CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 85889 of 2019

(Arising out of Order-in-Appeal No. PK/967/ME/2018 dated 03.12.2018 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

M/s Anchorcert Analytical India Pvt. Ltd. ....Appellant
Unit 101B, SDF IV, SEEPZ SEZ,
Andheri (East), Mumbai – 400 096

VERSUS

Commissioner of CGST, Mumbai East ....Respondent
9th Floor, Lotus, Parel,
Lotus Infocentre,
Near Parel Station,
Parel East, Mumbai – 400 012

<u>APPERANCE:</u>

Ms. Krita Lodha, C.A. for the Appellant
Shri Vinod Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86065 / 2022

Date of Hearing: 05.09.2022
Date of Decision: 05.09.2022

Order of the Commissioner of CGST & Central Excise (Appeals-II), Mumbai confirming rejection of refund claim filed by the Appellant under Notification No. 12/2013-ST dated 01.07.2013 seeking refund of Service Tax paid on specified services used in relation to authorised operation in SEZ unit is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is a Special Economic Zone (SEZ) unit providing various services to overseas customers. As per its entitlement it is exempted from payment of Service Tax on input services received by it under Section 126E of the SEZ Act, 2005. It sought for refund of Rs.14,89,819/- for two quarters between January, 2016 to March, 2016 and April, 2016 to June, 2016 by filing refund application on dated 28.12.2016 and 09.01.2017 respectively. It is a admitted case of the Appellant that it got due approval of the Approval Committee of the SEZ unit subsequent to receipt of services by its SEZ unit but much before filing of refund claims on those two days mentioned above. The same claim was rejected by the refund sanctioning authority on the ground that the conditions stipulated in Notification No. 12/2013-ST had not been complied with and the same rejection order got confirmed by the Commissioner (Appeals) in the appeal filed by the said SEZ unit who is the Appellant in the present case.

3. During course of hearing of the appeal, in citing 8 case laws as reported in *2018 (6) TMI 661 – CESTAT Chennai* in the case of *SE Forge Ltd. V/s Commissioner of Central Excise, Coimbatore, 2022 (5) TMI 713 – CESTAT, Ahmedabad* in the case of *Intas Pharmaceuticals Ltd. V/s C.S.T. Service Tax, Ahmedabad, 2017 (49) S.T.R. 311 (Tri. – Bang.)* in the case of *CCE Mangalore V/s Mangalore SEZ Ltd., 2021 (49) G.S.T.L. 11 (Tri. – Bang.)* in the case of *Harman Connected Services Corporation India Pvt. Ltd V/s Commissioner of Central Tax, Bengaluru East., 2015 (38) S.T.R. 841 (Tri. – Mumbai.)* in the

case *of Mahindra Engineering Service Ltd. V/s Commissioner of Central Excise, Pune-I, 2018 (9) TMI 258 – CESTAT, Bangalore* in the case of *Mast Global Business Services India Pvt. Ltd. V/s Commissioner of Central Tax Bangalore, 2019 (2) TMI 588 – CESTAT Bangalore* in the case of *ONGC Mangalore Petrochemicals Limited V/s Commissioner of Central Excise & Central Tax, Mangalore Commissionerate, 2015 (5) TMI 453 – CESTAT, Mumbai* in the case of *Trizetto India Pvt Ltd. V/s Commissioner of Central Excise, Pune-III.* On the issue of fulfilment of the conditions of the notification namely receipt of approval by the time of availing input services, learned Counsel for the Appellant submitted that the only ground of refusal noticeable in the Order-in-Appeal has been settled in favour of Appellant and by following one divergent order on the issue passed by this Tribunal in *M/s. Kolland Developers Pvt. Ltd. Vs. CCE, Nagpur* reported in *2016 (8) TMI 847* refund was denied on the ground of *post facto* approval for procurement of input services by the Unit Approval Committee, the claim of the Appellant was rejected by the Commissioner (Appeals) but the same order of M/s. Kolland Developers Pvt. Ltd. was set aside by the Hon'ble Bombay High Court with a remand order to the Tribunal for reconsideration on the basis of judicial precedent available on the issue and in due obedient to such direction of the Hon'ble High Court, this Mumbai Bench of CESTAT had allowed the appeal on 17.08.2022 granting refund sought by M/s. Kolland Developers Pvt. Ltd. and therefore Appellant’s claim for refund is to be allowed by way of setting aside the order passed by the Commissioner (Appeals).

4. Learned Authorised Representative for the Respondent-Department, on the other hand, argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and submitted that going by the conditions stipulated in Notification No. 12/2013-ST, no irregularity is noticeable in confirming the order of the rejection of refund to the Appellant by the Commissioner (Appeals).

5. I have gone through the case record, notification under question and the relied upon case laws including the order passed by this Tribunal on 17.08.2022. Conditions mentioned in paragraph 2 & 3 of the said notification is required to be reproduced here for better clarity on the issue.

Notification No. 12/2013-ST

> *"2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:*
> *Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.*
>
> *3. This exemption shall be given effect to in the following manner:*
>
> > *(i) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax."*

Going by the bare text of the notification, it can be said that in respect of the proviso under which SEZ unit may opt for not paying the Service Tax *ab initio*, the conditions and procedure stated in para 3(i) would be a mandatory requirement and in case of refund of Service Tax paid on 'specified services' received by the SEZ unit though no such stipulation is expressly provided, to avail exemption by way of refund, at best such approval would be considered as a requirement for the purpose of establishing its 'authorised operation' in the said SEZ unit. This being the provision contained in the exemption notification, observation of the Commissioner (Appeals) that receipt of authorisation by the date of receipt of service can only enable the SEZ unit to avail the benefit is not in conformity to the provision contained in the said notification. It is worth mentioning here that the Commissioner (Appeals) had relied upon the only contradictory judgement of this Tribunal passed in the case of M/s. Kolland Developers Pvt. Ltd. despite the fact that on identical issues since 2015 Tribunals across India were consistently of the view that such conditions need not be fulfilled at the time of availing the services. Moreover, Hon'ble High Court of Bombay in the appeal filed against CESTAT order on *M/s. Kolland Developers Pvt. Ltd. (cited supra)* had given a clear finding that *prima facie* the Appellant was justified in relying upon the earlier decision of this Tribunal in *Mahindra Engineering Service Ltd. (cited supra)* and CESTAT was not justified in disregarding earlier orders for which re-consideration by the Tribunal is warranted wherein it ought to have considered the effect of its earlier decision passed in the case of *Mahindra*

Engineering Service Ltd. (cited supra) and in the due consideration of the said judgement, this Tribunal has re-considered the matter upon remand and given its finding on 17.08.2022, the operating portion of which reads:

> *"I find that the issue is no longer res integra and the Tribunal has been consistently taking the view that till the time services are input services for the developer, the refund claim made as per Notification No. 12/2013-ST could not have been denied just for the reason that at the time of receipt of services, there was no approval of the Approval Committee cannot be upheld."*

In due obedience to the judicial precedent set by this Tribunal and in order to ensure consistency and predictability of its order, the following order is passed.

<u>THE ORDER</u>

5. The appeal is allowed and the order passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai vide Order-in-Appeal No. PK/967/ME/2018 dated 03.12.2018 is hereby set aside. The Appellant is entitled to get refund of Rs.14,89,819/- with applicable interest and the Respondent-Department is directed to pay the same within two months of receipt of this order.

(Dictated & pronounced in open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad