CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH, COURT NO-I

Service Tax Appeal No.52274 of 2016

(Arising out of order-in-Appeal No. 08/ST/LTU/DLH/2016, dated 09.05.2016 passed by the Commissioner (Appeals-I) Central Excise, LTU New Delhi)

M/s SRF Limited **Appellant**
Indore Special Economic Zone,
Sector-3, Pithampur Dhar-M.P.

VERSUS

Commissioner of Customs, **Respondent**
Central Excise and Service Tax,
LTU New Delhi
N B C C Plaza, Pushp Vihar, Saket, - Delhi

Appearance:

Shri R.Krishnan, Advocate for the appellant
Shri R.K. Manjhi, Authorised Representative for the respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51230/2019

DATE OF HEARING/ DECISION: 29.07.2019

BIJAY KUMAR:

The present appeal is directed against the order in appeal No. 08/ST/LTU/DLH/2016 dated 9.05.2016 by which the Commissioner (Appeal) has upheld the order dated 03.04.2015 passed by the Deputy Commissioner, Central Excise and ST/LTU. The Deputy Commissioner in the said order has rejected the refund claim of the appellant amounting to Rs. 11,65,509/- (Rs. Eleven Lakhs Sixty Five Thousand Five Hundred Nine only).

2. Briefly stated the appellant is holding Service Tex registration No. AAACS0206PST010 and is also a member of Large Taxpayer Unit (LTU) Delhi, having membership No. LTU/DEL/038. The appellant had filed a

refund claim of Rs. 54,93,071/- for the service tax paid by it on various services in respect of the appellant's unit, which is located in Special Economic Zone, (SEZ for short) Indore, under Notification No.40/2012-Service Tax dated 20.06.2012 for the period September, 2012 to January, 2013. After the scrutiny of the refund claim, the Assistant Commissioner sanctioned the refund amount of Rs. 43,27,562/- (Rs. Forty Three Lakh Twenty Seven Thousand Five Hundred and Sixty Two only) to the appellant but rejected the remaining amount of Rs. 11,65,509/-. Being aggrieved, the appellant filed appeal before the Learned Commissioner (Appeals), who sustained the order of the lower adjudicating authority and rejected the appeal by the impugned order.

3. Learned Advocate, appearing on behalf of appellant submits that the appellant is engaged in the manufacture of polyester films in their factory located in the SEZ at Pitampur, M.P. under the Special Economic Zone under Specific Economic Zone Act, 2005 (for short 'Act of 2005'). The units located in the SEZ are totally exempted from all duties of customs, excise and service tax and are required to export their products as per the prescribed norms in the Foreign Trade Policy. The duties paid by the SEZ Unit is permitted to be reclaimed, by them or by the developers of the SEZ though a refund mechanism in terms of Notification No. 40/2012-ST dated 20.06.2012. The Services received by the SEZ units and used for authorized operations, which are wholly consumed within the SEZ are exempt from payment of duties at source, that is, the service provider to the SEZ, need not even charge service tax. But, where the services received by the SEZ unit are not wholly consumed within the SEZ, maximum refund of service tax is restricted to the extent of the ratio of the Export Turnover to the total turnover as per the notification in question.

3.1 He further submits that the impugned order did not consider the provisions of the Notification No. 40/2012-ST read with the Act of 2005 and upheld the rejection of refund claims, which is not sustainable.

3.2 Inputs service were used in November 2012 and refund was claimed during September to January 2013, during which the services so consumed were included in the list of approved service by the Development Commissioner of the SEZ and also the exhibition services was used for promoting the products manufactured by the appellant.

3.3 In this regard, it has also been submitted that the Approval Committee has accorded its approval on 05.07.2013, which is also acknowledged in the impugned order. Further, the copy of Bill raised by M/s Trident Exhibitors Pvt. Limited, Noida on the appellant revealed that the service was provided to the appellant (SEZ unit) only and used/consumed completely in the SEZ and hence, the Service Tax paid on the Business Exhibition Services is eligible for total refund. It was also submitted that approval of service from the Approval Committee is just a contour of procedure and non compliance thereof, cannot deprive the substantive benefit of exemption/refund. It was also pleaded that as per provisions of SEZ Act 2005, granting exemption from all duties and taxes have overriding effect and the immunity from taxes and duties cannot be denied by notifications issued under Finance Act. He placed reliance on the followings decisions:

(i) Makers Mart vs. CCE & ST- 2016 – 43- - STR – 309 (T) DB
(ii) Makers Mart V CCE & ST – 2016 – 44 -126 (T) (DB)
(iii) Intas Phrma Limited vs. CST – 2013 -32-STR – 543 (T) (SM)

4. It is also submitted that the impugned order rejected the refund claim of proportionate service tax credit paid and distributed, as Inputs Service Distributer (ISD) on invoices, by the Head Office of the appellant, and the

receipt of ISD Credit from their Head Office is not tax paid by the appellant, and hence is not in accordance with the Notification No.40/2012.

5. In view of above submission he pleads for allowing the appeal filed by the appellant for grant of the refund claim.

6. Learned Authorised Representative reiterates the findings contained in the impugned order.

7. We have considered the submissions made by the learned Advocate on behalf of appellant and the Learned Authorized Representative on behalf of Revenue. It is apparent from the impugned order and also from the order-in-original dated 3.04.2014 that the refund claim has been rejected on the ground of non approval of the list of service in terms of SEZ Act by the Development Committee. During the period for which claim has been made, nonetheless, the list was approved subsequently on 4.07.2013 by the Development Commissioner. The non approval of list of the services by the Development Commissioner will not be fatal to the refund claim, in view of decision of this Tribunal in **Makers Mart** (Supra), wherein it was held as under:

> 4. We have considered the contentions of the appellant. As regards the ground of non-submission of the approved list of authorized operations which is a condition in Notification No. 9/2009-ST., we find that the issue has been discussed and analyesed and settled in favour of the assesses in the case of Intas Pharma (Supra) wherein it was held as under.
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> > 11. On true and fair construction of Notifications 9/2009 and 15/2009 issued under Section 93 (1) of the Act, considered in the light of the overarching provisions of Sections 7 and 26(a) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor 15/2009 disentitle immunity to Service Tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009 and 15//2009 merely contour the process by which the benefit of exemption/immunity to tax is operationalised. Notification Nos. 9/2009 and 15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of claiming refund of Service Tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a

> SEZ. On this harmonious construction, the immunity to Service provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be eclipsed the procedural prescriptions of Notification No. 9/2009 or 15/2009. These Notifications are calibrated to enable recipients of taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the Service Tax, wherever assessed and collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the substituted provisions, of clause/sub-paragraph 'c' of Notification No. 15/2009 cannot be inferred to have imposed any disability on the recipient of services consumed wholly within the SEZ, from seeking refund of Service Tax remitted on such transactions, by the providers of such services.

8. The Notification No. 9/2009, 15/2009 and 17/2011 are preceding notifications to Notification No. 40/2012 dated 2.06.2012, under which the present refund claims have been filed. All these notifications pertains to SEZ and have identical provisions. Thus, the findings of the Tribunal in case of Maker Mart (Supra) are fully applicable in the instant case and impugned order is not sustainable.

9. Likewise, for the denial of refund on account of "Business Exhibition Service" to the appellant for displaying of their goods in exhibition, the issue is decided by the Chandigarh Bench of this Tribunal in **New Swam Enterprises Vs. Commissioner of Central Excise,** Ludhiana 2017/47 STR 354 (Tri.- Chandigarh), wherein it has been held that the "Business Exhibition Service" is for the display of goods in the exhibition, which is ultimately for the business promotion activities and therefore, the activity is having nexus with the manufacturing business of the appellant. Similar is the case of the appellant, who has consumed the business exhibition service for conducting display of their product in exhibition at Chicago, through Trident Exhibiters, Noida. It is also evident from the invoice of Trident, dated 09.11.2012, that the service pertained to the Appellant's unit only. In view of above, we are of the view that the Appellant has rightly availed the Cenvat Credit on "Business Exhibition Service", (Supra) and it is refundable

to it in terms of the Notification. The impugned order is therefore, not sustainable.

10. Similarly, the denial of Cenvat credit in respect of Input Services having been distributed by the Appellant's Head Office is not sustainable as the distribution of credit is permitted in terms of Rule '7' of Cenvat Credit Rules. The argument that the Head Office itself could have availed the credit is not sustainable and contrary to the Cenvat Credit Rules. Further, the denied by the Adjudicating Authority of the credit distributed input on account of having not been approved as 'Service' by the Approval Committee, is also not sustainable.

11. The Impugned Order is, accordingly, set aside the appeal is allowed with consequential benefits as per law.

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

(JUSTICE DILIP GUPTA)
PRESIDENT

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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