CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Bench – SMB
Court – I

Appeal No. ST/30840 & 30848/2017

(Arising out of Order-in-Appeal No. HYD-EXCUS-004-APP-0397-16-17-ST dated 31.03.2017 & HYD-EXCUS-004-APP-01-17-18-ST dated 04.04.2017 passed by Commissioner of Service Tax, (Appeals), Hyderabad)

M/s Cyient Limited …..**Appellant(s)**

Vs.

Commissioner of Customs, Central Tax & Service Tax, Hyderabad- IV …..**Respondent(s)**

Appearance
Shri Vinay, Advocate for the Appellant.
Shri Arun Kumar, Deputy Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. M. V. Ravindran., Member (Judicial)

Date of hearing: 05/02/2018
Date of decision: 05/02/2018

FINAL ORDER No. A/30415-30416/2018

[Order per: M. V. Ravindran.]

These two appeals are directed against Order-in-Appeal No. HYD-EXCUS-004-APP-0397-16-17-ST dated 31.03.2017 & HYD-EXCUS-004-APP-01-17-18-ST dated 04.04.2017.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding refund of an amount of service tax paid by the appellant on specified services in relation to authorized operations of the SEZ unit for the quarter January, 2014 to March, 2014. The said refund claim has been rejected on the ground that the specified services were procured prior to UAC approval. Both the lower authorities have emphasized their findings on the refund Notification No. 12/2003-ST to deny the refund claim.

4. The issue is no more res integra as this Tribunal in the case of Mylan Laboratories Ltd., vide Final Order No. 31249-31250/2017 dated 09.08.2017 on similar facts held as under:

> *7. On consideration of the submissions made by both sides and perusal of the records, I find that the issue in this case falls in a very narrow compass, as to whether the appellant is eligible for refund of the service tax paid under reverse charge mechanism in respect of services received by him from foreign supplier or otherwise. Undisputedly appellant is SEZ unit and eligible to receive services without payment of duty or can claim the refund of the duty under various provisions and more so under Notification No. 12/2013-ST; appellant had discharged service tax liability under reverse charge mechanism for various services received by him under the category of business support services on 6.10.2014 and subsequently claimed the refund on the said amount as being provided under the list of approved services by the DGFT on 21.10.2014 and 9.4.2015. It is also not in dispute that the refund claims are within the time limit as prescribed in the said rules and the notifications. In my considered view it is an admitted fact that appellant being an SEZ unit is not required to pay any service Tax either to service provider or under reverse charge mechanism and even if he pays the same, he is eligible for the refund of the service tax liability so discharged. The bone of contention in these appeals being that the service tax liability was discharged correctly and when it was discharged the said services were not mentioned in the list of approved services. In my view this cannot be a reason for rejection of refund claim as it is an avowed policy of the Govt of India that SEZ unit should not be burdened with any taxes in order to make them competitive. If the contention of the department in these appeals is upheld, in that case the SEZ*

unit is burdened with service tax liability, which if appropriate notifications are applied need not have to pay.

8. *I find that the business support services are subsequently enlisted as list of approved services by the DGFT Authorities and the same is not being contested by the department,. If that be so, ratio of the decision of the Tribunal in the case of Mahindra Engineering Services Ltd (supra) would directly apply wherein the Bench in Paragraph 6 to 6.2 has held as below: "6. I have carefully considered the submissions made by both sides. It is noted that notification No. 9/2009 does not state that the list of services required in relation to authorized operations in the SEZ should be got approved from the approval committee before providing the services. The appellants have pointed out that they had filed the refund claim after the list was approved. Thus, the claim is in consonance with the requirement of notification.*

> ***6.1*** *It is also noted that the SEZ Act, clearly provides under Section 50 (1) that it will have overriding effect over the provisions of any other law. As both the SEZ Act and Service Tax Act, have been passed by Parliament, the provisions of Section 51 have to be given effect to. The reliance placed on the DHL Logistic Pvt. Ltd. (supra) by the A.R. relates to exemption notification No. 4/2004 which did not incorporate the refund mechanism. On the other hand, in the case of Intas Pharma Ltd. Vs. CST reported in 2013 (32) STR 543 (Tri.-AHD) = 2013-TIOL-1091-CESTAT-AHM, it was held that provisions of SEZ Act have overriding effect. Therefore, there appears to be no reason to deny the refund claim.*
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> ***6.2*** *On the issue of time bar it is noted that notification No. 9/2009 does give the authority to the Assistant Commissioner law to collect extension for filing of refund claim. The appellants were registered in 2009; thereafter took various approvals under SEZ Act and this being their first refund application, the same was filed beyond the six months period. They also needed time to ensure that the service provider not taken refund. The Assistant Commissioner should have examined the issue in total perspective while exercising his power under this clause (2f) of para 2 of the notification. The appellants have been filing refund claims thereafter which are receiving sanction. It would not meet the ends of justice, if the refund claim is denied when no service tax is payable under the provisions of SEZ Act."*

9. *In view of the facts and circumstances of this case and the judicial pronouncement, I hold that the impugned orders are unsustainable and liable to be set aside and I do so.*

5. The above ratio squarely covers the issue.

6. Further, I find that the Ministry of Commerce and Industries, SEZ Division, had published the default list of services approved by department of commerce which has been ordinarily

permitted by UAC unless to the contrary is noticed. On casual perusal of list of services, it was noticed the said list includes the services on which refund claim has been denied. Additionally, I find that office of Development Commissioner, Pritech Park Special Economic Zone, Cochin, had by letter dated 20.03.2013 informed the appellant approval for the service to be used in SEZ as per annexures A,B, C and these are the services on which CENVAT credit was availed though received prior to such approval being granted. Since the procedural formality of receiving the UAC approval is also complete, the ratio of Mylan Laboratories Limited case will apply in full force to the case in hand. Accordingly, I hold that the impugned orders are unsustainable on merits.

7. The impugned orders are set aside and appeals are allowed.

(Operative part of this order was pronounced in open court on conclusion of hearing)

(M. V. RAVINDRAN)
MEMBER(JUDICIAL)

Lakshmi….