CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH-COURT NO. 1

SERVICE TAX APPEAL NO: 85703 OF 2020

[Arising out of Order-in-Appeal No: SM/341/Appeals-II/ME/2019 dated 27th December 2019 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.]

Portescap India Pvt. Ltd.
Unit-2, SDF-I, Seepz-Sez,
Andheri East, Mumbai-400096 … ***Appellant***

versus

Commissioner of CGST &Central Excise
9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug,
Parel, Mumbai. ***…Respondent***

APPEARANCE:

Shri Mayur Jain, Advocate for the appellant

Shri Ajay Kumar Srivastava, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85447 /2024

DATE OF HEARING: 15/04/2024
DATE OF DECISION: 15/04/2024

M/s Portescap India Pvt Ltd is in appeal against the denial of privilege, afforded to them as a unit established under section 15 of Special Economic Zones Act, 2005, and, thereby, to exemption from service tax under the authority of section 26 of Special Economic

Zones Act, 2005. The appellant had discharged tax liability of ₹ 50,972/-, included in invoice raised by the SEEPZ-SEZ Authority, toward renting of immovable property and ₹ 28,686/- towards waste disposal but their claim for refund thereof was denied by the jurisdictional central excise authority which came to be upheld in the order[1] of Commissioner of CGST & Central Excise Service Tax (Appeals-II), Mumbai impugned now.

2. Learned Counsel for appellant submitted that the refund was denied on the finding that the two services had not been incorporated in the list, entitled to avail such exemption, as allowed by the 'Approval Committee' of the Zone. It was pointed out that *Instruction*[2] of Government of India in Department of Commerce, enumerating 'default services' for exemption, includes 'renting of immovable property' and that it is only such services as were not contained therein which require separate permission from the Approval Committee of the Zone. It is further contended that 'waste management service' was incorporated in the approval accorded by the 'Approval Committee' though *ex post facto*. He relied upon decisions of the Tribunal in *SE Forge Ltd v. Commissioner of Central Excise, Coimbatore, [2019(365) ELT 560 (Tri.-Chennai)]* and in *M/s Steria India Ltd v. Commissioner of Central Excise & CGST, Noida [2024 (4) TMI 226-CESTAT Allahabad]*.

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[1] [order-in-appeal No. SM/341/Appeals-II/ME/2019 dated 27th December 2019]
[2] [*SEZ Instruction No. 79 [F No D 12/19/2013-SEZ dated 19th November 2013]*

3. Learned Authorized Representative submitted that the said services had not been approved by the Approval Committee of the Zone as on the date of procurement of services which is an essential requirement for eligibility for refund.

4. Section 26 of Special Economic Zones Act, 2005 provides for goods to be exempted from duties of customs or central excise, as the case may be, and for 'services' to be exempted from tax to the extant required for carrying out 'authorized operations' in a special economic zone (SEZ). As far as goods are concerned, the entry into the premises of the zone can be monitored to give effect to the exemption but, owing to intangibility of services, with attendant impediment to ascertainment of receipt of such for 'authorized operation', a special procedure, involving upfront discharge of tax liability and subsequent refund, has been designed to avoid inconveniencing of units from reluctance of 'service provider' to be accountable for such rendition. It is this procedure that has been alleged to have been breached and offered as justification for denial.

5. The essential function of 'developer' of a 'special economic zone (SEZ)', in accordance with section 3(13) of SEZ Act, 2005, is 'renting of immovable property' which is, thus, a statutorily prescribed 'authorized operation' of developer essential to continued existence as 'developer'; therefore, this activity is not liable, at all and

doubtlessly, to be taxed under Finance Act, 1994, as the provision of such service is within the zone and, thereby, beyond the ambit of Finance Act, 1944 besides not falling within the ambit of section 30 of Special Economic Zones Act, 2005. It is mystifying that this indubitably ‘exempted’ service is being charged to tax at all. Be that as it may, it is even more mystifying that the jurisdictional tax authority has denied refund of a tax that should not have been collected and has, instead, insisted upon superfluous certification. Taking note of the primacy of provisions of Special Economic Zones Act, 2005, the Tribunal, in *re SE Forge Ltd.* and in *re M/s Steria India Ltd,* has held that eligibility deriving therefrom may not be denied merely owing to any procedure infirmity.

6. ‘Waste disposal’ may be a service but it is a service involving disposal of material which is certainly not unascertainable. It is also an essential, and even statutorily prescribed, requirement for undertaking of industrial activity and it is not in dispute that the said service has been rendered within the zone. The findings of the lower authorities that approval had not been obtained ahead of procurement of the impugned service may, at best, be a procedural lapse which, in the absence of evidence that the said service has not been utilized in pursuance of carrying out of ‘authorized operations’, is not a valid ground for denial of refund. The provisions of section 26 of Special Economic Zones Act, 2005 is not to be circumscribed by any

procedural, or even any statutory provision, to the contrary as is amply evident from section 51 of Special Economic Zones Act, 2005.

7. In view of the above, the denial of refund by the lower authorities is not consistent with law and the appellant is entitled to refund of the entire claim. Appeal is, accordingly, allowed.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*