

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.78733 of 2018

(Arising out of Order-in-Appeal No.112-113/ST/RKL-GST/2018 dated 29.06.2018 passed by Commissioner(Appeals), GST, CX & Customs, Bhubaneswar.)

M/s. Vedanta Limited (SEZ Unit),
(Burkhamunda, Dist. Jharsuguda, Odisha-768201.)

...Appellant

VERSUS

Commissioner of CGST & CX, Rourkela Commissionerate

.....Respondent

(KK-42, Civil Township, Rourkela-769012.)

WITH

(i) Service Tax Appeal No.78734 of 2018 (M/s. Vedanta Limited Vs. C, CGST & CX, Rourkela Commissionerate); (ii) Service Tax Appeal No.78735 of 2018 (M/s. Vedanta Limited Vs. C, CGST & CX, Rourkela Commissionerate); (iii) Service Tax Appeal No.78736 of 2018 (M/s. Vedanta Limited Vs. C, CGST & CX, Rourkela Commissionerate); (iv) Service Tax Appeal No.78737 of 2018 (M/s. Vedanta Limited Vs. C, CGST & CX, Rourkela Commissionerate);

(i) (Arising out of Order-in-Appeal No.101/ST/RKL-GST/2018 dated 29.06.2018 passed by Commissioner(Appeals), CGST, CX & Customs, Bhubaneswar.)

(ii) (Arising out of Order-in-Appeal No.106/ST/RKL-GST/2018 dated 29.06.2018 passed by Commissioner(Appeals), CGST, CX & Customs, Bhubaneswar.)

(iii) (Arising out of Order-in-Appeal No.112-113/ST/RKL-GST/2018 dated 29.06.2018 passed by Commissioner(Appeals), GST, CX & Customs, Bhubaneswar.)

(iv) (Arising out of Order-in-Appeal No.105/ST/RKL-GST/2018 dated 29.06.2018 passed by Commissioner(Appeals), CGST, CX & Customs, Bhubaneswar.)

APPEARANCE

Shri K.K.Acharya, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75310-75314/2022

DATE OF HEARING : 12 May 2022
DATE OF DECISION : 08 June 2022

P.K.CHOUDHARY :

Since the issue in dispute in all the Appeals are common hence all the Appeals are taken up together for disposal.

2. The appellant, M/s.Vedanta Ltd., erstwhile M/s.Vedanta Aluminium Ltd. (SEZ Unit), has preferred the present appeals against different Orders-in-Appeal (referred to hereunder as 'the impugned Orders') passed by the Ld. Commissioner(Appeals), GST, CX & Customs, Bhubaneswar (referred to hereunder as 'the L'd Commissioner(A)'), whereby the Appellant's claim for refunds of Service Tax, as disallowed, was upheld by way of rejecting the Appellant's appeals.

3. The brief facts leading to filing of the present appeals are that during the relevant period, the Appellant was a Special Economic Zone (SEZ) Unit, duly declared by the jurisdictional Development Commissioner, in the notified SEZ area, for manufacture of Aluminium products.

4. In the course of its operation as such, the Appellant availed 'Banking and Other Financial Services' from their service providers namely M/s.ICICI Bank, Axis Bank, State Bank of India and Bank of Baroda and bore the incidence of Service Tax paid thereon by the said service providers. Subsequently, the Appellant applied for refund of the said Service Tax components as was passed on to it by the aforesaid service providers during the relevant period.

5. Upon scrutiny of the appellant's said refund applications, Show Cause Notices requiring the Appellant to show cause as to why the appellant's refund claims as above should not be rejected on, amongst others, the ground that they have not properly followed the provisions of the Notification No.12/2013-ST dated 01.07.2013, Notification No.17/2011-ST dated 01.03.2011 and Notification No.40/2012-S.Tax dated 20.06.2012 and thereby violated the provisions thereof.

6. The show cause notices were adjudicated vide the Orders-in-Original, whereby, the Appellant's refund claims were rejected with the finding that the documents submitted by the Appellant in support of its claim were not a proper document admissible in terms of Notification No.12/2013-ST dated 01.07.2013, Notification No.17/2011-ST dated 01.03.2011 and Notification No.40/2012-S.Tax dated 20.06.2012, supra.

7. Being aggrieved, the appellant challenged the said Orders-in-Original in appeal before the Ld. Commissioner(Appeals). The impugned orders were passed *ex parte*, whereby, the appellant's appeals were rejected. Being aggrieved, the appellant has preferred the present appeals. For better appreciation of facts and the issues before us across the Appeals are tabled as below:-

	ST/78733/2018	ST/78736/2018
Refund claimed (under Notification No.12/2013-ST dated 01.07.2013)	Rs.3,57,345	Rs.3,76,942
Relevant Period	May 2014	
Refund allowed	Rs.1,04,234	Rs.1,50,936
	In respect of rent-a-cab service availed from different travel agents	
Refund rejected	Rs.2,53,111	Rs.2,26,606
	In respect of banking and financial services received from ICICI Bank, Axis Bank, State Bank of India and Bank of Baroda.	
Ground of rejection	Tax-paying documents received by appellant from the Banks are computer generated and are not signed.	
	ST/78734/2018	
Refund claimed (under Notification No.17/2011-ST dated 01.03.2011)	Rs.5,17,752	
Refund rejected	Rs.5,17,752	
Relevant Period	February 2012	
Ground of rejection	Tax-paying documents received by appellant from the Banks are computer generated and are not signed.	
	ST/78737/2018	
Refund claimed (under Notification No.40/2012-ST dated 20.06.2012)	Rs.4,97,816	
Refund rejected	Rs.4.97,816	
Relevant Period	January, February & June 2013	
	In respect of banking and financial services received	

	from State Bank of India and ICICI Bank.
Ground of rejection	Tax-paying documents have been addressed to appellant's Corporate Office at Mumbai.
	ST/78735/2018
Refund claimed (under Notification No.40/2012-ST dated 20.06.2012)	Rs.2,68,692
Refund rejected	Rs. 2,68,692
Relevant Period	May 2014
	In respect of banking and financial services received from State Bank of India and ICICI Bank.
Ground of rejection	Tax-paying documents have been addressed to appellant's Corporate Accounting Office at Mumbai.

8. The Ld.Advocate appearing on behalf of the Appellant submitted that the present appeals are covered by the Final Order No.75203/2020 dated 04.02.2020, in the appellant's own case and therefore, the impugned order in the present case may be set aside on this count alone.

8.1 Nonetheless, the impugned orders are verbatim reproduction of the Orders-in-Original and therefore, are manifestly without any application of mind. On this ground alone the impugned orders are liable to be set aside.

8.2 The impugned Orders are contrary to the provisions of Rule 4A of the Service Tax Rules which categorically provides that *"in case the provider of taxable service is a banking company or a financial institution, including a non-banking financial company providing service to any person, an invoice, a bill or, as the case may be, challan shall include any document by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule"*. The impugned Order completely overlook the aforesaid mandate of Rule 4A *ibid*.

8.3 The impugned orders failed to appreciate that the appellant is a unit in the Special Economic Zone (SEZ) and their entitlement to refund of service tax paid on eligible services cannot be disputed. Therefore, rejection of refund claim to the appellant, being a SEZ unit, is contrary

to the avowed policy of the Central Government as contained in Section 7 & 51 of the SEZ Act, 2005.

8.4 The discrepancy pointed out by the Original Authority (blindly copied by the Appellate Authority in the impugned orders) is a technical discrepancy and more particularly, categorically contrary to the concession granted by the statute in Rule 4A of the ST Rules.

8.5 The impugned order does not dispute the factum of eligibility of the impugned services for refund in terms of Para-3(I) of Notification No.12/2013-ST dated 01.07.2013 and so also does not dispute payment of service tax by the appellant in respect of such eligible services. With these quintessential conditions being satisfied in the present case, rejection of the appellant's refund claim, as impugned in the present case, is wholly illegal and therefore the impugned order is liable to be set aside.

9. Learned Advocate, appearing on behalf of the appellant submits that the impugned orders are exemplary case of total non-application of mind and gross abuse of power with utter disregard to the provisions of the statute and the Notifications issued there-under with utmost apathy to the consequential prejudice caused to *bona fide* tax payers and the effect thereof on the public in general.

The Ld. Advocate further submits that the findings of the Ld. Commissioner(Appeals) in the impugned orders are *verbatim* reproduction in bits & pieces from the Orders-in-Original, without at all considering the grounds of appeal taken by the appellant, particularly with reference to the object and intent behind granting of refund to SEZ units, which were emphatically submitted by the appellant in the Memorandum of Appeals. Thus, the impugned orders lack the fundamental characteristics of an Appellate Order and therefore deserves to be quashed *in limine*.

Ld. Advocate further submits that the findings of the Ld. Commissioner(Appeals) are wholly contradictory to the letters and spirit

of the benefit of exemption granted to SEZ units, by way of refund of Service Tax paid.

10. Ld. Advocate further submits that the impugned orders have completely ignored the binding precedents cited by the appellant in support of its claim that a substantive benefit of refund cannot be denied as long as consumption of the impugned services by the SEZ are not in dispute and that mere discrepancy in the invoices/bills/challans cannot be a reason to deny the benefit of refund. Having not considered the appellant's above submissions read with the case laws relied upon by the appellant, the impugned orders suffer from the infirmity of being a non-speaking orders, liable to be set aside.

11. Ld. Authorized Representative, appearing on behalf of the respondent department justifies the orders of the lower authorities.

12. Heard both sides and perused the appeal records.

13. On perusal of records, it transpires that the issue is regarding rejection of refund claims, claimed by the Appellant. The Appellant claimed the refunds of the amount as being Service Tax paid on "Banking and Other Financial Services" in respect of services received in the SEZ unit. They claimed the benefit of Notification No.12/2013-ST dated 01.07.2013, Notification No.17/2011-ST dated 01.03.2011 and Notification No.40/2012-S.Tax dated 20.06.2012. The refunds were rejected by the lower authorities on the ground that along with the refund application, the said Refund Claim cannot be disallowed in this light. However, the documents submitted by the claimant relating to banks which are not signed by any the banks Authority the "Computer Generate Advice" of Foreign Import Bill Transaction Advice for CUSTID; 507991965/Foreign Remittance Advice for CUSTID; 507991965/Import Letter of Credit Issuance Advice/Debit Advice for outward Remittance" of the aforesaid document can be obtained as many times as they like and utilization of the same in different occasion cannot be ruled out.

14. I observe that the benefit of Notification No.12/2013-ST dated 01.07.2013, Notification No.17/2011-ST dated 01.03.2011 and Notification No.40/2012-S.Tax dated 20.06.2012 can be availed in

either way i.e. the service provider may not tax the amount or the service recipient being SEZ can claim refund.

15. Further, the Development Commissioner, Falta Special Economic Zone, Kolkata vide his letter No.I(43)/ACM/2009 dated 06.08.2009 and letter No.F.2/126/2006-SEZ/2013-14/3525 dated 29.01.2014 has approved list of services for carrying out the authorized operation in the SEZ unit. The “Banking or Financial Service” involved in this claim application has also been approved by the “Approval Committee” for the purpose of claiming exemption. M/s. VAL(SEZ Unit) have also furnished declaration in Form A-1 duly verified by the Specified Officer of the SEZ for the purpose of claiming exemption. M/s. VAL (SEZ Unit) have also submitted declaration to the effect that they have not taken Cenvat credit of Service Tax paid on the specified services used for the authorized operations in their SEZ. As discussed in the brief facts above, they are maintaining proper account of receipt and use of the specified services on which exemption is claimed.

16. It is my considered view that mere technical discrepancy in the invoices cannot be the ground for denying substantive benefit of refund available to SEZ unit. It is the policy of the Government to exempt or refund the input tax incurred by the SEZ unit. Keeping the policy of the Government in mind and specifically in the light of section 7 and section 51 of the SEZ Act, 2005, I find denial of refund claim on this ground is not sustainable. Regarding re-conciliation of Service Tax payment with evidence of challans, I find that the same was produced before the lower authority and also before me and the same is satisfactory.

17. If the service recipient is a SEZ unit, they should pay Service Tax to the service provider and claim the refund of the amount. In the case in hand, the fact that the appellant is SEZ unit is not disputed and the receipt of the services is also not disputed as also the payment of Service Tax to the service provider. In the absence of any adverse findings on these issues, I find that the appellant herein is eligible for claiming refund of the Service Tax paid by the service provider which is in consonance with the law.

In view of the above discussions/findings, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on 08 June 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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