit which is required for smooth functioning. These are genuinely required for the Appellant's business and so denial of refund on these grounds is not justified.

10. The Adjudicating Authority has relied upon the Circular No. 120/01/2010-ST dated 19.01.2010 to deny the benefit of outdoor catering services and also tour operator services commenting that there is no sufficient nexus

between the services and authorized operations as detailed in para 3.1.2 as below: -

> *"3.1.2 Therefore, the phrase, "used in" mentioned in Notification No. 5/2006-CX (NT) to show the nexus also needs to be interpreted in a harmonious manner. The following test can be used to see whether sufficient nexus exists. In case the absence of such input/input service adversely impacts the quality and efficiency of the provision of service exported, it should be considered as eligible input or input service. In the case of BPOs/call centres, the services directly relatable to their export business are renting of premises; right to use software; maintenance and repair of equipment; telecommunication facilities; etc. Further, in the instant example, services like outdoor catering or rent-a-cab for pick-up and dropping of its employees to office would also be eligible for credit on account of the fact that these offices run on 24 x 7 basis and transportation and provision of food to the employees are necessary pre-requisites which the employer has to provide to its employees to ensure that output service is provided efficiently. Similarly, since BPOs/call centres require a large manpower, service tax paid on manpower recruitment agency would also be eligible both for taking the credit and the refund thereof. On the other hand, activities like event management, such as company-sponsored dinners/picnics/tours, flower arrangements, mandap keepers, hydrant sprinkler systems (that is, services which can be called as recreational or used for beautification of premises), rest houses etc. prima facie would not appear to impact the efficiency in providing the output services, unless adequate justification is shown regarding their need."*

A perusal of this Circular makes it all the more clear that tour operator service, rent-a-cab service and outdoor catering service once approved cannot be termed as not used for authorized operations.

11. Thus, considering the explanation given by the Appellant, we do not find any justification for rejecting the service tax refund claim on tour operator services and outdoor catering services when these services are approved by the Approval Committee and also used for authorized operations.

12. In the case of *Commissioner of Service Tax, Pune Vs. Eaton Technologies Pvt. Ltd. [2017 (47) STR 355 (Tri.-Mumbai)]*, the Tribunal held as follows: -

> ***"6.*** *It is not in doubt that the services which were provided to the respondent were taxable and that the service tax on the supplied services had been discharged. The sole issue for determination is whether services for which tax has been collected along with consideration by the provider have been utilised in connection with the authorized operations for which the competent authority is the Development Commissioner. There is no finding that these are not approved services. The assessment to tax and the exemption provided under Notification No. 40/2012-S.T. merely lays down the procedure for reimbursement of a tax that should not have been collected in the first place. That it was collected is attributable to the caution exercised by the service provider who would rather not tangle with the possible intransigence on the part of service tax officers. No evidence has been produced to show that M/s. Mayur*

Hotels has not rendered 'outdoor catering service' or provided catering service outside the zone. In these circumstances, there is no ground to warrant interference in the impugned order."

13. Major and significant portion of the refund claims filed have been rejected as the same are not filed within 6 months from the date of payment of service tax as per the condition mentioned at 2(f) of the Notification *ibid*. The condition mentioned at 2(f) of the Notification No. 09/2009-ST dated 03.03.2009 is extracted below: -

"***2. …***

(f) the claim for refund shall be filed, within six months 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, from the date of actual payment of service tax by such developer or unit to service provider;"

A perusal of the above condition indicates that when there is a delay in filing the refund claim, the Assistant Commissioner or the Deputy Commissioner of Central Excise have been endowed with authority to allow extension of time for filing the claims.

14. We find in these appeals, the Ld. Advocate has advanced the reason that the delay is caused by the Consultant in filing the claims. In the case of *Vedanta Aluminium Limited Vs. Commissioner of Central Excise and Service Tax, Bhubaneswar [2024 (3) TMI 1325-CESTAT KOLKATA],* the Tribunal Kolkata has held as follows: -

"7.1. The appellant contends that the SEZ Act, being a specialized act, is having overriding effect over any other act. Accordingly, it is their contention that a notification issued under Service Tax cannot restrict or provide a time-limit for grant of refund of Service Tax which is not payable under the SEZ Act.

7.2 We find that the contention raised by the appellant has been considered by the Tribunal, New Delhi in the case of M/s. SRF Ltd. (supra) wherein the Tribunal observed as under: -

> *"37. Thus, Section 26(1) of the SEZ Act is inconsistent with the three charging sections viz., Section 3 of the Central Excise Act, 1944, Section 12 of the Customs Act, 1962 and Sections 66, 66A and 66B of Chapter V of the Finance Act, 1994. In addition to the general principle of a specific law (pertaining to SEZ) prevailing over the general law (levying customs, central excise or service tax) and the later enactment (such SEZ Act, 2005) prevailing over the earlier enactments (Central Excise Act, 1944, Customs Act, 1962 and Finance Act, 1994), in the SEZ Act, the Parliament has explicitly resolved this inconsistency between the laws. Section 51 of the SEZ Act states that the provisions of SEZ Act override any other provisions of other laws. It reads as follows :*
>
> > *51.(1) 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.*
>
> *38. Thus, insofar as supplies for authorised operations of SEZ developers and units are concerned, Section 26 of the SEZ Act overrides the charging sections in all the three Acts.*
>
> *39. The charging sections, having been overridden by the SEZ Act passed by the Parliament, no legal authority to levy and collect central excise duty, customs duty or service tax for goods or*

services supplied for authorised operations of SEZ developers and units covered by Section 26 remains. Without such a legal authority, no tax or duty can be either levied or collected in view of Article 265 of the Constitution of India.

40. Therefore, there is no need for any exemption notifications under any of these three Acts nor is it necessary to fulfil any conditions of any of the conditions laid down in exemption notifications, if any, issued for the purpose. Thus, the charge of excise duty under Section 3 of the Central Excise Act, the charge of Customs Duty under Section 12 of the Customs Act and the charge of service tax under Sections 66, 66A and 66B of the Finance Act, 1994 will not apply to goods and services supplied to developers and units for authorized operations in the SEZ areas by virtue of the overriding provisions of the SEZ Act. Any exemption notifications and conditions therein are therefore, redundant because, the Parliament itself has, through Section 51 of the SEZ Act, overridden the charge in the other laws.

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48. Thus, as the charge of service tax under the Finance Act, 1994 on the services provided for authorised operations of the appellant are overridden by section 51 of the SEZ Act, 2005, any exemption notifications for such services as well as the conditions laid down in them are redundant. Service tax, if any, paid on such input services for authorised operations need to be refunded to the appellant. We also find no force in the other grounds raised for denying the refund of service tax paid and discussed above.

49. The denial of refund of service tax to the appellant in these five appeals is not sustainable and, accordingly, we find that appeals need to be allowed and the impugned orders need to be set aside."

7.3 This view was also taken in the case of DLF Assets Pvt. Ltd. (supra) wherein it has been held as under: -

"18. The contention advanced by the Learned Counsel for the appellant has force. As noticed above, Section 26(1) of the SEZ Act provides that subject to the provisions of the sub-section (2), every Developer shall be entitled to exemptions and the exemption at (e) exempts every Developer from service tax under Chapter-V of the Finance Act on taxable services provided to a Developer or unit to carry on the authorized operations in a SEZ. Section 51 of the SEZ Act provides for an overriding effect to the provisions of the SEZ Act. The provisions of Section 26 read with Rule 31 of the SEZ Rules thus, have overriding effect over anything inconsistent contained in any other law for the time being in force, which would include the Finance Act. It needs to be noted that the Notification

> *dated March 3, 2009 has been issued in exercise of the powers conferred by Section 93 of the Finance Act. Thus, when the services rendered by the appellant are fully exempted from service tax in terms of the provisions of the SEZ Act, the condition of exemption by way of refund imposed under the Notification issued under the Finance Act would be inconsistent with the provisions of the SEZ Act. It also needs to be noted that the SEZ Act was enacted in 2005, much after the enactment of the Finance Act in 1994.*
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> *21. 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, 2009, which has been issued under Section 93 of the Finance Act, therefore, has no application."*

7.4 In the view of Section 26(1) of the SEZ Act read with Rule 31 of the SEZ Rules, we observe that the conditions of Notification No. 09/2009-S.T. are clearly repugnant and inapplicable. This is because Section 51 of the SEZ Act grants overriding power to the provisions of the SEZ Act. We find that the Tribunal, New Delhi in the case of M/s Lupin Ltd. (supra) has held this view and the observations of the Tribunal are reproduced as under: -

> *"21. From the aforesaid, it is evident that the appellant fulfilled the criterias of eligibility to claim refund of the service tax paid on input services in terms of the Notification No 12/2013-ST. Infact it is not the case of the revenue that the appellant is not eligible to make such claims. Their only objection is to the claim being filed beyond the period of one year as per the notification. We are of the considered opinion that once the appellant is found to be eligible to claim the refund, the substantive conditions are complied with and the condition of time limit for making the claim under the notification being only a procedural requirement, needs to be construed liberally. Considering the beneficial object of establishing the SEZ tax free, without any burden of duties, the procedural lapse, if any,*

> *cannot be the basis to deny the refund to the appellant. The exemption is intended to be absolute is further evident from para 3 (11) of the Notification which provides for ab-initio exemption. This strengthens our conclusion that the SEZ Act and the Rules read with the notification is intended to be a beneficial policy for the SEZ, therefore has to be construed liberally. In our view we are supported by the decision of the Apex Court in Government of Kerala &Anr. Vs. Mother Superior Adoration Convent (supra), where it has been held that the beneficial purpose of the exemption must be given full effect to and before interpreting a statute, "we must first ask ourselves what is the object sought to be achieved by the provision and construe the statute in accordance with such object". The Court went ahead to hold that in the event of any ambiguity in such construction, such ambiguity must be in favour of that which is exempted. On the principle that there is a clear distinction between exemptions which are to be strictly interpreted as opposed to beneficial exemptions having the purpose of encouragement or promotion of certain activities, the Court relied on several decisions. ….*

8. The appellant also contended that in terms of Notification No. 09/2009-S.T. exemption is granted by way of refund of Service Tax in situations where services are not wholly consumed in the SEZ. Whereas for the services which are wholly consumed in SEZ, the appellant need not pay service tax at all because the assessee is eligible for outright unconditional exemption for the services wholly consumed in the SEZ. This change was brought about by Notification No. 15/2009-S.T. dated 20.05.2009.

8.1 We agree with the above contention of the appellant. If Service Tax is paid with respect of services which are wholly consumed within the SEZ, it would be the case of Service Tax wrongly paid, as no service tax is otherwise payable. In that case the refund claim of the assessee would not be covered by Notification No. 09/2009-S.T., but rather it would be covered under Section 83 of the Finance Act read with Section 11B of the Central Excise Act, 1944. In such a case the time period for filing the refund claim is one year and the appellant has filed the refund claim within this period of one year. Accordingly, the refund claim can be considered to be filed within the prescribed time-limit. We find that a similar view has been taken by the Tribunal in the case of M/s. Tata Consultancy Services Ltd. (supra).”

15. Further, in the case of *Congnizant Technology Solutions India Pvt. Ltd. Vs. Commissioner of Central Excise & Service Tax, Chennai [2021 (10) TMI 642-CESTAT CHENNAI]*, the Tribunal held as follows: -

> **"***It is not disputed that all claims had been filed on or before the last date for filing the refund claims. These were returned by issuing Deficiency Memo since the appellant had not furnished necessary documents - It can be seen from the Deficiency Memo that the refund claim is returned to the appellant. There is no decision on merits; there is no application of mind or a speaking order rejecting the claim.*
>
> *In the present case, the appellant has filed the refund claims originally within a period of one year and therefore, the date on which the claims were re-submitted along with documents cannot be considered to be the date of filing claim so as to deny the refund on the ground of limitation - The Tribunal in the case of BALMER LAWRIE & CO. LTD. VERSUS COMMISSIONER OF C. EX., KOLKATA-VI [2014 (8) TMI 977 - CESTAT KOLKATA] considered a similar issue and held that when the claim has been filed within the limitation period of one year and returned by the Department for removal of defects, the date of subsequent re-submission cannot be taken as the date on which the claim is filed afresh.*
>
> *This issue as to whether the terms and conditions prescribed in the Service Tax Notifications will prevail over Section 26 of the SEZ Act, 2005 read with Section 51 of the SEZ Act, 2005 was analysed by the Hon'ble High Court of Telangana and Andhra Pradesh in the case of GMR AEROSPACE ENGINEERING LIMITED AND ANOTHER VERSUS UNION OF INDIA AND OTHERS [2019 (8) TMI 748 - TELANGANA AND ANDHRA PRADESH HIGH COURT]. This Tribunal in the case of M/S. TVS LOGISTICS SERVICES LTD. VERSUS THE PRINCIPAL COMMISSIONER OF SERVICE TAX CHENNAI SOUTH COMMISSIONERATE [2021 (8) TMI 450 - CESTAT CHENNAI] has applied the above decision of the Hon'ble High Court of Telangana and Andhra Pradesh and held that Section 51 of the SEZ Act, 2005 has an*

overriding effect. The denial of the benefit of exemption by relying upon procedural requirement of a Notification would be against the provisions laid down in the SEZ Act.

The terms and conditions of the Notifications (04/2004-ST, 09/2009-ST and 17/2011-ST, as applicable for different periods) cannot be pressed into application to deny the substantive benefit of exemption enshrined in Section 26 of the SEZ Act, 2005 - the rejection of refund claims on the ground of being time-barred cannot sustain and requires to be set aside."

16. In view of the above discussion and appreciating the facts and applying the ratio of the above decisions relied upon, we are of the view that once the services are approved by the Approval Committee and are utilized in relation to the authorized operations in SEZ, rejecting a part of the claims is not in order as above. However, the Refund Sanctioning Authority has to satisfy himself that these input services are approved by the Approval Committee, due service tax has been paid, no CENVAT credit on these services availed and are used for authorized operations.

17. In summary, the Appellant has foregone the service tax amount involved on those invoices which are paid before the Notification No. 09/2009-ST dated 03.03.2009 came into effect. Further, the Appellant has wrongly produced invoices which are totally unrelated to authorized operations like invoices pertaining to interest paid,

conducting sports event and expenditure relating to services availed as detailed in Paragraph No. 4.3 above. We hold that these services cannot be treated as related to authorized operations and approve the Original Authority's denial of service tax paid in respect of these invoices. In terms of the decision of Hon'ble Supreme Court in the case of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company [2018 (361) ELT 577 (SC)]*, the onus is on the Appellant to prove that he has satisfied the conditions of the Notification No. 09/2009-ST dated 03.03.2009 which provides for refund of service tax paid to SEZ units.

18. In the result, the impugned Orders-in-Appeal Nos. 96-101/2015 (STA-I) dated 30.03.2015 passed by Commissioner of Service Tax (Appeals-I) is set aside on the above terms.

19. The appeals filed are allowed but for the above modification with consequential relief, if any, as per the law.

(Order pronounced in open court on 26.06.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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