CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.89065 of 2018

[Arising out of Order-in-Appeal No.NA/GSTA-III/MUM/643/17-18, dt.28.03.2018, passed by the Commissioner (Appeal-III),GST & CE, Mumbai]

M/s Vishay Semiconductor India Pvt. Ltd **......Appellant**
Unit No.100, SDF IV, SEEPZ-SEZ, Andheri (East),
Mumbai 400 096

VERSUS

CC, GST, Mumbai Central **......Respondent**
9th Floor, Piramal chambers, Jijibhoy Lane,
Lalbaug, Parel,
Mumbai 400 012

Appearance:
For Appellant : Shri Ronak Kumar, Chartered Accountant
For Respondent : Shri S.B. Mane, AC (AR)

CORAM:
HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

FINAL ORDER NO.A/86782/2019

Date of Hearing: 20.09.2019
Date of Decision: 20.09.2019

PER: Dr.D.M. MISRA

This appeal is filed against Order-in-Appeal No.NA/GSTA-III/MUM/643/17-18, dt.28.03.2018, passed by the Commissioner (Appeal-III),GST & CE, Mumbai

2. Briefly stated the facts of the case are that the Appellants, as a SEZ unit, engaged in the manufacture of export of semi-conductors. They filed refund claim for the period March 2009 to July 2009 for Rs.2,47,040/- of the service tax paid on various

specified services used in or in relation to authorized operation in the SEZ as per Notification No.9/2009-ST, dt.03.03.2009 as amended vide Notification No.15/2009-ST, dt.20.05.2009. Out of the said amount, the Adjudicating authority rejected Rs.1,31,142/-. Aggrieved by the said order, they filed appeal before learned Commissioner (Appeals), who in turn, rejected their appeal, hence the present appeal.

3. At the outset, the learned Chartered Accountant for the Appellant has submitted that out of the total rejected amount of Rs.1,31,142/-, an amount of Rs.3,863/- is the credit of service tax paid on Club or Association service, Rs.75,620/- relates to Service Tax paid on Life Insurance Service and Rs.5,659/- with regard to various input services wholly consumed in the SEZ. Refund of Rs.3,863/- on Club or Association Service was denied since the same was not mentioned in the list of approved service at the time of export which later included in the approved list by the approval committee vide letter dt.06.11.2009. He submits that subsequent approval of the services cannot disentitle in availing refund of service tax paid on such services in view of the judgment of this Tribunal in the case of M/s Bicon Ltd Vs C.C.T., Bengaluru – 2019-TIOL-797-CESTAT-BANG. He has further submitted that the service tax paid on the Life Insurance Policy of employee was denied on the ground of having no nexus with the output service even though the said service has been covered in the approved list of services required for authorized operation. It is his argument that the Tribunal in the case of Tata Consultancy Services Ltd Vs CCE & ST (LTU), Mumbai – 2012-TIOL-1034-CESTAT-MUM, observed that

refund of service tax paid on the said service is admissible. Also, he has referred to the judgment of this Tribunal in the case of Symantec Software & Services Pvt. Ltd Vs Commissioner, GST & CE, Chennai (South) – 2019-TILL-2060-CESTAT-MAD, observed that once the services are approved by the approval committee, denial of refund on the ground of having no nexus is unsustainable. On the issue of input service wholly consumed within the SEZ, the learned Chartered Accountant referred to the judgment in the case of Barclays Technology Centre India (P) Ltd Vs CCE Pune-III – 2015 (38) STR 35 (Tri-Mumbai).

4. Per contra, the learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records. The short issue involved in the present appeal is whether the Appellants are entitled to refund of service tax paid on various input services used in SEZ in carrying out authorized operation. The club or association service is initially not included in the approved list, but later forming a part of the approved list. Hence, refund cannot be denied to the Appellant in view of the judgment in the case of Biocon Ltd (supra). Similarly, since the service tax paid on life insurance service of the employees of the Appellant being included in the approved list, refund on this count cannot be denied to them in view of the judgment in the case of Tata Consultancy Services Ltd’s case (supra). Also, various input services which are wholly consumed within the SEZ, the service tax paid on such services cannot be denied as refund, in view of the principle of law laid down in the case of Barclays Ltd’s case (supra).

6. Following the aforesaid precedent, I am of the opinion that the impugned order being devoid of merit, accordingly, is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

Bahalkar