CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 23434 of 2014
(Arising out of **Order-in-Appeal** No.41/2014(V-I) ST dated 30.07.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Arkay Logistics Ltd., .. **APPELLANT**
Scindia House,
Near Flyover,
Visakhapatnam,
Andhra Pradesh – 530 004.

VERSUS

Commissioner of Central Excise and Service Tax Visakhapatnam - I .. **RESPONDENT**
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri Karthik Dedhia, Advocate for the Appellant.
Shri V. Srikanth 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/30391/2026

Date of Hearing: 25.06.2026
Date of Decision: 22.07.2026

[ORDER PER: ANGAD PRASAD]

The present appeal has been filed by M/s Arkay Logistics Ltd., challenging Order-in-Appeal No. 41/2014(V-I) ST dated 30.07.2014, whereby, the Commissioner (Appeals), upheld the confirmation of Service Tax amounting to Rs. 2,65,693/- along with interest while setting aside the penalty imposed under Section 78 of the Finance Act, 1994 by invoking Section 80 thereof.

2. The fact in brief is that the appellant is engaged in providing Cargo Handling Services and Steamer Agency Services. During audit for the year

2008-09, it was noticed that the appellant had rendered Cargo Handling Services at Visakhapatnam Port to Essar Steel Ltd., as SEZ Unit situated at Hazira, Gujarat. The Department formed the view that since the services where physically performed outside the Special Economic Zone, exemption under Notification no. 4/2004 – ST dated 31.03.2004 was unavailable and consequently demanded Service Tax under the Finance Act, 1994.

3. The appellant consistently contended before the Adjudicating Authority as well as the Commissioner (Appeals), that the services were admittedly provided to a SEZ Unit and were utilized for its authorized operations. It was submitted that exemption flowed directly from Section 26 (1) (e) of the Special Economic Zones Act, 2005 read with Rule 31 of the SEZ Rules, 2006 and that by virtue of Section 51 of the SEZ Act, the provisions of the SEZ Act have overriding effect over any inconsistent provision contained in any other enactment. It was argued that Notification No. 4/2004-ST, being a delegated legislation issued under the Finance Act could not curtail the substantive exemption granted under the parent statute.

4. The Learned Counsel for the appellant reiterated the above submissions and also submitted that the controversy is no longer res-integra. In view of the judgment of the Hon'ble Supreme Court in Arkay Logistics Ltd., Vs Commissioner of Central Tax, Visakhapatnam [2024 (17) CENTAX 470 (SC)] confirming the decision of the Ahmadabad Bench of this Tribunal reported in 2024 CENTAX 469 (Tri-Ahmd). It was further argued that the issue had earlier been considered by the Tribunal in Norasia Container Lines Vs Commissioner of Central Excise, New Delhi [2011 (23) S.T.R. 295 (Tri.-Del.)], wherein, it was held that services rendered outside the geographical limits of SEZ would also be eligible for exemption if they

were used for authorized operations of the SEZ Unit. Reliance was also place upon DHL Lemuir Logistics Pvt Ltd., Vs Commissioner of Central Excise, Thane [2017 (47) S.T.R. 309 (Tri. – Mumbai)] and Skyline Motors India Pvt Ltd., Vs Commissioner of Central Excise [2017 (6) G.S.T.L. 65 (Tri. – All.)] to contend that procedural conditions contained in notifications cannot override substantive statutory benefits.

5. Per Contra, Learned Authorized Representative reiterates the findings recorded in the impugned order and submitted that Notification NO. 4/2004 – ST specifically contemplated exemption only where taxable services were rendered within the SEZ and, therefore, the Commissioner (Appeals), had rightly upheld the demand.

6. We have carefully considered the rival submissions and perused the records.

7. The short issue arising for determination is whether Cargo Handling Services rendered at Visakhapatnam Port but admittedly received and utilized by an SEZ unit for its authorized operations are entitled to exemption under Section 26(1) (e) of the Special Economic Zones Act, 2005.

8. The factual position is not in dispute. It is not disputed by the Revenue that the recipient of service was an approved SEZ Unit. It is equally not disputed that the services were utilized for authorized operations of the said SEZ unit. The only reason assigned for denying exemption is that the services were physically rendered outside the geographical limits of the Special Economic Zones.

9. Section 26(1) (e) of the Special Economic Zones Act grants exemption from Service Tax in respect of taxable services provided to a Developer or

Unit for carrying on authorized operations. Rule 31 of the SEZ Rules, 2006 gives effect to the said statutory exemption. Significantly, neither Section 26 (1) (e) nor Rule 31 stipulates that the Service should necessarily be performed within the territorial boundary of the Special Economic Zone. The emphasis of the statute is upon the identity of the recipient and the purpose for which the service is utilized, namely, authorized operations.

10. Section 51 of the SEZ Act further declares that the provisions of the Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, where Parliament has granted a substantive exemption under SEZ Act, the same cannot be curtailed by a notification issued under the Finance Act, 1994. A delegated piece of legislation cannot impose restrictions which the parent statute itself does not contemplate.

11. The issue now stands concluded by the judgment of the Hon'ble Supreme Court in Arkay Logistics Ltd., supra. The Hon'ble Supreme Court affirmed the decision of Tribunal Ahmadabad and held that exemption under Section 26 of the SEZ Act cannot be denied merely because the services were performed outside the physical limits of the SEZ, once it is established that such services were received and utilized by the SEZ unit for its authorized operations. The Hon'ble Supreme Court recognized the overriding effects of Section 51 of the SEZ Act and held that delegated notifications issued under the Finance Act cannot whittle down the statutory exemption confirmed by Parliament. The relevant paras of decision of Tribunal Ahmadabad as follows:

> "5.4 We also find that in the present matter demand of service tax of Rs. 1,89,55,549/- also confirmed by the Learned Commissioner in respect of the disputed services provided by the Appellant to SEZ unit

on the ground that the exemption under Notification No. 4/2004-ST dated 31.03.2004 is in respect of services which are consumed within the SEZ only and not services which are partly consumed in SEZ. Majority work of inter-carting is initiated outside the SEZ area or ends outside the limits of SEZ, thus services provided to SEZ are not consumed within the SEZ. The services provided to SEZ are exempt if the same are consumed within the limits of SEZ. The issue whether the appellant are eligible for the service tax exemption under the Notification No. 4/2004 for the services rendered to SEZ unit and whether service tax payable or not on services provided to SEZ. For better appreciation, the relevant part of the notification is reproduced as under:-

"…………the Central Govt. being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service of any description as defined in clause (105) of Section 65 of the said Act provided to a developer of Special Economic Zone or a unit (including a unit under construction) of Special Economic Zone by any service provider for consumption of the services within such Special Economic Zone, from the whole of service tax leviable thereon under Section 66 of the said Act,………………..."

There is nothing in the notification to suggest that service has to be rendered in the geographical location of the SEZ unit. Such restricted interpretation would defeat the very purpose of the notification which is to provide relief to the deemed export to SEZ, from the burden of tax.

5.5 It is not in dispute that the service has been rendered by the appellant to a SEZ unit. The only ground on which the exemption is denied is that the service is not used wholly and exclusively within the geographical location of SEZ. Any service used for the authorized operations of SEZ should be treated as services consumed within the SEZ. The services used for export of goods manufactured by SEZ are to be treated as those consumed within the SEZ. Further that, the provisions of SEZ Act has overriding effect over the provisions of any other law in terms of Section 51 of SEZ Act, 2005. Section 26 of SEZ Act, 2005 provides various exemptions and concessions from duties and taxes. A harmonious reading of Section 51 and Section 26 of the SEZ Act would reveal that the units of SEZ are eligible for exemption from service tax for authorized operations of SEZ units. Export goods manufactured by SEZ unit are the most important authorized operation of such SEZ unit. Hence, the services consumed for such operation is to be exempted under the Notification No. 4/2004. The word "consumption" used in Notification No. 4/2004 has to be construed as service rendered to a developer/unit in SEZ. The service recipient/unit is situated in SEZ and therefore eligible for the benefit of exemption.

5.6 Without prejudice, we also find that prior to introduction of Notification No. 4/2004, exemption from service tax for services provided to developer/unit in SEZ was covered by Notification No. 17/2002-S.T., dated 21-11-2002. This notification did not contain any restriction as contemplated by the department now. Notification No. 4/2004 was later superseded by Notification No. 9/2009-S.T., dated 3-3-2009. In such notification also, there is no restriction that the service has to be consumed within the geographical location of the SEZ. When the notification previous as well as after does not put forward any such restriction, the contention of the department that the exemption would be eligible only for the services which are consumed within the geographical area of the SEZ is without legal basis.

5.7 We further find that on identical dispute the Tribunal in the matter of Norasia Container Line Vs. Commissioner of C.Ex., New Delhi 2011 (23) S.T.R. 295 (Tri. - Del.) also held as under:

We have considered the submissions from both the sides. The notification No. 4/2004 uses expression "for consumption of services" within such "Special Economic Zone", but at the same time also uses the expression "taxable services provided to a unit of the SEZ". Both the expressions are required to be read harmoniously. In any case, the subsequently enacted SEZ Act further provides in Section 26 as under:

"Section 26.

Exemptions, drawbacks and concessions to every Developer and entrepreneur. - (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely :-

(a) xxxx

(b) xxxx

(c) xxxx

(d) xxxx

(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 authorised operations in a Special Economic Zone;

(f) xxxx

(g) xxxx"

5. It is clear from the above provision that there is no restriction regarding the consumption of the services and the exemption is extended to the services rendered to a unit in the SEZ for the purpose of authorised operation in the SEZ.

> 6. Rule 31 of the Special Economic Zone Rules, 2006 provides as under:
>
> "Rule 31
>
> The exemption from payment of service tax on taxable services under section 65 of the Finance Act, 1994 (32 of 1994) rendered to a Developer or a Unit (including a Unit under construction) by any service provider shall be available for the authorised operations in a Special Economic Zone."
>
> 7. This Rule also states that exemption from service tax is available to services rendered to a unit in the SEZ for the authorised operations. There is no dispute that the containers provided to the units in the SEZ have been used by such units for the authorised operations, namely, for bringing inputs for manufacture and carrying the finished goods out of SEZ for export purposes. Therefore, we are of the view that the impugned services relating to supply of containers in the SEZ are exempt from payment of Service tax. We, accordingly, set aside the impugned order and allow the appeals.
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> From the above decision, it can be seen that the issue involved in the present case is absolutely identical to that of the above case, following the ratio of the aforesaid decision, in the present case too, the service provided for the authorized operation by the appellant to the SEZ based service recipient, demand of service tax is not sustainable. Since, we decide the matter on merit, we are not going into the issue of limitation.
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> 06. From the discussions above, and also the decisions cited supra, we are of the considered view that the impugned order cannot be sustained hence, the same is set aside. Appeal is allowed with consequential relief, if any, as per law."

12. Even prior to the aforesaid judgment, the Delhi Bench the Tribunal in Norasia Container Lines, supra, had taken the same view and held that the relevant consideration is the use of the service for authorized operations and not the physical location where the services was rendered. The Tribunal observed that services rendered outside the SEZ would also qualify for exemption if they were consumed for authorized operations of the SEZ Units. The decision in DHL Lemuir Logistics Pvt Ltd., supra, also reiterates that the substantive benefit available under the SEZ Act cannot be denied merely

because of procedural conditions or technical requirements, particularly where there is no dispute regarding utilization of the services for authorized operations. Likewise, Skyline Motors India Pvt Ltd., supra, reiterates the settled principle that procedural prescriptions cannot defeat substantive statutory rights where the essential conditions prescribed by law stand satisfied.

13. Applying the aforesaid principles to the facts of the present case, we find that the Department has not disputed the recipient of service, the nature of the service or their utilization for authorized operations. The denial of exemption rests solely upon the place where the services were physically rendered. Such interpretation is directly contrary to the law declared by the Hon'ble Supreme Court in Arkay Logistics Ltd., supra, and the consistent view taken by the Tribunal.

14. Consequently, we hold that the appellant was entitle to any exemption under Section 26 (1) (e) of the Special Economic Zones Act, 2005 read with Rule 31 of the SEZ Rules, 2006 and the demand of Service Tax confirmed by the lower authorities is not sustainable.

15. We also find considerable force in the appellant's submission on limitation. The entire dispute relates to interpretation of interplay between the SEZ Act and Finance Act. The Commissioner (Appeals), himself accepted that the issue involved reasonable cause and accordingly invoked Section 80 to set aside the penalty under Section 78 of the Finance Act, 1994. Once the issue is accepted to be interpretational, the allegation of fraud, suppression or willful mis-statement cannot simultaneously survive for the purpose of invoking the extended period under the proviso to Section 73(1) of the Finance Act, 1994. The transactions were duly reflected in the appellant's

books of an account and were detected during audit. Mere detection in audit does not establish suppression with intent to evade payment of tax. Accordingly, even on the ground of limitation the demand cannot be sustained.

16. Therefore, the impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 22.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha