IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76091 of 2016

(Arising out of Order-in-Appeal No. 12/ST/RKL-COM/2016 dated 29.03.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Vedanta Limited (SEZ Unit) **: Appellant**
Expansion Site Office, VIII:
Bhurkhamunda, Burndamal,
Kurebaga, Jharsuguda, Odisha

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

WITH

Service Tax Appeal No. 76092 of 2016

(Arising out of Order-in-Appeal No. 13/ST/RKL-COM/2016 dated 29.03.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Vedanta Limited (SEZ Unit) **: Appellant**
Expansion Site Office, VIII:
Bhurkhamunda, Burndamal,
Kurebaga, Jharsuguda, Odisha

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

WITH

Service Tax Appeal No. 76093 of 2016

(Arising out of Order-in-Appeal No. 11/ST/RKL-COM/2016 dated 29.03.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Vedanta Limited (SEZ Unit) **: Appellant**
Expansion Site Office, VIII:
Bhurkhamunda, Burndamal,
Kurebaga, Jharsuguda, Odisha

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

AND

Service Tax Appeal No. 76094 of 2016

(Arising out of Order-in-Appeal No. 07/ST/RKL-COM/2016 dated 29.03.2016 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Vedanta Limited (SEZ Unit) **: Appellant**
Expansion Site Office, VIII:
Bhurkhamunda, Burndamal,
Kurebaga, Jharsuguda, Odisha

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007, Odisha

APPEARANCE:

Shri Rahul Tangri, Advocate
Assisted by Smt. Payal Bharwani, Advocate
For the Appellant

Shri Faiz Ahmed, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77113-77116 / 2024

DATE OF HEARING / DECISION: 27.09.2024

ORDER: [PER SHRI ASHOK JINDAL]

All the appeals are having a common issue and therefore, all are disposed of by this common order.

2. The facts of the case are that the appellant is located in a SEZ Area and availing certain services on which they have paid Service Tax. Since no Service Tax can be levied on the services availed by the appellant located in the SEZ Area, therefore, the appellant filed refund claims.

2.1. The refund claims so filed came to be rejected by the ld. adjudicating authority on the ground that they were filed beyond the time-limit prescribed under Notification No.09/2009-S.T. dated 03.03.2009 and Notification No.17/2011-S.T. dated 01.03.2011. Thereafter, the appellant challenged the rejection of the refund claims before the Ld. Commissioner (Appeals), but the same was upheld by way of the impugned orders.

2.2. Against those orders, the appellant is before us.

3. Heard the parties.

4. The short issue involved in these appeals is whether the provisions of Notification No.09/2009-S.T. dated 03.03.2009 and Notification No.17/2011-S.T. dated 01.03.2011 are applicable for refund claims filed by a unit located in a SEZ Area or not.

5. The said issue has been settled by this Tribunal in the appellant's own case vide *Final Order No. 75552 of 2024 dated 06.03.2024 in Service Tax Appeal No. 75028 of 2013 (CESTAT, Kolkata)* as reported in *2024 (3) TMI 1325 – CESTAT, Kolkata,* wherein it has been observed that:

> *"7. We observe that the appellant has claimed the refund under Notification No. 09/2009-S.T. dated 03.03.2009. The refund was rejected only on the ground of limitation as prescribed in paragraph 2(f) of Notification No. 09/2009-S.T. We observe that there is no dispute regarding the payment of Service Tax or utilization of services for authorized operations in the SEZ. The refund has been rejected only on the ground that the claim has not been filed within the time limit prescribed in the notification. Thus, the issue to be decided here is whether the time limit prescribed under the notification is applicable in respect of the refund application filed by a unit located within the SEZ area.*
>
> *...*

7.4 in the view of Section 26(1) of the SEZ Act read with Rule 31 of the SEZ Rules, we observe that the conditions of Notification No. 09/2009-S.T. are clearly repugnant and inapplicable. This is because Section 51 of the SEZ Act grants overriding power to the provisions of the SEZ Act. We find that the Tribunal, New Delhi in the case of M/s Lupin Ltd. (supra) has held this view and the observations of the Tribunal are reproduced as under: -

> *21. From the aforesaid, it is evident that the appellant fulfilled the criterias of eligibility to claim refund of the service tax paid on input services in terms of the Notification No 12/2013-ST. Infact it is not the case of the revenue that the appellant is not eligible to make such claims. Their only objection is to the claim being filed beyond the period of one year as per the notification. We are of the considered opinion that once the appellant is found to be eligible to claim the refund, the substantive conditions are complied with and the condition of time limit for making the claim under the notification being only a procedural requirement, needs to be construed liberally. Considering the beneficial object of establishing the SEZ tax free, without any burden of duties, the procedural lapse, if any, cannot be the basis to deny the refund to the appellant. The exemption is intended to be absolute is further evident from para 3 (11) of the Notification which provides for ab-initio exemption. This strengthens our conclusion that the SEZ Act and the Rules read with the notification is intended to be a beneficial policy for the SEZ, therefore has to be construed liberally. In our view we are supported by the decision of the Apex Court in Government of Kerala & Anr. Vs. Mother Superior Adoration Convent (supra), where it has been held that the beneficial purpose of the exemption must be given full effect to and before interpreting a statute, "we must first ask ourselves what is the object sought to be achieved by the provision and construe the statute in accordance with such object. The Court went*

> *ahead to hold that in the event of any ambiguity in such construction, such ambiguity must be in favour of that which is exempted. On the principle that there is a clear distinction between exemptions which are to be strictly interpreted as opposed to beneficial exemptions having the purpose of encouragement or promotion of certain activities, the Court relied on several decisions."*

6. As the provisions of the Notifications mentioned hereinabove are not applicable to units located in a SEZ Area, as held by this Tribunal in the appellant's own case (*supra*), therefore, we hold that all the refund claims filed by the appellant were in time.

6.1. Accordingly, we set aside the impugned orders and direct the adjudicating authority to entertain the refund claims filed by the appellant, on their own merits.

7. The appeals are disposed of in the above terms.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd