CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50512 of 2019

(Arising out of order-in-appeal No. 533(SM)ST/JPR/2018 dated 31.12.2018 passed by the Commissioner (Appeals) Central Excise and Central Goods & Service Tax, Jaipur).

M/s Global Stones Pvt. Ltd., **Appellant**
PA-010-006, Special Economic Zone
Engineering and Related Industries
Mahindra World City, Sanganer
Jaipur-302037.

VERSUS

Commissioner, Central Goods & Service Tax and Central Excise **Respondent**
New Central Revenue Building
Statue Circle, C-Scheme, Jaipur (Rajasthan).

AND

Service Tax Appeal No. 51291 of 2019

(Arising out of order-in-appeal No. 533(SM)ST/JPR/2018 dated 31.12.2018 passed by the Commissioner (Appeals) Central Excise and Central Goods & Service Tax, Jaipur).

Pr. Commissioner Central Goods and Service Tax & Central Excise **Appellant**
New Central Revenue Building
Statue Circle, Jaipur (Rajasthan).

VERSUS

M/s Global Stones Pvt. Ltd., **Respondent**
PA-010-006, Special Economic Zone
Engineering and Related Industries
Mahindra World City, Sanganer
Jaipur-302037.

APPEARANCE:

Sh. B. L. Narasimhan, Advocate for the assessee
Dr. Radhey Tallo, Authorised Representative for the Revenue

Coram:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 52121 - 52122/2021

DATE OF HEARING/DECISION: 24.12.2021

ANIL CHOUDHARY:

The issue involved in these cross appeals is whether the refund of Service Tax have been rightly rejected on the lease premium charges paid by the appellant SEZ unit.

2. Global Stones Private Limited ('**Global Stones**') is engaged in the manufacture of engineered stone (Quartz) from its SEZ Unit situated at Mahindra World City, Sanganer, Jaipur. The quartz manufactured by Global Stones is intended for export. For this activity, Global Stones was granted the Letter of Approval ('**LOA**') on 31.05.2017.

3. In order to set up its SEZ unit, Global Stones entered into a lease agreement with Mahindra World City (Jaipur) ('**Mahindra**'). <u>As per the lease agreement between the two parties, Mahindra gave land on lease to Global Stones for a period of 90 years. In lieu of this, Global Stones paid an amount of Rs. 8,44,86,780/- as 'lease premium' against invoice dated 31.03.2017. On such amount, service tax of Rs. 1,26,73,017/- was paid under the category of 'renting of immovable property' service.</u>

(emphasis supplied).

4. It is urged that the impugned OIA has allowed the refund claim of Global Stones on merits, albeit has directed that the refund should be sanctioned proportionately in each quarter. As per the OIA, there is a possibility that Global Stones may not operate the SEZ unit for 90 years and therefore the refund cannot be sanctioned on a one-time basis, even though service tax was paid on the entire amount of lease premium in one go.

5. Further, it is submitted that vide appeal No. ST/51291/2019, the Department has also filed appeal to the extent of such apportionment of refund. As per the Department, there is no provision under the Finance Act,

1994 or under the SEZ Refund Notification which allows the claim of refund of an assessee for a certain period of time, to be disbursed on quarterly basis over 90 years. As per the Department, every refund claim is to be filed within its specified limitation and has to be disbursed within the specified time.

6. It is further urged that this aspect of 'apportionment of the refund claim' was neither proposed in the SCN nor found in the OIO. Hence, the findings in the OIA are beyond the allegations made in the SCN and the findings in the OIO.

7. The SCN proposed to reject the refund claim on the basis of three (3) allegations:

i. That refund was admissible only on applications to be filed on quarterly basis;

ii. That the invoice raised by Mahindra did not carry the address of the premises leased to Global Stones; and

iii. That the land lease service were not a part of specified services to be eligible for refund under the SEZ Refund Notification.

8. Since the findings of the OIA are not limited to the aforementioned proposals, it is submitted that the OIA is not legally sustainable for being beyond the scope of SCN. In this regard, reliance is placed on the following cases:

i. Reckitt & Coleman of India Ltd. vs. CCE, 1996 (88) E.L.T. 641 (SC)

ii. Toyo Engineering India Limited vs. CC, Mumbai, 2006 (201) E.L.T. 513 (SC)

9. The SEZ refund notification does not provide for any mechanism for apportionment of refund.

10. As can be seen above, a procedure has been prescribed for the purposes of filing a refund claim by an SEZ unit/developer. Global Stones hereinunder submits that the said procedure has been properly complied by it:

Sl. No.	**Requirement under the SEZ Refund Notification**	**Compliance by Global Stones**
1.	The exemption/ refund must be in relation to services received by an SEZ unit/developer for use in its authorized operations.	Condition satisfied, held in favour vide the OIA.
2.	The claim for refund is filed before the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise in Form A-4.	Yes, application enclosed at page 56 of the appeal memorandum.
3.	The taxable value mentioned in the invoice, including service tax payable, has been paid to the person liable to pay the service tax thereon.	Yes, lease premium and service tax paid by Global Stones to Mahindra and not disputed by the Department.
4.	Refund claim is filed within one year of payment of service tax.	Yes, also confirmed in the OIA.
5.	Only one claim can be made for each quarter.	Yes, only one claim filed by Global Stones, also confirmed in the OIA.

11. Further urges, as can be seen above, all the requirements under the SEZ Refund Notification have been followed by Global Stones. It is submitted that the SEZ Refund Notification does not contemplate any manner in which a single refund claim has to be apportioned. The allocation of refund on quarterly basis, when otherwise a single claim has been filed, is beyond the provisions of the SEZ Refund Notification.

12. Hence, it is submitted that such splitting of the refund claim is improper.

13. In this regard, learned Counsel places reliance on the case of State of Uttar Pradesh vs. Singhara Singh, AIR 1964 SC 358 wherein it has been held that **if a statute has conferred a power**

to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. Hence, if a particular manner of sanctioning refund has been prescribed under the SEZ Refund Notification, then no other procedure can be adopted by the Department.

14. For this purpose, reliance is placed on the case of **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar And Company & Ors, 2018 (7) TMI 1826 - SC** wherein it has been held that there can be no assumptions in a taxing statute, which must be read in terms of the words used therein.

15. In view of the above, it is urged that the manner of refund provided in the OIA is legally incorrect. The OIA is therefore liable to be set aside and refund is sanctionable in entirety to Global Stones.

THE SEZ UNIT HAS AN UNEQUIVOCAL EXEMPTION FROM PAYMENT OF SERVICE TAX ON INPUT SERVICES.

16. Without prejudice to the above, it is urged that the exemption from payment of service tax is otherwise available to Global Stones under the provisions of the Special Economic Zone Act, 2005 ('**SEZ Act**'), which have an over-riding effect and cannot be constrained by any notification.

17. Section 26(e) of the SEZ Act provides for exemption from service tax to all taxable services received by a developer or unit for

carrying on the authorized operations in an SEZ. Further, Section 26(2) of the SEZ Act provides that Central Government may prescribe for the manner and the terms and conditions by which exemption shall be granted to the Developer. The term 'prescribed' has been defined under Section 2(w) of the SEZ Act as **prescribed by rules** made by the Central Government under this Act.

18. Section 55(e) of the SEZ Act provides the Central Government with powers to make rules with respect to such exemption from payment of tax to an SEZ.

19. Accordingly, in the SEZ Rules, 2006, Rule 31, provide for an exemption from service tax to an SEZ unit on all services used for its authorized operations.

20. Hence, it is urged that by virtue of Rule 31 of the SEZ Rules, read with Section 26(e) and Section 51 of the SEZ Act, no service tax would be payable by Global Stones on services received by it as SEZ unit for its authorized operations.

21. It is further urged that the SEZ Act and the Rules have an overriding effect and no embargo against such exemption can be placed vide Notification under the Finance Act. This understanding has been confirmed in the following cases:

i) Cognizant Technology Solutions India Pvt. Ltd., vs. Commissioner of Central Excise & ST, Chennai -2021 (10) TMI 642 –CESTAT Chennai.

ii) DLF Assets Private Limited vs. Commissioner, Service Tax, Delhi- 2020 (11) TMI 35-CESTAT New Delhi.

iii) Intas Pharma Ltd., vs. CST, Ahmedabad -2013 (7) TMI 703 –CESTAT Ahmedabad.

iv) Reliance Ports & Terminals Ltd. v. CCE & ST, 2013-TIOL-1473-CESTAT-AHM

v) SE Forge Ltd. Vs. CCE, Coimbatore -2018 (6) TMI 661-CESTAT Chennai.

22. In addition and without prejudice to the above, it is submitted that the amount paid by Global Stones to Mahindra as lease premium was not susceptible to service tax. For this reason also, refund is sanctionable to Global Stones as service tax was paid by Global Stones and collected by the Department without authority of law.

23. It is submitted that the 'Lease Premium' amount paid by Global Stoneswas in the nature of 'premium'/'salami' which was not taxable as consideration towards renting service. The word 'Premium' as provided under Section 105 of the Transfer of Property Act, 1882, has been interpreted by various judicial forums as a '*price paid for obtaining the lease*'. Hence, it precedes the grant of lease, and therefore, it cannot be equated with the rent which is paid periodically.

24. In this regard, it is submitted that this Tribunal, in the case of ***M/s Greater Noida Industrial Development Authority v. CCE & ST Noida, 2015 (38) STR 1062 (Tri – Del)***, has held that 'premium' or 'salami' is paid by a lessee to lessor for transfer of interest in property. Such amount is not for continued enjoyment of property leased and is therefore not taxable under the category of 'Renting of immovable property service'.

25. It is further urged that the various judicial pronouncements have elaborated the distinction between 'premium'

and 'rent'. Lease premium is paid up front, when the lessee acquires the interest in the property, and is a single payment made towards the acquisition of a right which is treated as capital income. This lease premium cannot be termed as a rental income, which is received periodically against a stipulation for continuous enjoyment of benefits. Reliance in this regard has been made on:

- **iii. CIT vs. Panbari Tea Co.,** AIR 1965 SC 1871 (SC)
- **iv. Members for the Board of Agricultural Income Tax, Assam vs. Sindhurani Chaudhurani & Ors.,** AIR 1957 SC 729
- **v. Assam Bengal Cement Company Limited v. CIT,** [1955] 27 ITR 34 (SC)

26. In view of this, it is submitted that since the amount paid as lease premium was otherwise not taxable under the Finance Act, 1994, refund of service tax paid thereon would be admissible and retention of service tax by the Department would be improper.

27. Learned counsel further urges that the appellant have met all the conditions for grant of the refund as required by a SEZ unit/ developer.

28. Accordingly, learned Counsel for the appellant prayed for dismissing the appeal of the Revenue with consequential benefits.

29. Opposing the appeal of the appellant – assessee, in support of the Revenue appeal, learned Authorised Representative for Revenue urges that the refund claim is not admissible on the following grounds:-

(i) It appears that the appellant has not filed the refund claim on the quarterly basis. They have filed consolidated refund claim for the entire lease period which does not appear to be admissible in terms of para (III) (f) of the Notification No. 12/2013-ST dt. 01.07.2013.

(ii) Further, the invoice No. 1009/2018 dt. 31.05.2017 does not have the address of the premises leased to the appellant i.e. Plot No. PA-010-006, Special Economic Zone, Engineering & Related Industries, Mahindra World City, Tehsil Sanganer, Jaipur.

(iii) The appellant had paid the service tax amount of Rs.1,26,73,017/- on amount paid as land lease premium. It appears that the land lease service is not used towards authorised operations. Moreover, the service tax has been paid on the land lease charge not on Renting of Immovable Proper Service. The lease charge is not covered under specified service for refund under the notification.

(iv) The appellant also stated that, the lease premium charges are considered by Mahindra World City as leasing/ renting services and accordingly service tax has been paid. Further, land is nothing but an immovable property. Therefore, service tax has been paid for leasing charges of land which is nothing but renting of immovable property.

(v) It is further urged that the appellant has claimed the refund for the entire lease period instead of quarterly basis, which is not admissible in terms of para (III) (f) of Notification No. 12/2013-ST. Further, lease premium is not a specified service and there is no reason as to how it was used for authorised operation. Further, the refund claim for service tax paid on lease charges/ premium, which was a onetime payment made at the time of executing the agreement, is different from annual or on monthly rent.

(vi) It is further urged that the refund claim have been filed quarterly, whereas the assessee has filed one refund claim for lease premium relating to ninety (90) years. It is further urged that the Commissioner have erred in observing that only one refund claim can be filed for every quarter by claimant. Further, it is not prescribed under a law that an assessee can file refund claim quarterly on prorata basis, in the case when the appellant has paid the entire service tax alongwith the value of taxable service in full at one go or as one transaction. Thus, the appellant has correctly filed the said refund claim within one year from the date of actual payment of service tax, especially when the assessee could file only one refund claim every quarter. It is further urged that there is no provision under law which allow for sanction of refund on a particular date and it is subsequent disbursal of quarterly instalments over a period of ninety years, as the same would not only entail interest liability but is against the statute provision laid down for sanctioning refund. Accordingly, learned Authorised Representative for the Revenue have prayed for appropriate relief in the matter.

30. Having considered the rival contentions, we find that the appellant – assessee have rightly been sanctioned the refund claim by the Commissioner (Appeals) as lease premium have been paid for acquiring the lease of the premises in the Special Economic Zone, which is essential for carrying of the business activity of the appellant – assessee. We further find that levy of service tax is exempt under the provision of the SEZ Act. Only the procedure for exemption is

provided by way of refund. In this view of the matter, we hold that the Commissioner (Appeals) have erred in concluding that the amount of refund is disbursable on quarterly basis.

31. Accordingly, we allow the appeal of the appellant – assessee and modify the impugned order-in-appeal to the effect that the whole amount of eligible refund shall be disbursed in one go to the appellant – assessee with interest under Section 11BB as per Rules. We find no merit in the appeal by Revenue.

32. In view of our findings, we allow the appeal of the appellant – assessee with consequential benefits as mentioned hereinabove and dismiss the appeal by the Revenue.

(Operative part of the order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)

Pant