IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 30.1.2018
Date of Pronouncement: 04.05.2018

Appeal No. ST/1822/2011-SM

(Arising out of Order-in-Appeal No. IND/CEX/000/APP/324/11 dated 3.8.2011 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore)

Cummins Technologies India Ltd. Appellant

Vs.

CCE & ST, Meerut-II Respondent

Appearance

Shri Rachit Jain, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 51683/2018

Per S.K. Mohanty :

This appeal is directed against the impugned order dated 3.8.2011 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Turbo Chargers, parts, components and assemblies thereof, falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant was allotted with the Letter of

Approval to function as an unit in SEZ by Government of India vide letter No. C-39/ISEZ/PROJ/2007-08-726 dated 24.10.2007. As an unit under the SEZ scheme, the appellant was allowed to procure the goods and services without payment of any duty and service tax as per the provisions of Rule 27 of the SEZ Rules, 2006. The Government of India had issued Notification No. 9/2009-ST dated 3.3.2009, under which an exemption is granted to services provided to unit or developer under SEZ. Such exemption is administered by way of refund claim. Under the said notification, a unit or developer is required to pay the service tax amount to the service provider and thereafter, to claim refund of such amount by filing the application with the jurisdictional Assistant/Dy. Commissioner of Central Excise. In this case, the appellant had filed the refund claim application on 5.1.2009, claiming refund of service tax of Rs. 6,13,961/- paid on the input services during the period May 2009 to November, 2009. Out of such refund amount, the jurisdictional Central Excise authorities rejected the refund claim of Rs. 5,36,934/- on the ground of certain discrepancies/irregularities. Rejection of refund application by the original authority was upheld by the Commissioner (Appeals) vide the impugned order dated 03.08.2011.

3. The ld. Advocate appearing for the appellant submitted that the appellant is exempted from payment of service tax on the services received by its SEZ unit in view of exemption provided

under Section 27(1)(e) of the SEZ Act, 2005. He further submitted that the Notification No. 9/2009 as amended, cannot prescribe additional conditions, which are not provided in Section 27 of the SEZ Act. He further submitted that the phrase "prescribed manner" mentioned in Section 26(2) of the Act has been provided under Rule 31 of the SEZ Rules, 2006, whereby it is stated that exemption from payment of service tax shall be to any service provider for for use in the authorised operation in SEZ. To support the above stand, the ld. Advocate has relied on the decision of this Tribunal in the case of ***Reliance Ports & Terminals Ltd. Vs. CCE & ST, Rajkot -*** 2015 (40) STR 200 (Tri.), ***Intas Pharma Ltd. Vs. CST, Ahmedabad -*** 2013 (3) STR 543 and ***Trimurthy Industrieal Co. op. Soc. Ltd. Vs. CCE, Pune-I -*** 2018 (1) TMI 268-CESTAT-MUMBAI.

4. On the other hand, the ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. Clause (e) in sub-section (1) of Section 26 of the SEZ Act, 2005 grants exemption from payment of service tax on taxable services provided to a developer or unit to carry on authorised operations in a Special Economic Zone. Further, sub-section (2) of Section 26 of the Act empowers the Central Government to prescribe the manner,

terms and conditions for providing the exemptions or benefits to the developer or entrepreneur under sub-section (1). In exercise of the powers conferred by Section 55 of the SEZ ACT, the Central Government has made the SEZ Rules, 2006. Rule 31 of the said rules provides that the exemption from payment of service tax on taxable services specified in Section 65 of the Finance Act, 1994 should be available to to a developer or a unit for the authorised operations in a Special Economic Zone.

7. On perusal of the provisions contained in Section 26 (2) of the Act read with Rule 31 of the Rules, it reveals that such statutory provisions have not prescribed any conditions/ stipulations for grant of refund of service tax paid on the taxable services for providing SEZ activities. However, in exercise of the powers conferred by sub section (1) of Section 93 of the Finance Act, 1994, the Central Government has issued Notification No. 9/2009-ST dated 3.3.2009 and the amending Notification No. 15/2009-ST dated 20.5.2009, by providing certain conditions for claim of refund by the SEZ unit/developer. Since the SEZ Act and the rules have not provided any conditions for granting exemption from payment of service tax, the Central Government cannot issue the notification under a different statute i.e. Finance Act, 1994 in providing the conditions for grant of refund of service tax paid on the taxable services used for the authorised operations in the SEZ. Further, by

virtue of Section 51 of the SEZ Act, the provisions of the said Act and the Rules made there under are mandated to have overriding effect over the provisions contained in any other statute. Therefore, all the activities relating to SEZ shall be guided and governed by the provisions contained in SEZ Act and the SEZ Rules. Since, such statutory provisions governing the SEZ are silent about any condition or restriction for claiming the refund of service tax, the notification issued by the Central Govt. in terms of Finance Act, 1994 cannot prescribe any conditions, which are contrary to the SEZ provisions. Therefore, in my considered view, rejection of refund application by the authorities below by placing reliance on the notification dated 3.3.2009 cannot be sustained and is liable to be set aside. In context with the amending Notification No.9/2009 dated 3.3.2009 and 15/2009 dated 20.5.2009, this Tribunal in the case of ***Reliance Ports & Terminals Ltd.*** (supra) has held that the same notification has been issued to operationalise the exemption/immunity available to SEZ unit under Section 26(1)(e) of the SEZ Act, 2005. The relevant paragraphs in the said decision are extracted herein below:

> "7. From the provisions contained in Section 26(1)(e) of the SEZ Act, read with Rule 30(10) of the SEZ Rules, 2006, it can be seen that no Service Tax is payable on the services provided by a service provider to a SEZ unit. Further, Sec. 51 of the SEZ Act also makes an over-riding provision that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No. 9/2009-S.T. and amended Notification No. 15/2009-S.T. have been only issued to operationalize the exemption/immunity available to SEZ unit under Sec. 26(1)(e) of the SEZ Act, 2005."

8. In view of above, I do not find any merits in the impugned order, so far as it rejected the refund application filed by the appellant. Accordingly, the same is set aside and the appeal is allowed in favour of the appellant.

(Pronounced in Court on.........04.05.2018............)

(S.K. Mohanty)
Member (Judicial)

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