

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court - I

APPEAL No. ST/31173/2018

*(Arising out of **Order-in-Appeal** No. HYD-EXCUS-MD-AP2-0058-18-19-ST, dated 30.08.2018 passed by Commissioner (Appeals-II), GST&CE, Hyderabad)*

SHRI SHIRDI SAI TRAVELS .. APPELLANT

Vs.

CCT, CE&ST, MEDCHAL GST .. RESPONDENT

Appearance

Shri M.V.S. Sridhar, Advocate for the Appellant.

Shri Guna Ranjan, Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr. M.V. Ravindran, MEMBER (JUDICIAL)

Date of Hearing: 05.12.2018

Date of Decision: 21.12.2018

FINAL ORDER No. A/31589/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No. HYD-EXCUS-MD-AP2-0058-18-19-ST, dated 30.08.2018.
2. Heard both sides and perused the records.
3. On perusal of records, it transpires that the issue is regarding the amount of tax to be paid on the services rendered by the appellant to SEZ Unit.

4. Appellant herein, during the period in question from 01.04.2011 to 30.06.2012 rendered the services of Tour Operator Services/Rent-a-cab service to El Dupont Services India Pvt. Ltd. The said El Dupont Services India Limited was an unit situated and functioned as an SEZ and are entitled to receive authorised services as per the letter from the Development Commissioner. The said letter indicates M/s El Dupont is entitled to receive tour operator services wherein the description of the services is indicated as "Renting cabs for transport service" along with heading falling under section 65 (105) and the reasoning given is for transport of employees for business purposes. This letter is signed by the Development Commissioner authorising the said M/s El Dupont to procure the services from DTA. Undisputedly, during the period in question, appellant did supply the cabs to M/s El Dupont and did not pay any service tax claiming bonafide belief that services rendered to SEZ unit is not taxable. On scrutiny of records it was noticed and appellant was informed that it needs to be paid. Show cause notice was issued which was contested by the appellant. Adjudicating authority, after following due process of law, confirmed the demands raised and also imposed penalties and demanded interest. The first appellate authority also dismissed the appeal only on the ground that SEZ unit M/s El Dupont had not filed the declaration required under notification No. 9/2009-ST to the authorised authorities and the same was not produced before the authorities.

5. On perusal of records, I find that the services is rendered by appellant to SEZ unit and the said SEZ unit is authorised to receive the services without payment of service tax. The provisions of Section 51 of the Special Economic Zone Act, 2005 mandates that the provisions of SEZ Act shall have overriding effect notwithstanding anything inconsistent in any act. The provisions of Section 26 of SEZ Act mandates for exemption of service tax, draw backs and concessions to developer. On holistic reading, the services rendered to an SEZ unit are not taxable, is the settled law. In my view, there being no dispute that the services rendered by the appellant to an unit in SEZ who was supposed to follow the provisions of the law, which he did not do so, would not mean that appellant should be saddled with the service tax liability. Identical issue came up before the Tribunal in the case of Reliance Ports and Terminals Ltd. Vs. CCE, Rajkot [(2015) 49 GST 630 (CESTAT-AHD.)] and the Bench in that case, following the law laid down by the Tribunal in the case of TATA Consultancy Services Limited , Sujana Metal Products Limited and Intas Pharma Limited held that no service tax liability arises on the service provider. Relevant paras of the said judgment are reproduced.

“5. Heard both sides in detail and perused the records. The issue involved in this case is whether service provider is entitled to exemption from payment of Service Tax during the period from 3-3-2005 to 20-5-2005 when such services were provided inside SEZ. Under Notification No. 15/2009-S.T., dated 20-5-2009, exemption from payment of service to the service providers was made available by a suitable amendment in proviso (c) of para 1 of Notification No. 9/2009-

S.T., dated 3-3-2009 for the services provided inside SEZ. Before this amendment also, exemption was available to the service recipient by way of refund by the service recipient subject to certain conditions. In this regard, appellant has relied upon the judgment of **Tata Consultancy Services Ltd. v. CCE & ST (LTU)**, Mumbai (supra), under which it was held that even if a service provider was not required to pay duty as per the amended provisions of Notification No. 9/2009-S.T. but paid for some reasons then the service provider was entitled to refund under Section 11B of the Central Excise Act, 1944. On the same analogy when services supplied to SEZ are considered as services provided inside a SEZ unit, there is no Service Tax liability on such deemed export as held by CESTAT in the case of **Sujana Metal Products Ltd. v. CCE, Hyderabad** [(T.-Bang.)].

6. The appellant has further relied upon the judgment of **Intas Pharma Ltd. v. CST**, Ahmedabad (supra) holding that in view of the **provisions of Sections 7, 26 and 51 of 2005 Act [SEZ Act, 2005]**, exemption to services provided to a SEZ were always available and Notification No. 9/2009-S.T. and No. 15/2009-S.T. have only operationalized the exemption provided. Para 11 of the above judgment is reproduced below :

“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 overarching “11. **provisions of Section 7 and 26(e) 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 operationalized. 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 Tax 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.”

It is also relevant to quote the **provisions contained in Sec. 26(1)(e) and Sec. 51 of the SEZ Act, 2005** as reproduced below :

“26(1)(e): exemption from Service tax under Chapter V of the **Finance Act, 1994 (32 of 1994)** on taxable services

provided to a Developer or Unit to carry on the authorized operations in Special Economic Zone.

51. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

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.”*

6. In view of the foregoing and the facts and circumstances of this case, I hold that the impugned order is unsustainable and liable to be set aside which I do so.

7. Impugned order is set aside and appeal is allowed.

(Pronounced in open court on 21.12.2018)

**(M.V. RAVINDRAN)
MEMBER (JUDICIAL)**