CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 30747 of 2024

(Arising out of Order-in-Appeal No.HYD-SVTAX-MD-AP2-143-2024-25 dt.26.06.2024 passed by Commissioner of Customs & Central Tax (Appeals-II), Hyderabad)

M/s Srisun Exim Services
Flat No.301, Maithri Apartments, Thirumalgherry,
Secunderabad, Telangana – 500 015 **……Appellant**

VERSUS

Commissioner of Central Tax
Medchal - GST
GST Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004 **……Respondent**

Appearance

Shri P. Rosi Reddy, Advocate for the Appellant.
Shri Jyotish Verma, AR for the Respondent.

Coram: **HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30414/2026

Date of Hearing: 06.07.2026
Date of Decision: 28.07.2026

[Order per: ANGAD PRASAD]

This appeal has been filed by M/s Srisun Exim Services (hereinafter referred to as the appellant) against Order-in-Appeal dt.26.06.2024, whereby, the Commissioner (Appeals) partly upheld the department's appeal and confirmed service tax demand of Rs.1,43,523/-, together with applicable interest and penalty, on the ground that the appellant failed to produce Form A-2 for the Financial Year 2016-17 in respect of services rendered to an SEZ unit. The Commissioner (Appeals) also upheld levy of late fee for delayed filing of ST3 returns.

2. The facts, in brief, are that the appellant is registered with the service tax department and is engaged in providing Business Auxiliary Service, Cargo Handling Service and Goods Transport Agency Service. A Show Cause

Notice was issued alleging short-payment of service tax on the basis of difference between the turnover reflected in Form 26AS and the turnover declared in the ST3 returns.

3. The Adjudicating Authority, after detailed verification of invoices, books of accounts and supporting records, found that the difference represented non-taxable reimbursements, transportation expenses incurred on behalf of customers, freight forwarding charges and supplies made to SEZ units. It further recorded a categorical finding that service tax had already been discharged on the taxable component and accordingly, dropped the proceedings.

4. The department preferred an appeal. The Commissioner (Appeals) agreed with the adjudicating authority regarding reimbursements and taxable turnover but held that exemption relating to services provided to the SEZ unit was inadmissible because the appellant had not produced Form A-2 for the relevant year. Consequently, service tax of Rs.1,43,523/- was confirmed.

5. Heard both sides and perused the recrods.

6. The principle issue for determination is whether exemption available in respect of taxable services provided to SEZ unit can be denied solely because Form A-2 pertaining to the relevant financial year was not furnished.

7. After considering rival submissions and examining records, we find that there is no dispute regarding the following facts:

a) The services were admittedly rendered to an SEZ unit;

b) The services were utilized for authorized operations of the SEZ unit;

c) The Commissioner (Appeals) has not disputed the nature of the services or their utilization within the SEZ;

d) The exemption has been denied only because Form A-2 for the relevant financial year was not produced.

Therefore, the controversy is confined only to the effect of non-submission of Form A-2.

8. The issue is no longer res integra. The Hon'ble Andhra Pradesh High Court in the case of GMR Aerospace Engineering Ltd Vs UOI [2019 (31) GSTL 596 (AP)], while considering identical notifications issued under section 93 of the Finance Act, 1994, held that;

- Section 26 of the SEZ Act grants a substantive statutory exemption.
- The conditions governing such exemption can only be prescribed under the SEZ Act and thus, SEZ Rules.
- The Executive cannot curtail or deny the statutory exemption by imposing additional procedural requirements through notifications issued under the Finance Act.
- Non-filing of Form A-1 or A-2 cannot result in denial of exemption otherwise available under the SEZ Act.
- The SEZ Act being a special enactment overrides inconsistent provisions by virtue of section 51 of the Act.

9. The above judgment has attained finality after being affirmed by the Hon'ble Supreme Court. The legal position has thereafter been consistently followed by the Tribunal.

10. In the present matter, the Commissioner (Appeals) has not recorded any finding that;

- The services were not provided to an SEZ unit;
- The services were not used for authorized operations;
- The appellant was otherwise ineligible for exemption.

11. The sole basis for confirming the demand is absence of Form A-2 for the year 2016-17. Such reasoning is directly contrary to the law declared by the Hon'ble Andhra Pradesh High Court in the case of GMR Aerospace Engineering Ltd Vs UOI (supra). Once it is established that services were rendered to an eligible SEZ unit for authorized operations, denial of exemption merely on account of non-production or non-renewal of Form A-2 is not sustainable in law. The Commissioner (Appeals), therefore, committed

an error in treating the procedural requirement of Form A-2 as mandatory substantive condition for grant of exemption.

12. The appellant has also challenged levy of late fee of Rs.47,000/-. Section 70 of the Finance Act, 1994 prescribes maximum late fee payable for delayed filing of ST3 returns. If the amount imposed exceeds the statutory ceiling applicable during the relevant period, the same cannot be sustained. Accordingly, the adjudicating authority shall restrict the late fee strictly in accordance with the statutory ceiling prescribed under section 70 of the Finance Act, 1994 applicable to the relevant period.

13. In view of the above discussion, non-filing of Form A-2 cannot be sustained. Consequently, the demand of Rs.1,43,523/-, along with consequential interest and penalty, is liable to be set aside.

14. The impugned order is set aside the extent it confirms the service tax demand of Rs.1,43,523/- together with consequential interest and penalty. The late fee for delayed filing of ST3 returns shall stand restricted to the amount legally permissible under section 70 of the Finance Act, 1994, if found to have been imposed in excess of statutory limit.

15. Accordingly, the appeal is allowed by way of remand for the limited purpose of re-quantification of late fee in above terms.

(Pronounced in the Open Court on 28.07.2026)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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