CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 30239 of 2018
(Arising out of **Order-in-Appeal** No.HYD-EXCUS-004-AP2-0245-17-18 dated 28.11.2017 passed by Commissioner of GST & Central Excise (Appeals-II), Hyderabad)

M/s Merit Infrastructures .. **APPELLANT**
Flat No. 1102,
SMR Vinay Sky City,
Opp. HPS,
Ramanathpur,
Hyderabad,
Telangana – 500 013.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Secunderabad – GST
Kendriya Shulk Bhavan,
L.B Stadium Road,
Basheerbagh,
Hyderabad,
Telangana – 500 001.

APPEARANCE:
Shri G. Prahlad, Advocate for the Appellant.
Shri B. Sangameshwar Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30193/2026

Date of Hearing: 10.12.2025
Date of Decision: 08.04.2026

[ORDER PER: ANGAD PRASAD]

M/s Merit Infrastructures (hereinafter referred to as appellant) are in appeal against order of the Commissioner (Appeals), dated 28.11.2017 (impugned order) whereby, the order of the Original Authority had confirmed the demand.

2. The brief fact of the case is that the appellant's are engaged in provision of service relating to Commercial or Industrial Construction Service as well as Works Contract Service. Based on certain records of the appellant,

Department noticed that they were provided certain service to developers as well as units in the special economic zone in contravened of the conditions of exemption provided in Notification No. 9/2009-ST dated 03.03.2009, 17/2011-ST dated 01.03.2011, 40/2011-DT dated 20.06.2012 and 12/2013-ST dated 01.07.2013. Therefore, a demand of rupees 63,22,249/- was made out for the services provided to SEZ Developers and also short payment of rupees 2,37,449/- in respect of services provide to non SEZ Units i.e., M/s GVPR. The Adjudicating Authority, inter alia, took into account that the notifications claimed were conditional which had to be fulfilled to become eligible for claiming exemption and the lapses could not be issued as their procedure infirmity and it was an admitted fact that they had not issued invoices to the customers and that the payments were received from customer on the basis of work done and recorded in their measurements books. The exemptions were denied as the appellant's were not imposition of any document in support of the exemptions claimed.

3. On appeal that the appellant submitted that they provided services to SEZ Units namely M/s Hetero Labs Ltd., M/s Hetero Infrastructure Ltd., and they could not form A1 and A2 for the taxable services provided services as same were not provided by the SEZ Units. He also submitted that he is not came in Service Tax amount on invoice raised by him to M/s Hetero Labs the Commissioner (Appeals), vide impugned order, inter alia, observe that the notification claimed to require that to fulfil the conditions of the notification and non production thereof cannot treated as mere procedural infirmity. In so far as the short payment was concerned, he held that he had not given any specific findings.

4. Learned Advocate submits that it is not that they have provided service to SEZ Units/Developers. However, they were not able to produce certain documents demanded by the Adjudicating Authority nor they could produce any document before the Commissioner (Appeals), in support that there is no liability to pay Service Tax in case services are provided to the SEZ Units/Developers. In so far as, supply of Works Contract Service to non SEZ Units during 2012-13 to 2014-15. The liability has been confirmed as Rs. 6,25,466/- whereas, it should actually be Rs. 3,88,017/-. If Cum Tax benefit is allowed and the correct method for computation of value of service is taken into consideration. In such a case the tax liability would be only Rs. 3,47,913/-, whereas, admittedly the appellant has already paid an amount of Rs. 3,88,017/-.

5. In so far as exemption for supply made to SEZ, his main submission is that the substantive provision cannot be denied mainly because of certain procedural breach. In terms of the notification cited by the Adjudicating Authority and Commissioner (Appeals), Moreover, in terms of provisions under Section 26 of the Special Economic Zones Act, 2005 is relying on the judgment of Jurisdictional High Court in the case of GMR Aerospace Engineering Ltd., [2019 (8) TMI 748 Telangana and Andhra Pradesh High Court], which was further upheld by the Hon'ble Supreme Court. The decisions of Co-ordinate Benches in this regard are also in their favour. He is relying on the following case laws.

i) Prasad Babu Kalyanam Vs Commissioner of Central Tax Visakhaptnam – GST, [2024 (2) TMI 1308 – CESTAT Hyderabad]

ii) Commissioner of Central Tax, Medchal Vs Simhapuri Fabs in Final Order No. A/30457/2025.

iii) Eclerx Services Ltd., Vs Commissioner of CGST & Central Excise, Navi Mumbai [2022 (9) TMI 166]

iv) Commissioner of Central Goods and Service Tax Navi Mumbai Vs Eclerx Services Ltd., [2023 (5) TMI 813-SC]

v) Shapoorji Pallonji & Company Ltd., Vs Commissioner of Central Excise, Customs & S.Tax, Nagpur – I [2025 (6) TMI 1264 – CESTAT Mumbai]

vi) Neeraj Insulation Contractors Vs Commissioner of C.E. & S.T. – Vadodara – i [2024 (10) TMI 820-CESTAT Ahmedabad]

vii) M/s Pristine Facility & Management Service Pvt Ltd., Vs Commissioner of Customs, Central Tax, Noida [2024 (5) TMI 73 – CESTAT Allahabad]

viii) M/s Accenture Solutions Pvt Ltd., (Erstwhile known as Accenture Services Pvt Ltd.,) Vs Commissioner of Service Tax-VII, Mumbai [2025 (3) TMI 1505 – CESTAT Mumbai]

ix) Commissioner of Central Tax, Pondicherry Vs Honda Siel Power Products Ltd., [2015 (323) E.L.T. 644 (S.C.) and Indian Oil Corporation Ltd., Vs CCE, Vadodara [2012 (276) E.L.T. 145 (S.C.)]

6. Heard both the sides and perused the records.

7. The short question for determination is whether in this case the appellant were required to pay any Service Tax on supply units to SEZ Units or otherwise and also a small issue of short payment of Service Tax on supply of non SEZ Units. The perusal of adjudication order as well as impugned order reveals that the Department has mainly relied on various conditions. The stipulated in the notifications were the once exemptions of supply of services to SEZ units and its developers. We find that keeping in view the judgment of the Telangana High Court in the GMR Aerospace Engineering Ltd., case, supra, as also various other judgments cited by the appellant, non-furnishing of various documents required of the vicious substantive benefit of the appellant. In other words if the supply has been made to the SEZ Unit/Developers non following of the various conditions or the notification would not be relevant in as much as said notification itself have been declared as ultra virus. However, the fact remains that supply has to be in relation to the Units of the SEZ or its Developer. We note that there

are observations that the appellant's were not able to conclusively evidence that the supply were actually made to SEZ Units. Therefore, in the facts of the case we feel that the matter needs to be remanded back to the Commissioner (Appeals), to specify himself that the valued SEZ Units and thereafter, to that extent demand cannot sustain irrespective of whether they fulfilled various conditions prescribed under the notifications relied on by the Department. The appellant's will be at liberty to submit necessary evidence including letter from the SEZ recipient that they have provided the aforesaid to their SEZ Units.

8. In so far as short payment is concerned, we find that there is no dispute that said short payment is the payment of duty per se is not required to be paid. However, what has been contested is non of Cum Tax benefit is also around computation in terms of Rule 2l of Service Tax beneficial rules. Essentially the computation is made by extending 60% abatement whereas, the abatement is 75% according to the appellant. This aspect has not been benefited adequately by the Commissioner (Appeals), therefore, this also needs to be examined.

9. In view of the above observation, we set aside the impugned order and remand that the matter to the Commissioner (Appeals), who shall satisfy himself with provision of services to the SEZ Units and thereafter, decide the demand keeping in view the observation above that mere procedural breach of non-compliance of notifications condition cannot be alone for confirming the duty. Similarly, it should consider the provisions under Service Tax Valuation Rules for re-computing the total Service Tax liability after extending Cum Tax benefit and thereafter, if still some demand is levied and same can be upheld to that extent.

10. Appeal allowed by way of remand.

(Pronounced in the open court on 08.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha