

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85430 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002 APP-596 to 602-16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Accenture Solutions Pvt. Ltd.

.... Appellant

(Erstwhile known as Accenture Services Pvt. Ltd.)

Plant No. 3, Godrej & Boyce Complex,
Pirojshah Nagar, Vikhroli (W), Mumbai – 400 079

Versus

Commissioner of Service Tax-VII, Mumbai

.... Respondent

Estrella Battery Compound, 2nd Floor,
Labour Camp, Matunga, Mumbai – 400 019

WITH

Service Tax Appeal No. 85432 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002 APP-596 to 602-16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Accenture Solutions Pvt. Ltd.

.... Appellant

(Erstwhile known as Accenture Services Pvt. Ltd.)

Plant No. 3, Godrej & Boyce Complex,
Pirojshah Nagar, Vikhroli (W), Mumbai – 400 079

Versus

Commissioner of Service Tax-VII, Mumbai

.... Respondent

Estrella Battery Compound, 2nd Floor,
Labour Camp, Matunga, Mumbai – 400 019

AND

Service Tax Appeal No. 85433 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002 APP-596 to 602-16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Accenture Solutions Pvt. Ltd.

.... Appellant

(Erstwhile known as Accenture Services Pvt. Ltd.)

Plant No. 3, Godrej & Boyce Complex,
Pirojshah Nagar, Vikhroli (W), Mumbai – 400 079

Versus

Commissioner of Service Tax-VII, Mumbai

.... Respondent

Estrella Battery Compound, 2nd Floor,
Labour Camp, Matunga, Mumbai – 400 019

AND

Service Tax Appeal No. 85434 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002 APP-596 to 602-16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Accenture Solutions Pvt. Ltd.**.... Appellant**

(Erstwhile known as Accenture Services Pvt. Ltd.)

Plant No. 3, Godrej & Boyce Complex,
Pirojshah Nagar, Vikhroli (W), Mumbai – 400 079

Versus

Commissioner of Service Tax-VII, Mumbai**.... Respondent**

Estrella Battery Compound, 2nd Floor,
Labour Camp, Matunga, Mumbai – 400 019

AND**Service Tax Appeal No. 85435 of 2017**

(Arising out of Order-in-Appeal No. MUM-SVTAX-002 APP-596 to 602-16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Accenture Solutions Pvt. Ltd.**.... Appellant**

(Erstwhile known as Accenture Services Pvt. Ltd.)

Plant No. 3, Godrej & Boyce Complex,
Pirojshah Nagar, Vikhroli (W), Mumbai – 400 079

Versus

Commissioner of Service Tax-VII, Mumbai**.... Respondent**

Estrella Battery Compound, 2nd Floor,
Labour Camp, Matunga, Mumbai – 400 019

AND**Service Tax Appeal No. 85436 of 2017**

(Arising out of Order-in-Appeal No. MUM-SVTAX-002 APP-596 to 602-16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Accenture Solutions Pvt. Ltd.**.... Appellant**

(Erstwhile known as Accenture Services Pvt. Ltd.)

Plant No. 3, Godrej & Boyce Complex,
Pirojshah Nagar, Vikhroli (W), Mumbai – 400 079

Versus

Commissioner of Service Tax-VII, Mumbai**.... Respondent**

Estrella Battery Compound, 2nd Floor,
Labour Camp, Matunga, Mumbai – 400 019

AND

Service Tax Appeal No. 85439 of 2017

(Arising out of Order-in-Appeal No. MUM-SVTAX-002 APP-596 to 602-16-17 dated 30.11.2016 passed by the Commissioner (Appeals), Service Tax-II, Mumbai)

M/s Accenture Solutions Pvt. Ltd.**.... Appellant**

(Erstwhile known as Accenture Services Pvt. Ltd.)

Plant No. 3, Godrej & Boyce Complex,
Pirojshah Nagar, Vikhroli (W), Mumbai – 400 079

Versus

Commissioner of Service Tax-VII, Mumbai**.... Respondent**

Estrella Battery Compound, 2nd Floor,
Labour Camp, Matunga, Mumbai – 400 019

Appearance:

Ms. Dhruvi Shah, Advocate for the Appellants

Ms. S. Varalakshmi, Authorized Representative for the Respondents

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)****FINAL ORDER NO. A/85331-85337/2025**

Date of Hearing: 17.09.2024

Date of Decision: 13.03.2025

Per: M.M. Parthiban

This appeal has been filed by M/s Accenture Solutions Private Limited (Formerly known as Accenture Services Pvt. Ltd.), Mumbai (herein after referred to, for short, as "the appellants") assailing the Order-in-Appeal Nos. MUM-SVTAX-APP-596 to 612 – 16-17 dated 30.11.2016 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner (Appeals), Service Tax-II, Mumbai.

2.1 The brief facts of the case are that the appellants herein is engaged in the business of providing taxable services under the Finance Act, 1994. For this purpose, the appellants have registered themselves with the jurisdictional service tax authorities and have obtained centralized service tax registration certificate No. AAACS6994CST020 for the category of services viz. Business Auxiliary Services, Management Consultancy Service & Business Support Service and is also providing software related and business process outsourcing services from their Special Economic Zone (SEZ) units which are engaged in IT/ITES services, situated at various places across the

country viz., Bangalore, Chennai, Gurgaon, Hyderabad, Navi Mumbai, Noida, Kolkata and Pune. The appellants, in the process of providing the said output services in the SEZ, received specified input services on payment of service tax for the authorized operations in the SEZ as approved by the Development Commissioner for IT/ITES and used them in authorised operation inside the SEZ by taking CENVAT Credit of input services as per the provisions of CENVAT Credit Rules, 2004 (for short, referred to as 'CCR').

2.2 The appellants had filed seven refund claims before the jurisdictional Service Tax authorities in terms of Notification No.17/2011-S.T dated 01.03.2011/ No.40/2012-S.T. dated 20.06.2012 in respect of service tax paid on the specified input services under Section 66/Section 66A of the Finance Act, 1994. The jurisdictional Assistant Commissioner of Service Tax. Division-V, Mumbai had partly allowed the refund and rejected part of the refund amount claimed by the appellants on various grounds. Being aggrieved with the orders of the original authority, the appellants have filed seven appeals before the Commissioner (Appeals). In deciding the issues, the learned Commissioner (Appeals) had confirmed the orders of the original authority and rejected the appeals filed by the appellants. The details of these appeals are given below as follows:

Sl. No	Appeal No.	Amount of Refund (in Rs.) which is			Period of refund claim
		claimed by appellants	Sanctioned by department	Rejected, for which appeal filed	
1.	85430/2013	53,69,282/-	50,87,248/-	2,82,034/-	March, 2011
2.	85436/2013	7,85,63,596/-	7,71,92,782/-	13,70,814/-	April, 2011 to Sept.2011
3.	85435/2013	3,78,82,855/-	3,71,52,647/-	7,30,208/-	Oct. 2011 to Dec. 2011
4.	85434/2013	3,91,70,126/-	2,07,54,219/-	1,84,15,907/-	Jan. 2012 to March,2012
5.	85439/2013	5,27,66,658/-	2,69,26,451/-	2,58,40,207/-	April, 2012 to June, 2012
6.	85432/2013	12,59,54,017/-	12,47,50,154/-	12,03,863/-	July, 2012 to Dec.2012
7.	85433/2013	6,16,17,804/-	5,64,93,011/-	51,24,793/-	Oct. 2012 to Dec. 2012

Feeling aggrieved with the orders of the learned Commissioner (Appeals), the appellants have filed these appeals before the Tribunal.

3.1 Learnd Advocate for the appellants submitted at the outset that the rejection of refund claims filed by the appellants during various periods may be grouped on the issues of dispute as follows:

Amount involved in Rs.	Issues in dispute	Grounds submitted for justification by the appellants
1	2	4
62,04,299/-	Input invoices are not issued in the name of SEZ address	Credit cannot be denied on technical ground that documents were not in the name of the assessee's address
4,29,80,419/-	Refund claim declined quoting Section 66 of the Finance Act, 1994	Refund of service tax paid under Section 66A of the Finance Act, 1994 is being refunded.
21,05,543/-	Input services are not approved by the approval committee of SEZ	When the receipt of services within the SEZ is not dispute, this technical requirement can be overcome as the purpose of exemption is fulfilled.
16,73,641/-	Services not actually performed in SEZ under Rule 4 of POPS	In terms of para (2) of Notification No.40/2012 it is clear that services wholly consumed within SEZ in respect of services specified under Rule 4 or Rule 5 of POPS Rules, the assessee has the option to claim up-from exemption nor refund of service tax paid.

3.2 Learned Advocate for the appellants also submitted that the appellants have preferred various refund claims on the basis of the government's decision to exempt services which are used for authorised operation in SEZ and on which service tax is payable, by way of refund of service tax paid on the specified services by SEZ unit or Developer. Accordingly, they filed refund of service tax paid on the input services used for SEZ purpose. He further stated that legal provision for exemption from payment of service tax in respect of output services provided to SEZ in terms of Section 26 of the SEZ Act, 2005. The said legal provision giving exemption of service tax read with Section 51 *ibid* provides overriding effect to any other law, which if it contradicts or inconsistent to the extent it is provided in the SEZ Act. Further, he stated that Rule 10 of the SEZ Rules, 2005 for giving permission for procurement of items by the SEZ Approval Committee is not applicable to their case, as these are meant for the purpose of establishing of SEZ and not relevant for the exemption provided under Section 26 *ibid* and therefore the confirmation of adjudged demands on such basis is not sustainable.

3.3 Learned Counsel also submitted that the issues in dispute in the present case viz., non-production of Form A-1 and Form A-2, non-fulfilment of conditions prescribed in the notifications issued by the department under the Customs/Central Excise/Finance Acts and thereby denying the exemption from payment of service tax has been examined by the Tribunal and the Hon'ble High Court in the following cases and it was held that the demand of service tax is not sustainable. The said decisions of the Tribunal/ High Court have also been upheld by the Hon'ble Supreme Court:

(i) Eclerx Services Limited Vs. Commissioner of CGST & C.Ex., Navi Mumbai – 2023 (72) G.S.T.L. 99 (Tri.-Mumbai) and upheld by the Hon'ble Supreme Court in Civil Appeal No.549 of 2023

(ii) Cummins Turbo Technology Vs. Commissioner of Customs, Central Excise & Central Tax, Indore – (2023) 12 Centax 334 (Tri.-Del.)

(iii) GMR Aerospace Engineering Ltd. Vs. Union of India – 2019 (312) G.S.T.L. 596 (A.P.) and upheld by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No.22140 of 2019

(iv) Ministry of Finance, TRU instruction vide F. No.354/148/2009-TRU dated 16.07.2006

(v) CBIC Circular No. 334/3/2011-TRU dated 28.02.2011.

4. On the other hand, learned Authorised Representative for Revenue reiterated the findings of the Commissioner (Appeals) in the impugned order, and submitted that in order to claim exemption, the appellants has to provide the documents mentioning the name of the contractor, even though it is supplied to SEZ and in the absence of the same, exemption cannot be extended to them. Further, by citing the judgement of the Hon'ble Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar and Company, he stated that exemption must be strictly complied with. In the absence of approval letter given by the SEZ authorities failing to mention the name of the appellants, such omission cannot be considered as substantial compliance for availing the service tax exemption. Therefore, he prayed that the appeal preferred by the appellants is liable to be set aside.

5. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper books for this case.

6.1 The issue involved in this appeal is to determine whether the appellants are eligible to the exemption from payment of service tax in respect of disputed services, provided to developers / units of Special Economic Zones (SEZ), under the provisions of Finance Act, 1994; Special Economic Zones (SEZ) Act, 2005 and the rules made thereunder read with exemption notifications, along with various conditions laid down in respective notifications, issued in this regard, or the appellants are liable to pay service tax on said services provided to developer or units or SEZ.

6.2 In adjudication of the seven refund claims periodically filed by the appellants as tabulated in paragraph 2.2 above, the original authority had

rejected part of the refund claim, on the basis that input invoices issued were not in the address of SEZ; service tax paid on services provided in terms of Section 66A is not eligible for refund, as the notification provide for refund of tax paid under Section 66 ibid only; input services were not approved by the Approval Committee in certain cases; and services were not actually performed within SEZ approved under Rule 4 of POPS. These issues were also examined by the learned Commissioner (Appeals) and he had on the basis of his findings in the impugned order, had rejected all the appeals filed by the appellants by upholding the orders of the original authority. The relevant paragraphs of the impugned order is extracted and given below:

"13. In view of the admitted fact that the appellant has not been able to satisfy the said mandatory conditions of the notification, the rejection of refund, in respect of the invoices not in favour of the SEZ units, ordered in the respective impugned orders cannot be faulted with, in view of the settled law as above. I accordingly uphold the rejection of refund of claim of Rs. 62,04,239/- collectively in the respective impugned orders..."

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15.1 I find that the AA has rejected the refund claims (Rs.60,123/- + Rs.16,13,518/-) pertaining to the services viz. Commercial Coaching & Training, Management, Maintenance and Repair, Technical Inspection and Certification, Technical Testing & Analysis, Technical Testing & inspection, Business Auxiliary service, Business Support Service, Consulting Engineer, Custom House Agent, observing that the same does not appear to have been actually performed within SEZ.

15.2 ...I have seen the invoices, however, a conclusion cannot be drawn that the services were actually performed within the SEZ. I, therefore, agree with the AA's decision and uphold the rejection of the service tax paid on such services.

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18....In this regard to the rejection of the refund claim of Rs.1,81,24,418/- & Rs. 2,48,56,001/- totally amounting to Rs. 4,29,80,419/-, the appellant has contended that the services viz. Business Auxiliary service,..... on which service tax has been paid under section 66A of the FA, have been used for authorised operations of the SEZ unit and that similar Refund claims filed by them for the period upto Dec.2011 have been allowed in respect of the service tax paid under section 66A. They also placed reliance in the case of BNP Paribas India in WP No. 9857 of 2012, Birla Corpn. Ltd etc.

19.... The AA also observed that the appellant has claimed refund of service tax paid under Section 66A on the import of services which are not inputs services as defined under Rule 2(1) of CCR and/or those are not actually used for the authorised operation in the SEZ and have also not provided any evidence to show that those were actually used for the authorised operation in SEZ.... Thus, placing reliance on the judgements of the Supreme Court, the AA has correctly based his decision of rejection of the claims as laid down in the Notifn. Accordingly, I uphold the rejection of the refund of the service tax of Rs.4,29,80,419/-

20. In view of the foregoing, the impugned orders are upheld and the seven impugned appeals filed by the appellant are rejected."

From the above it transpires that the learned Commissioner (Appeals) had concluded that the appellants are not eligible for refund of service tax as they had not fulfilled the conditions of the notification, not obtained necessary approval from concerned authorities, the invoices do not have the address of the SEZ etc.

7. In order to appreciate the above issue under dispute, the relevant legal provisions of the SEZ Act, 2005 and SEZ Rules, 2006, Notification No. 04/2004-S.T. dated 31.03.2004 and subsequent amendments to such notification, which is relevant to the dispute, are extracted and herein given below for ease of reference:

**"Special Economic Zones Act, 2005
[28 of 2005]**

*An Act to provide for the establishment, development and management
of the Special Economic Zones for the promotion of exports
and for matters connected therewith or incidental thereto.*

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows :—

**CHAPTER I
PRELIMINARY**

Short title, extent and commencement.

1. (1) This Act may be called the Special Economic Zones Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates[±] may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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Exemption from taxes, duties or cess.

7. Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by,—

(i) a Unit in a Special Economic Zone; or

(ii) a Developer.

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

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CHAPTER VI

SPECIAL FISCAL PROVISIONS FOR SPECIAL ECONOMIC ZONES

Exemptions, drawbacks and concessions to every Developer and entrepreneur.

26. (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:—

(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;

(b) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;

(c) exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or

any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;

(d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;

(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;

(f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 (23 of 2004) in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;

(g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 (74 of 1956) if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

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Act to have overriding effect.

51. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

SEZ Rules, 2006

"10. **Permission for procurement of items.** - The Approval Committee may permit goods and services to carry on the operations authorized under rule 9:

Provided that for the Special Economic Zones set up by the Central Government, the goods and services required for the authorized operations may be approved by the Board:

Provided further that exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-developer, as the case may be, shall also be available to the contractors including sub-contractors appointed by such Developer or Codeveloper, and all the documents in such cases shall bear the name of the Developer or Co-developer along with the contractor or sub-contractor and these shall be filed jointly in the name of the Developer or Co-developer and the contractor or sub-contractor, as the case may be:

Provided also that the Developer or Co-developer, as the case may be, or the Special Economic Zone Unit shall be responsible and liable for proper utilization of such goods in all cases."

8.1 We also find that the provisions relating to Special Economic Zones (SEZ) was initially provided under the Customs Act, 1962 vide Chapter X-A under Sections 76A to 76N *ibid*, which was omitted with effect from 11.05.2007 under Section 90 of the Finance Act, 2007 (Act 22 of 2007), upon bringing a separate legislation governing the SEZs i.e., SEZ Act, 2005.

8.2 On plain reading of the above said legal provisions of the SEZ Act, 2005 and the Customs Act, 1962, it transpires that the Chapter X-A providing for special provisions relating to SEZ were omitted or removed from the Customs Act, 1962 consequent to the Parliament enacting a special legislation viz., SEZ Act, 2005. Moreover, in order to provide more clarity and purpose of such separate legislation for SEZ, a specific Section 51 of the said Act of 2005 has provided a *non obstante* clause stating that the provisions of SEZ Act, 2005 shall have the overriding effect, notwithstanding anything inconsistent therewith, if any, contained in any other law for the time being in force. Thus, if an exemption is provided under Section 26 of the SEZ Act, 2005, then the same cannot be taken away by prescribing certain conditions elsewhere in any other law or notification issued thereunder, which is contrary to the legal provisions made therein.

9.1 We find that the dispute in respect of similar issue relating to exemption from payment of service tax in respect of services provided to SEZ have been dealt with in the case of *GMR Aerospace Engineering Limited* (*supra*) by the Hon'ble Andhra Pradesh High Court by holding that standalone exemptions under Section SEZ law are not subject to provisions of any other law, including Finance Act, 1994, and therefore such exemption cannot be denied for mere non-filing forms, as these are not required under SEZ law. The relevant paragraphs of order of the Hon'ble High Court in the above case is extracted and given below:

"18. *In the light of the above admitted facts, the only question that arises for consideration is as to whether the availability of exemptions under Section 26 of the SEZ Act would depend not only upon the terms and conditions prescribed under Section 26(2), but also upon the terms and conditions prescribed in the notifications issued under various enactments such as Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1944, Central Excise Tariff Act, 1985, Finance Act, 1994 and Central Sales Tax Act, 1956 etc., enlisted in clauses (a) to (g) of sub-section (1) of Section 26 of the Act.*

19. *The only argument of Smt. Sundari R. Pisupati, Learned Senior Standing Counsel for the Department is that since SEZ Act, 2005 and the Rules framed thereunder do not constitute a self-contained Code, the*

availability of exemptions under Section 26 of the Act would certainly depend upon the terms and conditions stipulated in the notifications issued under the respective enactments indicated in clauses (a) to (g) of sub-section (1) of Section 26. But, the contention of Mr. S. Niranjan Reddy, Learned Senior Counsel appearing for the petitioners, is that there is no scope for restricting Section 26, especially when the SEZ Act, 2005 which is also a parliamentary enactment of a later date, is given an overriding effect under Section 51 of the Act.

20. In order to find an answer to this question, one must understand in conceptual terms, what a Special Economic Zone is. As pointed out by the Madras High Court in *Nokia India Sales*, a SEZ (1) is a territory outside the Customs Territory of India for the purpose of undertaking authorized operations and (2) is deemed to be a port, in land container depot, land stations and land customs station under Section 7 of the Customs Act, 1962. This is by virtue of Section 53 of SEZ Act, 2005. Keeping this core concept in mind, let us now go to the provisions of the Act. Section 7 of the Act exempts from payment of taxes, duties or cess, under all enactments specified in the First Schedule, any goods or services exported out of or imported into or procured from Domestic Tariff Area, by a unit in a SEZ or a developer. But Finance Act, 1994 is not one of the enactments specified in the First Schedule. Therefore, Section 7 has no application to the case on hand.

21. However, Section 26(1) specifically allows exemptions, drawbacks and concessions to every developer and entrepreneur. These exemptions are confined to the enactments listed in clauses (a), (b), (c), (e), (f) and (g). Section 26 in its entirety reads as follows :

"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur. -

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely :-

(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur :

(b) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;

(c) exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;

(d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;

(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;

(f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 (23 of 2004) in case the taxable securities

transactions are entered into by a non-resident through the International Financial Services Centre;

(g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 (74 of 1956) if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1)."

22. *It may be noted that sub-section (1) of Section 26 begins with the words "subject to the provisions of sub-section (2)". Sub-section (2) authorizes the Central Government to prescribe the manner in which and the terms and conditions subject to which exemptions shall be granted to the Developer or entrepreneur under sub-section (1).*

23. *As rightly pointed out by Sri S. Niranjan Reddy, Learned Senior Counsel appearing for the petitioner, the word "prescribe" appearing in sub-section (2) of Section 26 has to be understood with reference to the definition of the word "prescribed" appearing in Section 2(w) of the SEZ Act, 2005. Section 2(w) of the Act reads as follows :
"prescribed" means prescribed by rules made by the Central Government under this Act."*

24. *Therefore, the terms and conditions subject to which the exemptions are to be granted under sub-section (1) of Section 26 should be prescribed by the Rules made by the Central Government under the SEZ Act, 2005. Being conscious of this fact, the executive has incorporated Rule 22 in the SEZ Rules, 2006 issued in exercise of the power conferred by Section 55 of the SEZ Act. It is not necessary to extract Rule 22, since there is no dispute about the fact (1) that the petitioners have complied with the prescriptions contained in Rule 22 of the SEZ Rules, 2006 and (2) that Rule 22 of the SEZ Rules, 2006 does not stipulate the filing of forms A1 and A2 as prescribed in the three notifications issued under Section 93 of the Finance Act, 1994.*

25. *In other words, the 5th respondent does not dispute the fact that the petitioners have fulfilled the terms and conditions stipulated in Rule 22 of the SEZ Rules, 2006 and that if those Rules are considered on a stand alone basis, the petitioners would be entitled to the exemptions.*

26. *Having taken note of the provisions of the SEZ Act and Rules, let us have a look at the Finance Act and the relevant notifications. Section 93 of the Finance Act, 1994 reads as follows :*

"93. Power to grant exemption from service tax. -

(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order."

27. A look at Section 93 of the Finance Act, 1994 would show that it has nothing to do with the units located in a SEZ. Section 93 is a general power of exemption available for the benefit of all and sundry. In fact, Section 93 was substituted in its present form by Finance (No. 2) Act, 1998 with effect from 16-10-1998. The notifications issued under Section 93 may cover taxable services of any description. Even the units located outside a SEZ are entitled to the benefit of the notifications issued under Section 93 of the Finance Act, 1994, if the conditions stipulated in those notifications are fulfilled.

28. The SEZ Act, 2005 is also a parliamentary enactment issued later in point of time to the Finance Act, 1994 and Section 51 of the Act declares that the provisions of the SEZ Act, 2005 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Section 51 reads as follows :

"51. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

29. The contention of Smt. Sundari R. Pisupati, Learned Senior Standing Counsel is that there is no inconsistency between (i) the terms and conditions prescribed in the notifications issued under Section 93 of the Finance Act, 1994 and (ii) the terms and conditions prescribed in Rules 22 and 31 of the SEZ Rules, 2006, and that therefore, Section 51 of the SEZ Act, 2005 cannot be pressed into service. But this contention is unacceptable.

30. This is for the reason that Section 26(1) of the SEZ Act made the entitlement to certain exemptions subject to provisions of sub-section (2) of Section 26. Section 26(1) did not make the entitlement of a Developer to certain exemptions, subject to the provisions of something else other than the provisions of sub-section (2). Therefore, the 5th respondent cannot read Section 26(1) to mean that the exemptions listed therein are (1) subject to the provisions of sub-section (2) of Section 26, and (2) also subject to the terms and conditions prescribed in the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Tariff Act, 1985 and the Finance Act, 1994. This is especially so, since the authority of the Central Government to prescribe the terms and conditions subject to which exemptions may be granted under Section 26(1), flows only out of sub-section (2) of Section 26. The word "prescribe" is verb. Generally no enactment defines the word "prescribe". But the SEZ Act 2005 defines the word "prescribe" under Section 2(w) to mean the rules framed by the Central Government under the SEZ Act, 2005. The space is also not left unoccupied, as the Central Government has issued a set of Rules known as "the Special Economic Zones Rules, 2006", wherein the Central Government has prescribed the terms and conditions for grant of exemptions under Rule 22. Therefore, there is no question of comparing the terms and conditions prescribed in Rule 22 with the terms and conditions prescribed in the notifications issued under any one of five enactments listed in Section 26(1) to find out whether there was any inconsistency.

31. Support can be drawn for the above interpretation, from Section 50 of the SEZ Act, 2005 also. Section 50 of the SEZ Act, 2005 enables State

Governments to enact laws for the grant of exemption from state taxes, levies and duties. Since a Central Law cannot provide for exemption from the levy of State taxes, Section 50 merely enables the State Governments to enact laws.

32. *A combined reading of Sections 7, 26 and 50 of the SEZ Act, 2005, would show that SEZ Act, 2005 speaks of three different types of exemptions. They are, -*

(1) exemption from payment of taxes under the enactments specified in the First Schedule, in respect of goods and services exported out of, or imported into or procured from a DTA by a unit in a Special Economic Zone or a Developer under Section 7,

(2) exemption from payment of duties under the Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1994, Central Excise Tariff Act, 1985, Finance Act, 1994, Finance (No. 2) Act, 2004 and Central Sales Tax Act, 1956, covered by Section 26 (1); and

(3) exemption from payment of state taxes, levies and duties covered by Section 50, provided there is a state enactment to the said effect.

33. *The word "prescribe" is used in the present tense in Section 26(2) and in the past tense in Section 7. Both will have the same meaning as assigned to the word under Section 2(w). The moment a set of rules is issued either in respect of matters covered by Section 7 or in respect of matters covered by Section 26(1), there is no scope for invoking any other law for imposing any other condition.*

34. *The benefit of exemptions granted under the notifications issued under Section 93 of the Finance Act, 1994, are available to any one and not necessarily confined to a unit in a special economic zone. Section 93 of the Finance Act, in that sense is a general power of exemption available in respect of all taxable services. But, Section 26(1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone. Therefore, the notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in a SEZ qualifies for exemption or not.*

35. *For driving home her contention that SEZ Act, 2005 and the rules framed thereunder do not constitute a complete Code in themselves, Smt. Sundari R. Pispuati, Learned Senior Standing Counsel relied upon two decisions of the Supreme Court and one decision of the Madras High Court. In Ravula Subba Rao v. Commissioner of Income Tax, Madras - AIR 1956 SC 604 relied upon by the Learned Senior Standing Counsel, the question that arose before the Supreme Court was whether the requirement under the Income Tax Rules (as they existed then) for all partners to sign an application for registration personally, would exclude the applicability of the Powers of Attorney Act, 1882, which empowers every agent to do what the principal is capable of doing. The Supreme Court held in that context that the Income Tax Act is a complete Code in itself and that therefore, the question of importing the Powers of Attorney Act, would not arise.*

36. *In Girnar Traders v. State of Maharashtra - 2011 (3) SCC 1, relied upon by Smt. Sundari R. Pisupati, Learned Senior Standing Counsel, the Supreme Court considered in detail the question as to when the provisions of a statute could be construed as a self-contained code. It was pointed out in the said judgment that if complete machinery or mechanism is not provided under an Act to ensure effective execution of the functions*

assigned therein, with due protection of the rights of the interested persons, within the framework of law, it may not be possible for the court to hold that such a statute is a self-contained code. But, the Court also pointed out in the said decision that it is not possible to State parameters of universal application, which could determine with precision as to whether an Act is a self-contained code or not. In paragraph 35 of the report in *Girnar Traders*, the Supreme Court held that where a law contains a compilation of provisions, which would comprehensively deal with various aspects of the purpose sought to be achieved by that law and its dependence on other legislations is either absent or minimal, the same can be said to be a complete code.

37. Even if apply the parameters indicated in *Girnar Traders*, the case on hand would pass the test. Section 26(1) of the SEZ Act indicates (1) persons who are entitled to exemptions; (2) the duties in respect which exemption is available; (3) the circumstances under which exemption is available and (4) the provisions of law subject to which the exemptions are available. To put it in simple terms, Section 26(1) identifying the persons, who are eligible for exemption. They are the Developer and entrepreneur. Section 26(1) identifies the duties from which exemption is available. They are the duties under the Customs Act, Customs Tariff Act etc. Section 26(1) also indicates the circumstances under which the exemptions are available. These circumstances vary from clause to clause under Section 26(1). This can be best understood by providing a tabulation as follows :

Duty exempted	Circumstances under which exempted
(1) Duty under Customs Act, 1962	(1) on goods imported into or services provided in a special economic zone or a unit to carry on the authorised operations by the Developer or entrepreneur
(2) Duty under the Customs Tariff Act, 1975	(2) All goods exported from or services provided from a SEZ or from a unit to any place outside India.
(3) Duty of excise under the Central Excise Act, 1944 or Central Excise Tariff Act, 1985	(3) All goods brought from DTA to a SEZ or unit to carry on the authorised operations by the Developer or entrepreneur
(4) Service tax	(4) on taxable services provided to a developer or unit to carry on the authorised operations in a SEZ
(5) Securities transaction tax leviable in Finance (No. 2) Act, 2004	(5) If the taxable securities transactions are entered into by a non-resident through the international financial service centre.
(6) Taxes under the Central Sales Tax Act, 1956	(6) If such goods are meant to carry on authorised operations by the Developer or entrepreneur.

38. Thus, the SEZ Act clearly indicates the persons who are entitled to the benefit of exemptions. The Act also lists out the duties from which exemption is granted. The Act enlists the operations or activities in respect of which exemption is available.

39. After prescribing all the above three, in Section 26(1) itself, the Act also empowers the Central Government to prescribe in the form of Rules, the manner in which and the terms and conditions subject to which the exemptions are to be granted. Therefore, all the parameters indicated in *Girnar Traders* are satisfied in Section 26 and the Rules issued thereunder. If the word "prescribe" has not been defined or at least if Section 26 had used the words "prescribed under the relevant statutes" the position would have been different.

40. *Inviting our attention to a Circular No. 105/08/2008 in F. No. 137/168/2008-CX.4, dated 16-9-2008, Smt. Sundari R. Pisupati, Learned Senior Standing Counsel contended that there is no exclusion of SEZ in Chapter-V of the Finance Act, 1994 and that the service tax is applicable on taxable services provided by SEZ units, except those that are exempt by Notification No. 4 of 2004. She also drew our attention to the amendment introduced to the SEZ Rules by way of notification in GSR 772(E), dated 5-8-2016. Under this notification, sub-rule (5) was inserted under Rule 47 of the SEZ Rules, 2006. This sub-rule (5) inserted in Rule 47 of the SEZ Rules, 2006 reads as follows :*

"(5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to unauthorized operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder".

41. *On the strength of the aforesaid circular and the amendment to the Rules, it was contended by the Learned Senior Standing Counsel that the machinery provisions for working out refund, drawback etc., are not available either in SEZ Act or the Rules framed thereunder and that therefore, the operation of the Act is subject to the provisions of the other enactments.*

42. *But, we do not agree. Though the "section title" to Section 26 reads as "exemptions, drawbacks and concessions", clauses (a) to (g) except clause (d) speak only about exemptions. It is only clause (d) of sub-section (1) of Section 26, which speaks about drawbacks and such other benefits. In so far as exemption is concerned, sub-section (1) makes the entitlement of a Developer to exemption, subject only to the provisions of sub-section (2) of Section 26. Sub-section (2) of Section 26 empowers the Central Government to prescribe both the manner in which as well as the conditions subject to which exemptions may be granted. Therefore, the area relating to exemption is completely occupied by the rules.*

43. *It is only the issues relating to refund, demand, adjudication, review and appeal, which were left unoccupied by the SEZ Act and the Rules framed thereunder. Realising the vacuum in respect of these specific areas, sub-rule (5) was inserted under Rule 47. Sub-rule (5) of Rule 47 makes a reference to the provisions of the three enactments namely Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 and the Rules made thereunder and the notifications issued thereunder. It is by virtue of this sub-rule (5) that the authorities can fall back upon the Rules and notifications issued under those three enactments. The very fact that sub-rule (5) was inserted would show, that but for its insertion, the respondents cannot fall back upon the Rules framed under the Customs Act etc., for dealing with a question of refund, demand, adjudication etc.*

44. *The issue can be looked at from another angle also. If sub-rule (5) of Rule 47 had also included the procedure for grant of exemption within its purview, then the stand taken by the Department would be perfectly valid. The very fact that sub-rule (5) of Rule 47 made the Rules and notifications issued under certain Acts applicable only to issues of refund, demand etc., would show that Rules 22 and 31 have independent legs to stand."*

9.2 We further find that in the Special Leave Petition filed against the above order of the Hon'ble High Court by the department in SLP (Civil) Diary No.22140/2019, the Hon'ble Supreme Court had dismissed the SLP filed by the department, by upholding the order of the Hon'ble High Court. The extract of the said judgement dated 28.07.2019 is given below:

ITEM NO.18

COURT NO.10

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s).22140/2019

(Arising out of impugned final judgment and order dated 27-12-2018 in WP No. 13546/2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh)

UNION OF INDIA & ANR.

Petitioner(s)

VERSUS

M/S GMR AEROSPACE ENGINEERING LIMITED & ORS. Respondent(s)
(WITH I.R. and IA No.105573/2019-CONDONATION OF DELAY IN FILING and
IA No.105575/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date : 26-07-2019 This petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Ms. Pinky Anand, ASG
Mr. Arijit Prasad, Sr. Adv.
Mr. Vikrant Yadav, Adv.
Mr. Abhishek Kumar, Adv.
Ms. Tanisha Samanta, Adv.
Mr. B. Krishna Prasad, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

In the facts and circumstances of the present case,
we see no reason to interfere with the impugned judgment
and order of the High Court.

The Special Leave Petition is accordingly dismissed.

Pending applications, if any, are disposed of.

Validity unknown
Digitally signed by
SANJAY KUMAR
Date: 2019.07.27
13:09:41
Reason:

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

In view of the detailed analysis and categorical decision of the Hon'ble High Court of Andhra Pradesh which was upheld by the Hon'ble Supreme Court, the issues under dispute in the present case is no more open to debate, and a different view cannot be taken by this Tribunal.

9.3. We also note that the Hon'ble Supreme Court had dealt with the issue of *"What is the interpretative rule to be applied while interpreting a tax exemption provision/notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied?"* in the case of Dilip Kumar and Company (supra). Further, in the case of Dharmendra Textile Processors Vs. Union of India – 2008(231) E.L.T. 3 relied upon by the authorities below, the Hon'ble Supreme Court had only stated that it is well settled principle in law that the court cannot read anything into a statutory provision or a stipulated condition which is plain and unambiguous. In fact, the said case law only supports the claim of the appellants that since the SEZ statute, by an *non obstante* clause and in plain & unambiguous words have expressed that taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone is exempt, there is no question of denying such benefits. Similarly, the case law in Rajasthan Spinning & Weaving Mills relied upon by the learned Commissioner (Appeals) is also dealing about the case of exemption from duty in a notification. We find that in the present case, the question of ambiguity in interpretation, exemption benefit under notification etc. are not the issues to be dealt, and therefore we do not find force in the argument of learned AR, that the same should apply to the present case.

10. We also find that the Co-ordinate Bench of the Tribunal in the case of *Cummins Turbo Technology (supra)* have held that there is no legal authority to levy and collect central excise duty, customs duty or service tax for goods or services supplied for authorised operations of SEZ developers and units covered by Section 26 of the SEZ Act, 2005. Without such legal authority, no tax or duty can be either levied or collected in view of Article 265 of Constitution of India, 1950. Therefore, the Tribunal have held that there is no need for exemption notifications under Central Excise Act, 1944, Customs Act, 1962 and Finance Act, 1994, nor is it necessary to fulfil of conditions under exemption notifications, if any, issued. The relevant paragraph of the said order is extracted and given below:

"23. While the SEZ Act itself provided for exemption from service tax (as well as Central Excise duty and Customs duty), exemption notifications were also issued by the Government under the respective laws. These exemption notifications were also issued with some conditions. Thus, there is duplication inasmuch as the goods and services provided to authorised operations of developers and units in the SEZs are exempted from Customs duty, Central Excise duty and the service tax by the SEZ Act itself (subject to the manner which may be prescribed) and there are also exemption notifications under the respective tax laws which are also subject to some conditions. The exemption notification in dispute in this case is service tax exemption notification ST-40/2012 dated 20-6-2013.

24. This contradiction and duplication of exemption under the two provisions viz. SEZ Act and Rules and the exemption notifications under the Finance Act, 1994 were discussed at length by this bench in

case of DLF Assets [2021 \(45\) G.S.T.L. 176 \(Tribunal\)](#), the relevant extract of which is reproduced below :

"10. According to the appellant, as the aforesaid services were utilized for authorized operations by the recipient SEZ units, there was no necessity to pay any service tax. The Department, however, alleged that though the exemption provided under the SEZ Act is contained in the Notification dated March 3, 2009, but the appellant did not follow the conditions prescribed therein and, therefore, was liable to pay service tax on renting of immovable property services to SEZ units. The Department also alleged that since the appellant had classified signage as sale of space or time for advertisement, it was not entitled to claim exemption.

11. In order to appreciate the contentions advanced by learned Counsel for the appellant and the learned Authorized Representative of the Department, it will be appropriate to refer to the relevant provisions. Section 26 of the SEZ Act deals with exemptions, drawbacks and concessions to every Developer and entrepreneur. The relevant provisions are reproduced below:

"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur.—

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:—

(a) to (d) **

(e) exemption from service tax under Chapter V of the Finance Act, 1994 (32 of 1994) on taxable services provided to a Developer or Unit to carry on the authorized operations in a Special Economic Zone

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1)."

12. Section 51 of the SEZ Act further provides overriding effect to the provisions of the SEZ Act and it is reproduced below:

"51. Act to have overriding effect — The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

13. Section 55 of the SEZ Act gives power to the Central Government to make rules for carrying out the provisions of the Act. In exercise of the aforesaid powers, the Central Government made "The Special Economic Zones Rules, 2006¹²". Rule 31 deals with the exemption from payment of service tax and is reproduced below:

"31. The exemption from payment of service tax on taxable services under section 65 of the Finance Act, 1994 (32 of 1994) rendered to a Developer or a Unit (including a Unit under construction) by any service provider shall be available for the authorized operations in a Special Economic Zone."

14. The impugned order has confirmed the demand of service tax on the ground that for the period from March 3, 2009 upto May 19, 2009, exemption on services rendered to SEZ units was available only by way of refund and thus the appellant was not eligible for ab-initio exemption, which was introduced subsequently by amendment of Notification dated March 3, 2009 by Notification No. 15/2009-ST w.e.f. May 20, 2009. It would, therefore, be necessary to reproduce the aforesaid two Notifications. The relevant portion of the Notification dated March 3, 2009 is reproduced below:

Notification No. 09/2009-Service Tax : Dated March 3, 2009

G.S.R. 146 (E) - In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), and in supersession of the Notification of the Government of India, Ministry of Finance (Department of Revenue), No. 4/2004-Service Tax, dated the 31st March, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 31st March, 2004, vide, G.S.R.248(E), dated the 31st March, 2004, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in clause (105) of section 65 of the said Finance Act, which are provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax leviable thereon under section 66 of the said Finance Act:

Provided that-

(a) to (b) **

(c) the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

(d) to (g) **

2. **

**

(emphasis supplied)

15. Proviso (c) to the aforesaid Notification dated March 3, 2009 was amended by Notification dated May 20, 2009. The amended proviso (c) is reproduced below:

**

"(c) the exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone except for services consumed wholly within the Special Economic Zone;"

16. It would, therefore, be seen that prior to May 20, 2009 the exemption could be claimed by way of refund of service tax paid on the specified services used in relation to the authorized operations in the SEZ. However, proviso (c) was amended by Notification dated May 20, 2009. The amended proviso (c) stipulates that the exemption claimed by the developer or units of SEZ shall be provided by way of refund of service tax paid on the specified services, except for services consumed wholly within the SEZ.

17. The Notification dated March 3, 2009 has been issued in exercise of the powers conferred by section 93 (1) of the Finance Act. It is for this reason that it has been contended by learned Counsel for the appellant that the said Notification dated March 3, 2009 would not have any relevance to the case of the appellant when it sought exemption from payment of service tax under the provisions of section 26(1)(e) of the SEZ Act read with rule 31 of the SEZ Rules.

18. The contention advanced by the learned Counsel for the appellant has force. As noticed above, section 26(1) of the SEZ Act provides that subject to the provisions of the sub-section (2), every Developer shall be entitled to exemptions and the exemption at (e) exempts every Developer from service tax under Chapter-V of the Finance Act on taxable services provided to a Developer or unit to carry on the authorized operations in a SEZ. Section 51 of the SEZ Act provides for an overriding effect to the provisions of the SEZ Act. The provisions of section 26 read with rule 31 of the SEZ Rules thus, have overriding effect over anything inconsistent contained in any other law for the time being in force, which would include the Finance Act. It needs to be noted that the Notification dated March 3, 2009 has been issued in exercise of the powers conferred by section 93 of the Finance Act. Thus, when the services rendered by the appellant are fully exempted from service tax in terms of the provisions of the SEZ Act, the condition of exemption by way of refund imposed under the Notification issued under the Finance Act would be inconsistent with the provisions of the SEZ Act. It also needs to be noted that the SEZ Act was enacted in 2005, much after the enactment of the Finance Act in 1994.

19. This issue was examined by the Telangana and Andhra Pradesh High Court in *GMR Aerospace Engineering Limited and another v. Union of India and Others*¹³. The second petitioner, a Developer of GMR Hyderabad Aviation SEZ, entered into a sub-lease agreement with the first petitioner for rendering certain services. It, however, claimed examination on the ground that under section 26(1)(e) of the SEZ Act, every Developer was entitled to exemption from service tax under Chapter-V on the Finance Act on taxable services provided to a Developer or unit to carry on the authorized operations in a SEZ and the same was not dependent upon the conditions stipulated in the Notification issued under section 93 of the Finance Act.

20. It is in this context that the Andhra Pradesh High Court observed as follows:

"22. It may be noted that sub-section (1) of section-26 begins with the words "subject to the provisions of sub-section (2)". Sub-section (2) authorizes the Central Government to prescribe the manner in which and the terms and conditions subject to which exemptions shall be granted to the developer or entrepreneur under sub-section (1).

23. As rightly pointed out by Sri S. Niranjan Reddy, learned senior counsel appearing for the petitioner, the word "prescribe" appearing in sub-section (2) of section 26 has to be understood with reference to the definition of the word "prescribed" appearing in section 2(w) of the SEZ Act, 2005. Section 2(w) of the Act reads as follows:

"prescribed means prescribed by rules made by the Central Government under this Act."

24. Therefore, the terms and conditions subject to which the exemptions are to be granted under sub-section (1) of section 26 should be prescribed by the Rules made by the Central Government under the SEZ Rules, 2006 issued in exercise of the power conferred by section 55 of the SEZ Act. It is not necessary to extract rule 22, since there is no dispute about the fact (1) that the petitioners have complied with the prescriptions contained in rule 22 of the SEZ Rules, 2006, and (2) that rule 22 of the SEZ Rules, 2006 does not stipulate the filing of Forms A1 and A2 as prescribed in the three Notifications issued under section 93 of the Finance Act, 1994.

29. The contention of Smt. Sundari R. Pisupati, learned senior standing counsel is that there is no inconsistency between (i) the terms and conditions prescribed in the Notifications issued under section 93 of the Finance Act, 1994, and (ii) the terms and conditions prescribed in rules 22 and 31 of the SEZ Rules, 2006, and that therefore, section 51 of the SEZ Act, 2005 cannot be pressed into service. But this contention is unacceptable.

30. This is for the reason that section 26(1) of the SEZ Act made the entitlement to certain exemptions subject to provisions of sub-section (2) of section 26. Section 26(1) did not make the entitlement of a developer to certain exemptions, subject to the provisions of something else other than the provisions of sub-section (2). Therefore, the fifth respondent cannot read section 26(1) to mean that the exemptions listed therein are (1) subject to the provisions of sub-section (2) of section 26, and (2) also subject to the terms and conditions prescribed in the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Tariff Act, 1985 and the Finance Act, 1994. This is especially so, since the authority of the Central Government to prescribe the terms and conditions subject to which exemptions may be granted under section 26(1), flows only out of sub-section (2) of section 26. The word "prescribe" is verb. Generally no enactment

defines the word "prescribe" but the SEZ Act 2005 defines the word "prescribe" under section 2(w) to mean the rules framed by the Central Government under the SEZ Act, 2005. The space is also not left unoccupied, as the Central Government has issued a set of rules known as "the Special Economic Zones Rules, 2006", wherein the Central Government has prescribed the terms and conditions for grant of exemptions under rule 22. Therefore, there is no question of comparing the terms and conditions prescribed in rule 22 with the terms and conditions prescribed in the Notifications issued under any one of the five enactments listed in section 26(1) to find out whether there was any inconsistency.

34. The benefit of exemptions granted under the Notifications issued under section 93 of the Finance Act, 1994, are available to any one and not necessarily confined to a unit in a special economic zone. Section 93 of the Finance Act, in that sense is a general power of exemption available in respect of all taxable services. But, section 26(1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone. Therefore, the Notifications issued under section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in a SEZ qualifies for exemption or not."

(emphasis supplied)

21. Thus, what follows is that the Commissioner was not justified in examining whether the conditions set out in the Notification dated March 3, 2009 were satisfied or not for grant of any exemption from service tax. Section 26(2) of the SEZ Act does provide that the Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions shall be granted to the Developer under sub-section (1) but what is important to notice, and as was also observed by the Andhra Pradesh High Court, the word "prescribe" would mean "prescribed by rules made by the Central Government under the SEZ Act," in view of the definition of "prescribed" under section 2(w) of the SEZ Act. The Notification dated March 3, 2009, which has been issued under section 93 of the Finance Act, therefore, has no application."

25. Thus, the legal position is that SEZ Act overrides any other law because of section 51 of the SEZ Act. The question is what part of the tax law have been overridden by the SEZ Act. To answer this question, we proceed to examine the requirement under the Constitution of India to levy taxes and the relevant legal provisions of the Central Excise Act and Customs Act and Chapter V of the Finance Act, 1994 under which Service Tax is levied.

26. Taxes can be levied only as per article 265 of the Constitution of India which reads as follows:

265. Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.

27. This authority of law to levy and collect taxes is in the form of charging sections of the Acts- such as section 3 of the Central Excise Act, 1944, section 12 of the Customs Act, 1962 and sections 66, 66A and section 66B of Chapter V of the Finance Act, 1994 (for collection of Service Tax). While section 66 provides for levy of service tax on forward charge basis by the service provider, section 66A provides for charge of service on reverse charge basis by the service recipient in case of certain services. Section 66B provides for levy of service tax on all services other than those in the negative list after 2012.

28. The levy and collection of these taxes and duties are further modified by some machinery provisions of these Acts, including those which enable the Government to issue exemption notifications. The contradiction is between these three charging sections under which duties or service tax are levied and section 26 of the SEZ Act as per which they are exempted. Section 51 of the SEZ Act overrides the provisions of the other Acts and therefore, service tax is always exempted for the services provided to developers and units in SEZ regardless of any provisions of the Finance Act, 1994. Section 26 of the SEZ Act reads as follows:

26. (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely: -

(a) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;

(b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;

(c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;

...

(e) exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;

29. Section 51 of the SEZ Act states that the provisions of SEZ Act override any other provisions of other laws. It reads as follows:

51. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

30. Thus, insofar as supplies for authorised operations of SEZ developers and units are concerned, section 26 of the SEZ Act overrides the charging sections in all the three Acts.

31. The charging sections, having been overridden by the SEZ Act, no legal authority to levy and collect central excise duty, customs duty or service tax for goods or services supplied for authorised operations of SEZ developers and units covered by section 26 remains. Without such a legal authority, no tax or duty can be either levied or collected in view of article 265 of the Constitution of India.

32. Therefore, there is no need for any exemption notifications under any of these three Acts, nor is it necessary to fulfil any of the conditions laid down in the exemption notifications, if any, issued for the purpose. Thus, the charge of excise duty under section 3 of the Central Excise Act, the charge of customs duty under section 12 of the Customs Act and the charge of service tax under sections 66, 66A and 66B of the Finance Act, 1994 will not apply to goods and services supplied to developers and units for authorized operations in the SEZ areas by virtue of the overriding provisions of the SEZ Act. Any exemption notifications and conditions therein are therefore, redundant because, the Parliament itself has, through the SEZ Act, overridden the charge in the other laws.

33. The status of exemption notifications which are issued when the tax that is sought to be levied is out of the ambit of charging section itself was considered by the Supreme Court in the case of *Larsen & Toubro*¹⁴. The case before the Supreme Court, in brief, was as follows. Service tax was levied under Chapter V of the Finance Act, 1994 under section 66 on taxable services. The list of taxable services was defined under section 65(105) and this list was expanded from time to time. If the taxable service was provided as a part of a works contract which involved both rendering the service and transfer or deemed transfer of goods, exemption notifications were issued by the Government towards abatement of the value of the goods used in the services. Later, on 1-6-2007, works contract service, itself was introduced as a service. The question before the Supreme Court was whether works contract service could have been taxed under various other heads prior to this date. The Supreme Court held that there was no charge on works contract service prior to 1-6-2007 because works contracts services were a separate specie of contract known to commerce and there was no levy on such contracts prior to 1-6-2007. It was pleaded on behalf of the Revenue that abatements were given through various exemption notifications prior to 1-6-2007. The Supreme Court held as follows:

43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.

34. In view of the aforesaid legal position, the exemption notifications issued under the Finance Act, 1994 are redundant because service tax was already exempted by the Parliament by section 26 of the SEZ Act. Any conditions in such notifications are also, therefore, irrelevant and need not be fulfilled.....”

11.1 We also find that the Tribunal in the case of *Eclerx Services Ltd.* (*supra*) have held that SEZ unit was eligible for exemption from service tax on services received by it and in view of the overriding effect of SEZ law, denial of exemption on the grounds of procedural infirmities is not sustainable. The relevant paragraph of the said order is extracted and given below:

“6. The issue to be decided on this appeal is plain and simple enough: whether the notifications relied upon by the adjudicating authority can invalidate exemption accorded under

'26. (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely: -

- (a) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;
 - (b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;
 - (c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;
 - (d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;
 - (e) exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;
 - (f) exemption from the securities transaction tax leviable under section 98 of the Finance (No. 2) Act, 2004 in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;
 - (g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.
- (2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

of Special Economic Zones Act, 2005. It is unquestionably clear from the

'51. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.'

of Special Economic Zones Act, 2005 that no other law can prevail over it.

7. It is on record that the required documentation was not available for the entire period of the dispute but, at the same time, it cannot be denied that at some point, the eligibility did exist. The procedural infirmities, for a shorter or longer time, does not in any way supplant the exemption accorded to the impugned supply of services. Furthermore, the findings of the adjudicating authority do not arrive at a conclusion that, but for the said procedural infirmities, the eligibility of the appellant to render such services without payment of tax was in question. In the light of decision cited supra, the overriding nature of the exemption afforded by section 26 of Special Economic Zones Act, 2005 and the breach of conditions being procedural, we have no hesitation in setting aside the demand pertaining to the rendering of services to M/s Credit Suisse Service (India) Pvt. Ltd.

8. The next issue concerns the finding that the services had been rendered in India and consumed in India. The definition of

'(m) "export" means –

- (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;'

in Special Economic Zones Act, 2005 is substantially different from that in the rules which delineate 'exports' from 'domestic supply' in the scheme of service tax law and, in view of section 51 of Special Economic Zones Act, 2005, have to be read in the context of the exemption afforded by section 26 of Special Economic Zones Act, 2005 and not in terms of Finance Act, 1994. Consequently the prism through which the adjudicatory perception has been enunciated does not apply to the facts of the service rendered by the appellant. Accordingly, the demand for allegedly rendering of services within India does not sustain."

11.2 We further find that in the Civil Appeal filed by the department against the aforesaid order of the Tribunal holding that exemption provided under Section 26 of the SEZ Act, 2005 has overriding effect and that the breach of conditions is procedural, the Hon'ble Supreme Court had dismissed the appeal filed by the department, by upholding the order of the Tribunal. The copy of the said judgement of the Hon'ble Supreme Court is extracted and given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO. 549 OF 2023
@ Dy. No. 42620 of 2022THE COMMISSIONER OF CENTRAL GOODS AND
SERVICE TAX NAVI MUMBAI

.....Appellant(s)

Vs.

ECLERX SERVICES LIMITED

.....Respondent(s)

O R D E R

Delay condoned.

The judgment relied upon in "*M/s GMR Aerospace Engineering Limited & Ors. Vs Union of India & Anr.*" (W.P. No. 13546 of 2018) decided on 27.12.2018 by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh was challenged under Article 136 (in a SLP(C) Dy. No. 22140 of 2019) which was dismissed by this Court on 26.07.2019. Following the said decision, this Court holds that there is no merit in the appeal. It is accordingly dismissed.

All pending applications are disposed of.

.....J.
(S. RAVINDRA BHAT).....J.
(C.T. RAVIKUMAR)

Validity unknown
Digitally signed by
NEETA SINGH
Date: 2023.02.04
17:22:11
Reason: I am the author

New Delhi;
January 27, 2023.

12. In view of the foregoing discussions and analysis, and on the basis of the judgements delivered by the Hon'ble Supreme Court referred above, we are of the considered view that exemption benefits by way of refund, extended to taxable services provided to SEZ under Section 26 of the Special Economic Zones Act, 2005 cannot be denied on the ground that certain procedures have not been followed or certain conditions prescribed in the notification have not been fulfilled.

13. Therefore, the impugned order is liable to be set aside to the extent it had rejected the refund of service tax claimed by the appellants on account of the services having been rendered to SEZ, which was initially paid and subsequently claimed as refund under the notifications issued by the Ministry of Finance under the Finance Act, 1994. Accordingly, by setting aside the impugned order dated 30.11.2016, the appeals filed by the appellants are allowed in their favour, with consequential relief, as per law.

(Order pronounced in open court on 13.03.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)