

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11359 of 2019

(Arising out of OIA-VAD-EXCUS-002-APP-610-2018-19 dated 27/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Tega Industries Limited

Plot No.Z/103/J, Dahej Phase II, P.O.Dahej Tal - Vagra
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-II

1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat-390023

.....Respondent

APPEARANCE:

Ms. Disha Gursahaney, Advocate for the Appellant

Shri. Dinesh Prithiani, Assistant Commissioner (Authorized Representative)) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 10705 /2022

DATE OF HEARING: 15.06.2022

DATE OF DECISION: 17.06.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for refund in terms of Notification No. 12/13-ST dated 01.07.2013 read with Section 11B of Central Excise Act, 1944 during the period January 2017 to March 2017. The Learned Commissioner (Appeals) by the impugned order upheld the rejection of refund claim on the ground that the service of marketing on which the refund claim was made is not listed in approved list of the approval committee for the Special Economic Zone. Secondly, the appellant and the service provider are one entity hence, it cannot be said that the appellant have received the services from the service provider. Being aggrieved by the said impugned order, appellant filed the present appeal.

2. Ms. Dish Gursahaney, Learned Counsel appearing on behalf of the appellant submits that the appellant has entered into an agreement which is holding company for receiving Business Support Service. The said service was used for expanding its business outside of India. She submits that the services in the nature of operational assistance in marketing would get covered under the scope of the definition of "Support Services of Business and Commerce", at least under that limb of the inclusive part which says for 'operational assistance for marketing'. In the present case, the invoices have been issued by the M/s Tega Industries Limited, Kolkata to the appellant unit M/s Tega

Industries SEZ Ltd., Dahej (SEZ) Bharuch for providing 'Business Support Service'. Therefore, it cannot be disputed that the appellant have not received the service of the business support and same is not listed in the approved list. The said services were used for authorised purpose and were not merely exported through account/documents as alleged in OIA. She submits that both the units have separate registration shall be treated as two different entities. She also submits that as per the provision under the Special Economic Zone Rules, 2006, two units of the same entity one in DTA and other is SEZ are treated two separate identities with separate books of accounts and the unit in the Special Economic Zone is treated separate legal entity. Without prejudice, she submits that even if service is not included in approved list it is merely a procedural lapse and for that reason refund cannot be denied. She placed reliance on the following judgments:-

- Metlife Global Operations Support Center Pvt. Ltd.-2020 (12) TMI 1069 CESTAT Bangalore
- Mast Global Business Service India Pvt Ltd v. Commissioner of Central Tax, Bangalore North -2018 (9) TMI 258 (CESTAT Bangalore)
- Lowes Services India Private Limited- 2019 (3) TMI 116-CESTAT Bangalore
- S. Lowe's Services India Pvt. Ltd. -2021 (3) TMI 230-CESTAT Bangalore:
- TP Vision India Private Limited- 2019 (5) TMI 759-CESTAT Bangalore
- Societe Generale Global Solutions Centre Pvt. Ltd.-2020 (2) TMI 229 CESTAT Bangalore
- ONGC Mangalore Petrochemicals Limited 2019 (2) TMI 588-CESTAT, Bangalore
- Photon Infotech Pvt. Ltd. 2017 (12) TMI 1028-CESTAT Bangalore

As per the above submission, she submits that the Order-In-Appeal is illegal and hence the same is not sustainable.

3. Shri. Dinesh Prithiani, Learned Assistant Commissioner (Authorized Representative) appearing on behalf the Revenue reiterates the findings of the impugned order. He submits that the appellant's service does not fall under the Business Support Service whereas the same is marketing service and market service is not included in the approved list. He further submits that since both unit i.e. service provider and service recipient are the same entity, it cannot be said that the appellant have received any service, hence, impugned order is sustainable.

4. I have carefully considered the submissions made by both the sides and perused the records. I find that the Learned Commissioner (Appeals) have denied the refund on the ground that first the service is not included in the approved list, and secondly, the service provider and service recipient both are the same entity. I find that as regard the inclusion of service in the approved list firstly, the invoice issued by the service provider is clearly in respect of Business Support Service. A sample copy is scanned below:-

(18)

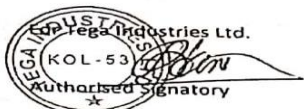
SERVICE BILL
Tega Industries Ltd.
147, Block-G, New Alipore, Kolkata - 700 053

Tega Industries SEZ Ltd. Plot no Z/103/J In Dahej SEZ Maluka Gavara Bharuch		Bill No. TIL/BSS/10/16-17 Dated : 31.05.2016
Particulars	Amount (Rs)	
Business Support Service provided for Ghana Branch May'16	6,396	
Towards Business Support Service provided for Accra Branch May'16	4,339	
	10,735	
Add: Service Tax @ 14%	1,503	
Swachh Bharat Cess 0.5%	54	
TOTAL	12,292	

(Details enclosed)

Rupees: twelve thousand two hundred ninety two only

Tax Regn No. AABCT2074MST001
City: Kolkata
Division: III
Category: Business Support Services
PAN: AABCT 2074M




10% 1,229 TDS (Professional Fees)

4.1 From the above invoice, it can be seen that the appellant's Kolkata unit has raised the invoices for the services of Business Support Service, therefore, at the end of the appellant the classification of service cannot be disputed. The Business Support Service is clearly included in the approved list by the approval committee of SEZ. A copy of the same is scanned below:-

Minutes of the 55th meeting of the Approval Committee for the multi-product Dahej – Special Economic Zone held on 27-08-2014, at 1130 hours under the Chairmanship of Shri K. L. Sharma, ITS, Development Commissioner, Dahej Special Economic Zone, in the DC's Office, Dahej SEZ, Bharuch.

46.	Survey & map making services
47.	Scientific or technical consultancy service
48.	Sound recording studio or agency services
49.	Technical inspection and certification
50.	Technical testing and analysis services
51.	Telecommunication services
52.	Transport of goods by Air services
53.	Transport of goods by Rail services
54.	Transport of goods by Road services
55.	Works contract services
56.	Transport of goods services
57.	Construction services
58.	On-line information and database access services.
59.	SEZ Online Services
60.	Rent-a-Cab Service's Service
61.	Air Travel Agent Services
62.	Rail Travel Agent's Services
63.	Travel Agent's Services
64.	Business Support Service
65.	Transport Passengers by Air
66.	Accommodation Service.

4.2 From the above approved list, it is clear that the Business Support Service is clearly included in the list approved by the approval committee. I also find that even if it is assumed that the service falls under marketing service and same is not included in the approval list even then for this being a procedure lapse refund cannot be denied. This has been held in various judgments as cited by the Learned Counsel. In the case of Mast Global Business Service India Pvt. Ltd (Supra), the CESTAT Bangalore has passed the following order:-

"6.1... The other grounds on which the refund claims have been rejected by the impugned order is that the appellant has not produced the approved list of specified input services from the UAC SE2 which is mandatory and as per the Commissioner (Appeals). In reply to this argument, the Learned counsel submitted that in view of the settled legal position by various

decisions relied upon by him, condition in respect of approval from UAC not a mandatory requirement as the SEZ Act vide Section 51 of SEZ Act will have overriding effect over the provisions of other law. Therefore keeping in view the of the intention of the Government in enacting the SEZ Act and giving special fiscal concessions SEZs, I am of the considered opinion that this is only a procedural and is not a mandatory condition as held by the Commissioner (Appeals). Further the decisions relied upon by the appellant clearly held that the SEZ Act has an overriding effect over other laws. Therefore this ground on the basis of which refund claims have been rejected is not tenable in law.”

4.3 From the above order along with other decision cited by the appellant merely for the reason that the service is not included in the approved list the refund cannot be denied. As regard the contention of the Learned Commissioner (Appeals) that the appellant’s service provider and appellant are same entity. I find that there is no dispute that the appellant’s service provider is located in Kolkata which is a DTA unit and the appellant’s unit is located in SEZ. As per Sub Rule (7) of Rule 19 of the Special Economic Zone Rules, 2006 it clearly provides that if an enterprise is operating both as Domestic Tariff Area Unit as well as a Special Economic Zone Unit, it shall have two distinct identities with separate books of account, but it shall not be necessary for Special Economic Zone unit to be a separate legal entity. With this clear provision under the Special Economic Zone Rules even if the appellant is not a separate legal entity, the unit being located in SEZ shall be treated as distinct identity, therefore, the denial of refund on this ground also not tenable.

5. As per my above discussion and findings the appellant is clearly entitled for the refund under Notification No. 12/13-ST dated 01.07.2013. Accordingly, impugned order is not sustainable, hence, the same is set aside. The appeal is allowed.

(Pronounced in the open court on 17.06.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)