IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/88162 & 88170/2018

(Arising out of Order-in-Appeal No. MKK/423-426/RGD APP/2017-18 dated 17.01.2018 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), CBD Belapur, Navi Mumbai)

Jardine Lloyd Thompson India Pvt. Ltd. **Appellant**

Vs.

Commissioner of CGST, CE & Service Tax **Respondent**
Navi Mumbai

Appearance:

Shri Prasad Paranjape, Advocate for appellant
Shri S.B. Mane, Authorised Representative for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 22.02.2019

FINAL ORDER NO. **A/86662-86663 / 2019**

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged *inter alia,* in the activities of performing a broad range of back-end operations like administrative support, financial accounting, data processing etc., for its group company M/s Jardine Lloyd Thompson, located outside India. Such services provided by the appellant are categorized as taxable service, defined under the Finance Act, 1994 and for that purpose, the appellant got itself registered with the Jurisdictional Service Tax authorities. The appellant operates its unit located within the Special Economic

Zone (SEZ). During the disputed period, the appellant had filed refund applications on 27.02.2012, claiming refund of service tax paid on the input services, used for various operations of the SEZ unit. Such refund applications were rejected by the original authority vide order dated 08.10.2012 and upheld by the learned Commissioner (Appeals) by the impugned order dated 17.01.2018, on the following grounds:-

(a) Letter of approval of list of services required for authorized operations was received after the period of refund i.e. on 07.07.2011.

(b) Appellant had not produced documentary evidence to substantiate receipt and use of specified services within the SEZ area.

(c) Refund of Rs.81,198/- was claimed after 1 year from the date of payment to the vendor.

(d) Letter of approval of list of services required for authorized operations was received after the period of refund i.e. on 07.07.2011.

(e) Appellant has not produced documentary evidence to substantiate receipt and use of specified services, on which refund is claimed in SEZ.

2.1 The learned Advocate appearing for the appellant submits that the Notification No.17/2011-S.T dated 01.03.2011 does not provide for any condition that list of services are required to be approved prior to provision of service. In this context, he has relied upon the decision of this Tribunal in the case of *Makers Mart v. Commissioner of Central Excise & ST, Jaipur – 2016 (44) STR 126 (Tri. – Del).* With regard to non-submission of documentary evidence regarding receipt and use of specified services in the SEZ, the learned Advocate submits that the Notification dated 01.03.2011 also does not require that the assessee should submit any documents, evidencing receipt and use of specified services. In this context, he has placed reliance on the decision of this Tribunal in the case of *Wardha Power Co. Ltd. v. Commissioner of Central Excise, Nagpur – 2018 (10) GSTL 248 (Tri. – Mum).*

2.3 With regard to rejection of refund claim on the ground of limitation, the learned Advocate submits that the discretion provided in the Notification to the adjudicating authority has not been exercised judiciously and the refund application was rejected solely on the ground of limitation. He has relied on the decision of this Tribunal in the case of *Makers Mart* (supra) and *Jubiliant Infrastructure Ltd. v. Commissioner of Central Excise & ST, Vadodare II – 2015 (40) STR 576 (Tri. Ahmd.)* to state that when the power vested under the Notification has not been exercised in a broader perspective, rejection of refund applications on the ground of limitation alone, should not stand for judicial scrutiny.

3. On the other hand, learned D.R. appearing for the Revenue reiterates the findings recorded in the impugned order. He further submits that since the notification dated 01.03.2011 has specifically provided the time limitation of one year for filing refund application, the assessee has to file such application strictly within the prescribed period and the application filed belatedly cannot be condoned by the lower authorities. He further submits that for extending the period of limitation, no written application was filed by the appellant and accordingly, rejection of refund applications by the original authority is in confirmity with the provisions laid down in the Notification No. 01.03.2011.

4. Heard both sides and perused the records.

5. The fact is not under dispute that during the relevant period, the appellant had operated its unit located within SEZ. As a unit under SEZ, the appellant was governed under the Notification No. 17/2011-S.T. dated 01.03.2011 for procuring the input services without payment of service tax and also for claiming of refund of service tax, where ever such tax has been paid on the specified services received for various operations in SEZ. In this case, the appellant had opted for payment of service tax on the input services and thereafter, had filed the refund applications before the Jurisdictional service tax authorities.

5.1 With regard to the observations of the lower authorities that since the letter of approval of list of services was received by the appellant on 07.07.2011, the benefit of refund should not be available, I find that the Notification dated 01.03.2011 at para 2(b) provides that "for the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorized operations approved by the Approval Committee." The said clause nowhere specified that the Letter of Approval has to be obtained before filing of the refund applications. Since the fact is not under dispute that the appellant is governed under the SEZ Scheme and procuring the services on the basis of Letter of Approval issued by the competent authority i.e. Approval Committee, denial of refund benefit on the ground of non-submission of Letter of Approval prior to the date of refund claim should not be considered as legal and proper. Thus, I am of the view that denial of refund benefit on this ground is not sustainable.

5.2 As regards denial of refund benefit on the ground of non-submission of documentary evidence to substantiate the receipt and use of specified services, I find that the notification dated 01.03.2011 has prescribed the formula at Column Serial 9.1 and 9.2 read with para 3(f)(iii)(A). On perusal of the original and the impugned orders, I do not find that the authorities below have specifically alleged regarding non-compliance of the said conditions by the appellant. Since the appellant had submitted the information as prescribed under Table (B), denial of refund benefit on the alleged ground of non-submission of documents cannot also be sustained.

5.3 I find that the refund claim has been denied by the original authority on the ground that the said application was filed by the appellant beyond the period of one year from the date of payment made to the vendors. With regard to the time limit for filing the refund application, the Notification dated 01.03.2011 at para 3(e) provides that claim for refund shall be filed within one year from the end of the month, in which actual payment of service tax was made by the SEZ unit. The said clause provides discretion to the Central Excise officers for extending the period of limitation. In this case, though the refund application was not filed within the stipulated time, but the empowered authorities under statute have not extended the time limit for entertaining the refund application. Since the fact of use of input services for the purpose of SEZ operations was not alleged or denied by the department, as per the conditions of notification, the appellant should be entitled for the refund benefit. In this connection, I find that the ratio of the order/decision cited by the learned Advocate for the appellant squarely applicable to the facts of the present case, wherein this Tribunal has allowed the refund in respect of the claim applications filed beyond the period of one year.

5.4 In view of the foregoing discussions and analysis, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeals are allowed in favour of the appellant with consequential benefit of refund.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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