**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI**

**WEST ZONAL BENCH**

**Service Tax Appeal No: 90154 of 2014**

[Arising out of Order-in-Appeal No: PUN-EXCUS-003-APP-070-14-15 dated 17th September 2014 passed by the Commissioner of Central Excise (Appeals), Pune – III.]

Manjri Stud Farm Pvt Ltd
IT/ITES SEZ Developer S No. 209,
Next to Satyapuram Society, Pune-Sawad Road
Puursungi, Pune – 412 308 … ***Appellant***

*versus*

Commissioner of Central Excise
Pune – III
ICE House, Sassoon Road, Pune – 411 001 ***…Respondent***

*APPEARANCE:*

Shri Mehul Jiwani, Chartered Accountant for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**
**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: A/87589 / 2019**

DATE OF HEARING: 12/07/2019
DATE OF DECISION: 12/07/2019

*PER: C J MATHEW*

This appeal of M/s Manjari Stud Farm Pvt Ltd, against order-in-appeal no. PUN-EXCUS-003-APP-070-14-15 dated 17th September 2014 of Commissioner of Central Excise (Appeals), Pune-III, disputes the upholding of the rejection of claim of ₹ 1,26,94,193 dated 13th June 2013,filed in accordance with notification no. 14/2012-ST dated 20th June 2012, for refund of tax paid on services.

2. Appellant is a ‘developer’ approved by Government of India in accordance with the procedure laid down in Special Economic Zones Act, 2005 and is, under section 26 thereof, entitled to exemptions from duties of customs and central excise, chargeable on goods procured from outside India and from manufacturers in India, as well as from tax on services procured for rendering of ‘authorised operations’ as approved by the competent authority under the Act. While the duties on goods are exempted upfront on receipt in the notified area of the ‘special economic zone’, the peculiarities of monitoring intangible services required a special procedure for ascertainment and verification before the exemption is implemented. That has been laid down in notification no. 40/2012-ST dated 20th June 2012. Needless to say, the benefit of the exemption is to be accorded solely in terms of section 26 of Special Economic Zones Act, 2005.

3. Learned Chartered Accountant appearing for the appellant submits that the refund has been denied for non-compliance with the conditions of the notification at serial no. 3(f)(ii) therein inasmuch as

the debit notes are not acceptable as valid substitutes for invoice and that these were not serially numbered. He contends that no conditions are prescribed in section 26 of Special Economic Zones Act, 2005 or in rule 31 of Special Economic Zones Rules, 2006 by citing technical objections that were upheld in the impugned order. He relies on the decisions of the Tribunal in *Cummins Technologies India Ltd v. Commissioner of Central Excise and Service Tax, Meerut-II [2018-TIOL-1735-CESTAT-DEL], Intas Pharma Ltd v. Commissioner of Service Tax, Ahmedabad [2013 (3) STR 543]* and in *Reliance Ports & Terminals Ltd v. Commissioner of Central Excise & Service Tax, Rajkot [2015 (40) STR 200 (Tri)]*. Likewise, relying upon the decision of the Hon'ble Supreme Court in *UM Cables Ltd v. Union of India and ors [2013-TIOL-386-HC-MUM-CX]*, he contends that substantive compliance with the mandated provisions suffices for grant of refund that is otherwise in compliance with section 26 of Special Economic Zones Act, 2005. Reliance is also placed on the decision of the Tribunal in *Wardha Power Company Ltd v. Commissioner of Central Excise, Nagpur [2018 (10) GSTL 248 (Tri-Mumbai)].*

4. Learned Authorised Representative contends that the impugned order cannot be faulted as the operational notification no. 40/2012-ST dated 20th June 2012 specifies in paragraph 3 (f) that the claim should be supported with 'bill or invoice or challan' and further states that rule 4A of Service Tax Rules, 1994 prescribes invoice for rendering of

services. Citing the decision of the Hon'ble High Court of Jharkhand in *Manpreet Engineering & Construction Co v. Union of India [2016 (44) STR 384 (Jhar)]* and, in particular, on

> *'(III) It appears on perusal of VCES, 2013 that the clauses of the Scheme are drafted very clearly and they are bereft of any ambiguity. What is to be paid that has already been mentioned in Section 107. We cannot replace all these sections. In a taxing statue interpretation ought to be made strictly. Court can neither replace all these clauses of VCES, 2013 nor further instalments can be given by the court in exercise of powers under Article 226 of the Constitution of the India. The so called theory argued by the counsel for the petitioner, viz. 'substantial compliance' has no place in a taxing statute, otherwise every declarant or assessee will partly comply with a scheme or provision of the taxing statute and will say that there is substantial compliance, which will lead to nothing but chaos and court cannot be a party to this.'*

he contends that the lack of proper documentation suffices to discard the claim for refund.

5. The dispute arises from filing of claim for refund of taxes borne on 'business auxiliary service' rendered by M/s Shapoorji Pallonji & Co Ltd and for which they had issued debit notes, inclusive of tax element, to the appellant. The claim of refund was in compliance with the procedure prescribed, specifically for services procured from the domestic tariff area, as a substitute for upfront exemption permissible under section 26 of Special Economic Zones Act, 2005 on services

utilised for 'authorised operations' in special economic zones. Neither of the lower authorities have disputed the performance, or the purpose of the service, so rendered. It is solely on the ground of the claim having been supported with 'debit notes' and, that too, without being serially numbered, instead of furnishing invoices, that the rejection was ordered. It is the emphasis placed on the notification no. 40/2012 dated 20th June 2012 that led to this conclusion.

6. The entitlement of the appellant for exemption is, thus, undisputed. We have no doubt that, as submitted by Learned Authorised Representative, 'substantial compliance' has no place in a taxing statute. However, that particular injunction was rendered in the context of an amnesty scheme in which the tax liability was being waived. *Per contra*, in the present instance, the appellant's eligibility is not in question and it is not as if debit notes are unknown in commercial transactions. In matters relating to enforcement of tax collection, it may be open to tax authorities to make prescriptions that must be adhered to. However, in the implementation of a statue that not only overrides other statutes in the event of a conflict but also affords exemptions 'outside the customs territory', and the prescribed procedure is merely for monitorial oversight, rigidity on the part of the tax authorities may not find the same support. Here, it must be emphasized, that the Special Economic Zone is a scheme of the Central Government, of which the respondent is a part, and that recourse is had to the tax administration

to assist in implementation of the scheme. At best, objections may be raised to protect the interest of revenue but not at the cost of statutory entitlement and, in the absence of any evidence of ineligibility, there is no conflict with interest of revenue insofar as the claim for refund is concerned. The observation of the Tribunal in *re Wardha Power Company Ltd* that

> *'8. The items that were subject matter of the scrutiny by the Authority below were as stated aforesaid by the appellant and covered by paras 5.12 to 5.16 of the show cause notice at pages 63 to 65 of the appeal record. The services stated in para 5.1 has been disallowed on the ground that evidence was not produced. Appellant's grievance was that the services having been utilized in the SEZ and materials are borne by record to this effect, the burden of proof is on the person, who alleges, to bring out a case for defence of the other side. In absence of proper enquiry being conducted to bring out that the service was not utilized or the evidence adduced was insufficient nor there was any evidence, it is not possible to be appreciated that the appellant was disentitled to the benefit of refund. Learned Authority suspiciously acted as is coming out from para 5.1 of the show cause notice and denied refund. Therefore appellant shall not be denied benefit of tax exemption on this count. Similarly in paras 5.2, 5.3, 5.4, 5.5, 5.9, 5.13 and 5.16, disallowances were made on suspicion holding that it was beyond imagination that the service has been provided in the SEZ. We may make it clear that the suspicion, however, grave may be is not substitute of proof and Revenue did not discharge burden of proof bringing out a case to substantiate allegation of non-utilisation of service in question in the SEZ. Therefore on all these counts, there shall not be any disallowance of*

> *refund.*
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> *9. In respect of services other than above counts, the flimsy plea of Revenue is that the invoices were in the name of head office and tours were not verifiable as well as certain invoices were not relatable do not base on any enquiry result for which allegation of Revenue without discharging its burden of proof fails to stand. Further, stand of Revenue does not seem to be substantiated without any cogent or credible evidence brought to record. We may make it clear that we have not read the show cause notice hypertechnically but read minutely.*
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> *10. In view of the above observations and taking note of method of approach of learned adjudicating authority to law, failing to examine relevant evidence, without causing enquiry wherever needed as well as improper evaluation of evidence and having suspicion on the appellant, his order is set aside. Consequently, all three appeals are allowed.'*

is relevant.

7. In *re Cummins Technologies India Ltd*, it has been held that

> *'6. Clause (e) in sub-section (1) of Section 26 of the SEZ Act, 2005 grants exemption from payment of service tax on taxable services provided to a developer or unit to carry on authorised operations in a Special Economic Zone. Further, sub-section (2) of Section 26 of the Act empowers the Central Government to prescribe the manner, terms and conditions for providing the exemptions or benefits to the developer or entrepreneur under sub-section (1). In exercise of the powers conferred by Section 55 of the SEZ ACT, the Central Government has made the SEZ Rules, 2006. Rule 31 of the said rules provides that the exemption from payment of service tax on taxable services*

*specified in Section 65 of the Finance Act, 1994 should be available to a developer or a unit for the authorised operations in a Special Economic Zone.*

*7. On perusal of the provisions contained in Section 26(2) of the Act read with Rule 31 of the Rules, it reveals that such statutory provisions have not prescribed any conditions/stipulations for grant of refund of service tax paid on the taxable services for providing SEZ activities. However, in exercise of the powers conferred by sub section (1) of Section 93 of the Finance Act, 1994, the Central Government has issued Notification No. 9/2009-ST dated 3.3.2009 and the amending Notification No. 15/2009-ST dated 20.5.2009, by providing certain conditions for claim of refund by the SEZ unit/developer. Since the SEZ Act and the rules have not provided any conditions for granting exemption from payment of service tax, the Central Government cannot issue the notification under a different statute i.e. Finance Act, 1994 in providing the conditions for grant of refund of service tax paid on the taxable services used for the authorised operations in the SEZ. Further, by virtue of Section 51 of the SEZ Act, the provisions of the said Act and the Rules made there under are mandated to have overriding effect over the provisions contained in any other statute. Therefore, all the activities relating to SEZ shall be guided and governed by the provisions contained in SEZ Act and the SEZ Rules. Since, such statutory provisions governing the SEZ are silent about any condition or restriction for claiming the refund of service tax, the notification issued by the Central Govt. in terms of Finance Act, 1994 cannot prescribe any conditions, which are contrary to the SEZ provisions. Therefore, in my considered view, rejection of refund application by the authorities below by placing reliance on the notification dated 3.3.2009 cannot be sustained and is liable to be set aside. In context with the* *amending Notification No. 9/2009 dated 3.3.2009 and 15/2009 dated 20.5.2009, this Tribunal in the case of Reliance Ports & Terminals Ltd. (supra) has held that the same notification has been issued to operationalise the exemption/immunity available to SEZ unit under Section 26(1)(e) of the SEZ Act, 2005. The relevant paragraphs in the said decision are extracted herein below:*

> *"7. From the provisions contained in Section 26(l)(e) of the SEZ Act, read with Rule 30(10) of the SEZ Rules, 2006, it can be seen that no Service Tax is payable on the services provided by a service provider to a SEZ unit. Further, Sec. 51 of the SEZ Act also makes an over-riding provision that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No. 9/2009-S.T. and amended Notification No. 15/2009-S.T. have been only issued to operationalize the exemption/immunity available to SEZ unit under Sec. 26(l)(e) of the SEZ Act, 2005."'*

squarely covers the issue before us.

8. On perusal of notification no. 40/2012-ST dated 20 June 2012 it is seen that the structure is split into two paragraphs. Accordingly,

*'(2) The exemptions contained in this notification shall be subject to the following conditions, namely:-'*

and followed by

*'3. The following procedure should be adopted for claiming the benefit of the exemptions contained in this notification, namely:-'*

are independent components with compliance of the latter not a condition enumerated in the former.

9. Therefore, the substantive compliance of the latter will not in any way dilute the several decisions on strict compliance. Debit notes are frequently used in commercial transactions especially when the contractual arrangements are spread over longer periods and adjustments between the two parties are occasioned at regular intervals. Mere non-enumeration in rule 4A of Service Tax Rules, 1994, or within the procedure of the notification, will not detract from the entitlement to be sanctioned with the refund.

10. Accordingly, we set aside the impugned order and allow the appeal.

*(Pronounced in open court)*

**(Ajay Sharma)**
***Member (Judicial)***

**(C J Mathew)**
***Member (Technical)***

**/as*