

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT No. III

**Service Tax Appeal Nos. 40704 to 40706 of 2016**

(Arising out of Order-in-Appeal Nos. 41 to 43/2016 (STA-I) dated 04.01.2016 passed by the Commissioner of Service Tax (Appeals-I), Newry Towers, 2054/1, 12<sup>th</sup> Main Road, Anna Nagar, Chennai – 600 040)

**M/s. Celebrity Fashions Limited**

SDFF IV & C2, III Main Road,  
MEPZ-SEZ Tambaram,  
Chennai – 600 045.

**...Appellant**

***Versus***

**Commissioner of GST and Central Excise**

Chennai Outer Commissionerate,  
Newry Towers, No. 2054/1, II Avenue,  
12<sup>th</sup> Main Road, Anna Nagar,  
Chennai – 600 040.

**...Respondent**

**APPEARANCE:**

For the Appellant : Ms. P. Varshini, Advocate

For the Respondent : Mr. N. Satyanarayana, Authorized Representative

**CORAM:**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 23.09.2025**

**DATE OF DECISION : 16.12.2025**

**FINAL ORDER Nos. 41490 - 41492 / 2025**

**Order:-**

Service Tax Appeal Nos. ST/40704 to 40706/2016  
have been filed by Celebrity Fashions Ltd., Chennai,  
challenging the rejection of refund in Order-in-Appeal Nos.  
41-43/2016 dated 04.01.2016 passed by the Commissioner of  
Service Tax (Appeals-I), Chennai.

2. The Company is an SEZ unit engaged in the manufacture and export of ready-made garments. For their SEZ operations, they avail various input services on which service tax is paid either by the service providers or by the Appellants under the reverse charge mechanism as per Notification No. 30/2012-ST dated 20.06.2012. Being an SEZ unit, the Appellants are eligible to claim refund of such service tax in terms of Notification No. 40/2012-ST dated 20.06.2012. Accordingly, they filed refund claims on 09.05.2013 for the period July-September 2012, on 26.11.2013 for October-December 2012, and on 20.02.2014 for January-March 2013, seeking refunds of 23,98,207/-, 29,75,879/-, and 25,78,353/- respectively, towards service tax paid on services such as Rent-a-Cab, Works Contract, Management or Business Consultancy, Manpower Supply, Security Services, etc.

3. The Assistant Commissioner of Central Excise, Tambaram I Division, through Orders-in-Original No. 03/2014 dated 31.01 2014, 37/2014 dated 06.06.2014, and 65/2014 dated 08.08.2014, had partially rejected the refund claims. Aggrieved by these orders, the Appellants filed appeals before the Commissioner of Central Excise (Appeals). The Commissioner, *vide* common Orders-in-Appeal Nos. 41, 42 & 43/2016 (STA-1) dated 04.01.2016, from para 6 onwards,

arrived at the following findings for rejection of refund in certain cases: -

**a. Management Consultancy service: -**

The Commissioner rejected the refund relating to service tax paid on "Management or Business Consultancy Service" on the ground that the Appellants had claimed the benefit under Sl. No. 5 of Notification No. 30/2012-ST dated 20.06.2012, stating it be "Management or Business Consultancy Service", however the adjudicating authorities have noted that same pertains to "Legal Services." The Commissioner (Appeals) has further observed that the invoices produced described the service as "Company Secretary." The Commissioner finds that neither "Management nor Business Consultancy Service" is covered under the said notification entry nor is "Legal Service" included in the list of default authorized services for SEZ. Accordingly, the refund on this service was denied.

**b. Security Service: -**

Since the service provider in the present case is a private limited company and therefore not covered under Notification No. 30/2012-ST, as amended by Notification No. 45/2012-ST, for the purpose of claiming refund, the

learned Commissioner upheld the rejection of the refund claim pertaining to this invoice.

**c. Rent-a-cab & Insurance service: -**

The Ld. Commissioner rejected the refund claim on the ground that the rent-a-cab and insurance services were merely facilitating activities for the Appellants' staff/workmen and had no nexus with the manufacturing operations. He further observed that, under the SEZ Act, 2005, benefits and concessions are not available for services used for the personal use or consumption of officials, workmen, staff, owners, or any other person connected with the Unit or Developer.

**d. Discrepancies in the invoices: -**

The Ld. Commissioner, upon noticing discrepancies in the invoices such as non-availability of STC numbers, invoices not being addressed to the SEZ unit, and non-submission of certain invoice copies for verification either before the adjudicating authority or before him-observed that the rejection of refund on these grounds was sustainable.

4. Aggrieved by the portion of the common Orders-in-Appeal Nos. 41, 42 & 43/2016 (STA-I) dated 04.01.2016 whereby part of their refund claims was rejected as discussed above, the Appellants have preferred the present Appeals before this Forum.

5. The Ld. Advocate Ms. P. Varshini appearing for the Appellants, submitted that lower adjudicating authority had violated the principles of natural justice by not granting an opportunity of being heard to the Appellants before passing the Order-in-Original Nos. 03/2014 dated 31.01.2014, 37/2014 dated 06.06.2014, and 65/2014 dated 08.08.2014 and for the same reasons, and so these orders are liable to be set aside.

6. On merits, the Ld. Advocate submits that the rejection of refund relating to rent-a-cab and insurance services is erroneous. She states that the lower authority wrongly applied the provisions of the Cenvat Credit Rules, 2004, even though the refund claim was filed under Notification No. 40/2012-ST dated 20.06.2012. She argues that the Notification does not require an assessment of whether a service qualifies as an "input service" under Rule 2(1) of the Cenvat Credit Rules, 2004.

7. The Ld. Advocate further submits that the benefit under Notification No. 40/2012-ST is available to all services approved by the Development Commissioner and used in or in relation to the Authorized Operations of the SEZ unit. Since rent-a-cab and insurance services were duly approved and used for authorized SEZ operations, the Appellants are fully eligible for the refund of service tax paid thereon. In support of her submissions, the learned Advocate relies on the judgment of the Telangana & Andhra Pradesh High Court in GMR Aerospace Engineering Ltd. & Ors., 2019 (8) TMI 748, and the decision of the CESTAT, Delhi, in ATC Tires Pvt. Ltd., 2023 (8) TMI 659.

8. The Ld. Advocate submits that the Appellants had obtained the requisite approval of the Unit Approval Committee (UAC) for availing rent-a-cab services, as mandated under Rules 10 and 12 of the SEZ Rules, 2006 read with Section 26(e) of the SEZ Act, 2005. She points out that the approval-which included rent-a-cab service in the default list of approved services was valid up to 06.05.2013, thereby covering the entire period of dispute. Hence, rent-a-cab and insurance services, being approved services used for Authorized Operations, are eligible for refund.

9. With respect to Management Consultancy Service and Security Service, the learned Advocate argues that the rejection on the ground that the Appellants were allegedly not liable to pay service tax under the reverse charge mechanism is untenable. She submits that once these services are "specified services" under Notification No. 40/2012-ST dated 20.06.2012 and their use for Authorized Operations is not in dispute, the refund cannot be denied on the basis of technical objections regarding liability under reverse charge.

10. She further contended that even assuming, without admitting, that the service tax paid under reverse charge was not payable, such payment would constitute a mere deposit. In law, the department cannot retain any amount paid without authority. She drew attention to para 13.3 of the impugned order, where the Commissioner (Appeals) himself observed that any amount realised beyond what is permitted in law would be a realization outside the scope of the Act. Applying the same principle, she argues that the service tax paid on Management Consultancy and Security Services is also refundable.

11. With regard to the rejection of refund on the ground that certain invoices did not contain the service tax registration number, the Ld. Advocate submits that the invoices in question were issued by the State Bank of India, and the absence of the registration number was merely a procedural lapse. She argues that when the eligibility of the input service and its use for Authorized Operations is not in dispute, a substantive refund benefit cannot be denied for a procedural irregularity. In support of her contention, she relies on the decision of this Tribunal in *Austin Engineering Co. Ltd. v. CCE & ST, Bhavnagar, 2023 (12) TMI 119 (CESTAT Ahmedabad)*, wherein similar procedural deficiencies were held not to be fatal to refund claims.

12. The Ld. Authorized Representative Mr. N. Sathyanarayana has represented the Department. He has affirmed the findings of the Lower Adjudicating Authorities. He has argued that the appellant is not eligible for refunds as rejected in the impugned order and therefore, requested for upholding of the impugned order.

13. Heard both sides and considered the submissions made in the grounds of appeal and also during the course of hearing before the Tribunal.

14. I find that the primary issue in these appeals is whether the impugned Orders-in-Appeal are sustainable when they emanate from Orders-in-Original Nos. 03/2014 dated 31.01.2014, 37/2014 dated 06.06.2014, and 65/2014 dated 08.08.2014, all of which were passed in gross violation of the principles of natural justice. The Commissioner (Appeals), in para 6 of the impugned order, has himself acknowledged that the adjudicating authority failed to grant personal hearing, thereby accepting a clear breach of natural justice. In such circumstances, the Commissioner (Appeals) ought to have set aside the orders and remanded the matter to the original authority. Instead, he proceeded to decide the case on the basis of the findings of the lower authority, merely on the ground that an opportunity of hearing was provided at the appellate stage which is a post decisional hearing that will not cure the defect of absence of pre- decisional hearing in terms of decision of the Hon'ble Supreme Court in the case of *Institute of Chartered Accountants v. L.K. Ratna (1986) 4 S.C.C. 537*.

15. On merits, I find that the refund has been rejected basically on procedural aspects, applying the conditions of the notification issued under the Finance Act, 1994 and applying the rules of Cenvat Credit Rules, 2004. In this context, the decision of the Hon'ble High Court in the case of *GMR Aerospace Engineering Ltd. & Another Vs. UOI & Ors* reported in 2019 (8) TMI 748, wherein while discussing at para 18 of the decision as to "*whether the availability of exemptions under section 26 of the SEZ Act would depend not only upon the terms and conditions prescribed under section 26(2), but also upon the terms and conditions prescribed in the notifications issued under various enactments such as Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1944, Central Excise Tariff Act, 1985, Finance Act, 1994 and Central Sales Tax Act, 1956, etc., enlisted in clauses (a) to (g) of sub-section (1) of section 26 of the Act.*", the Hon'ble High Court has come to the following conclusions: -

*"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.*

*39. After prescribing all the above three, in section 26(1) itself, the Act also empowers the Central Government to prescribe in the form of Rules, the manner in which and the terms and conditions subject to which the exemptions are to be granted. Therefore, all the parameters indicated in *Girnar Traders [2011] 3 SCC 1* are satisfied in section 26 and the*

*Rules issued thereunder. If the word "prescribe" has not been defined or at least if section 26 had used the words "prescribed under the relevant statutes" the position would have been different.*

*40. Inviting our attention to a Circular No. 105/08/2008 in F. No. 137/168/ 2008-CX. 4, dated September 16, 2008, Smt. Sundari R. Pisupati, learned senior standing counsel contended that there is no exclusion of SEZ in Chapter V of the Finance Act, 1994 and that the service tax is applicable on taxable services provided by SEZ units, except those that are exempt by Notification No. 4 of 2004. She also drew our attention to the amendment introduced to the SEZ Rules by way of notification in GSR 772(E), dated August 5, 2016. Under this notification, sub-rule (5) was inserted under rule 47 of the SEZ Rules, 2006. This sub-rule (5) inserted in rule 47 of the SEZ Rules, 2006 reads as follows :*

*"(5) Refund, demand, adjudication, review and appeal with regard to matters relating to unauthorized operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder."*

*41. On the strength of the aforesaid circular and the amendment to the Rules, it was contended by the learned senior standing counsel that the machinery provisions for working out refund, drawback, etc., are not available either in the SEZ Act or the Rules framed thereunder and that therefore, the operation of the Act is subject to the provisions of the other enactments.*

*42. But, we do not agree. Though the "section title" to section 26 reads as "exemptions, drawbacks and concessions", clauses (a) to (g) except clause (d) speak only about exemptions. It is only clause (d) of sub-section (1) of section 26, which speaks about drawbacks and such other benefits. In so far as exemption is concerned, sub-section (1) makes the entitlement of a developer to exemption, subject only to the provisions of sub-section (2) of section 26. Sub-section (2) of section 26 empowers the Central Government to prescribe both the manner in which as well as the conditions subject to which exemptions may be granted. Therefore, the area relating to exemption is completely occupied by the rules.*

*43. It is only the issues relating to refund, demand, adjudication, review and appeal, which were left unoccupied*

*by the SEZ Act and the Rules framed thereunder. Realising the vacuum in respect of these specific areas, sub-rule (5) was inserted under rule 47. Sub-rule (5) of rule 47 makes a reference to the provisions of the three enactments namely Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 and the Rules made there- under and the notifications issued thereunder. It is by virtue of this sub-rule (5) that the authorities can fall back upon the Rules and notifications issued under those three enactments. The very fact that sub-rule (5) was inserted would show, that but for its insertion, the respondents cannot fall back upon the Rules framed under the Customs Act, etc., for dealing with a question of refund, demand, adjudication, etc.*

*44. The issue can be looked at from another angle also. If sub-rule (5) of rule 47 had also included the procedure for grant of exemption within its purview, then the stand taken by the Department would be perfectly valid. The very fact that sub-rule (5) of rule 47 made the Rules and notifications issued under certain Acts applicable only to issues of refund, demand, etc., would show that rules 22 and 31 have independent legs to stand.*

*45. Therefore, the writ petition is allowed, the order-in-original dated February 20, 2018 is set aside and the notifications in question in so far as they relate to special economic zones, are set aside. There shall be no order as to costs."*

16. I also find that above decision has been followed by this Tribunal in the case of *M/s. ATC Tires Private Limited Versus Commissioner of G.S.T. and Central Excise, Madurai* reported in 2018 (9) TMI 1673 (CESTAT Chennai), *M/s. MARS Transport vs. Commissioner of GST and Central Excise, Chennai III* reported in 2024 (8) TMI 587 (CESTAT-Chennai) while deciding whether SEZ Act has overriding effect.

17. In view of the above reasons, I order to set aside the impugned Orders-in-Appeal Nos. 41- 43/2016 dated 04.01.2016 with consequential relief, if any. Thus, the appeals are disposed of accordingly. The appellant is eligible for consequential relief(s), if any, as per law.

(Order pronounced in open court on 16.12.2025)

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

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