IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal Nos.40274 to 40277/2013

(Arising out of Order-in-Appeal No. 272 to 275/2012 dated 7.11.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Ugam Solutions SEZ Pvt. Ltd. **Appellant**
CHIL-SEZ, India Land KGISL Tech Park
Block A, 1st Floor, Keeranatham Village
Saravanampatty, Coimbatore – 641 035.

Vs.

Commissioner of GST & Central Excise **Respondent**
6/7, A.T.D. Street, Race Course Road
Coimbatore – 641 018.

APPEARANCE:

Shri Mahesh Raichandani, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. **40218-40221 / 2022**

Date of Hearing : 8.6.2022
Date of Decision: 10.6.2022

Per Ms. Sulekha Beevi C.S.

Brief facts are that the appellant is a company registered under the Companies Act, 1956 and is located in Special Economic Zone (SEZ). They provide business support services in the nature of market research operations and online marketing and content services to clients located outside India. They are registered for various categories of services. Fr providing output services, the appellant used various input services. However, as their output services are exported, they were not utilizing the CENVAT credit availed on the input services. They filed refund claims under Rule 5 of CENVAT Credit Rules, 2004 for

refund of the unutilized CENVAT credit on input services consumed by them in exporting services. They filed refund claims for the period April 2010 to June 2010, July 2010 to September 2010, October to December, 2010 and January 2011 to March 2011. The refund claims were rejected by the adjudicating authority on the ground that since the appellant is located in SEZ, they ought to have filed refund claims as per the procedure and conditions laid down under SEZ refund notification instead of claiming refund under Rule 5 of CENVAT Credit Rules, 2004. The appellant filed appeals before the Commissioner (Appeals) who vide the order impugned herein upheld the order of rejection. Aggrieved by such order, the appellant is now before the Tribunal.

2. The learned counsel Shri Mahesh Raichandani appeared on behalf of the appellant. He referred to the order passed by the adjudicating authority and submitted that the only ground by which the refund claims have been rejected is that the appellant being an SEZ unit ought to have filed refund claim in accordance with Notification No. 9/2009-ST dated 3.3.2009. The learned counsel submitted that the appellant being SEZ unit cannot be burdened with tax or duty and the refund application ought to have been allowed. It is highly erroneous to hold that the appellant being an SEZ unit has to file refund claim as per Notification No. 9/2009 only. Rule 5 of CENVAT Credit Rules, 2004 provides for refund of the unutilized credit when output services are exported. It is clear from the said provision that exporters of service can claim refund of unutilized credit on input services which are used for taxable services exported. The said rule does not make any bar for unit located in SEZ. The appellant has opted

to claim the benefit under Rule 5 of CENVAT Credit Rules, 2004 and the same ought not to have been denied when there is no allegation that the appellant has not used the input services or not exported the output services. Further, the application for refund even if filed under the SEZ notification is subject to section 11B of the Central Excise Act, 1944. The appellant has filed the refund under the above provision and ought to have been allowed.

3. The learned AR Shri Arul C. Durairaj supported the findings in the impugned order.

4. Heard both sides.

5. On perusal of records, we find that the only ground for denying the sanction of refund is that the appellant which is an SEZ unit has filed the refund claims under rule 5 of CENVAT Credit Rules, 2004 instead of filing the claim in terms of SEZ Notification No. 9/2009. The relevant portion is as under:-

> *"06. Before going into the merits of the claim, it observed that as regards the appellants arguments that they had obtained the refunds following the similar route earlier (which has now been denied), it is stated that just because the claims were allowed earlier does not mean that for all times to come, refund claims should be allowed. The claim admitted for an earlier period does not create an estoppel and if the proper officer is of the view that the refund claims allowed earlier were not proper, he can always follow the procedure, which, in his opinion is correct, for the subsequent claims. In other words, the earlier orders on the same issue, if it is not correct, do not create a binding precedence.*
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> *09. Though it is well known, it could be imperative to state that SEZ units enjoy a special status as regards Taxation, as the objective of the Government in establishing the SEZ is to promote exports. Geographically, the SEZ are situated in the territorial jurisdiction of India. But by a legal fiction, as a policy measure, for taxation purposes, they are deemed to be territories outside 'India'. That is clearances from DTA to SEZ are treated as exports. The CBEC vide Circular 29/2006 dated 27.12.2006, have also clarified that "The provisions relating to exports under Central Excise Act 1944 and Rules made there under may be applied mutatis-mutandis, in case of procurement by SEZ units and SEZ developer from DTA for their authorized operations". As far as Service Tax is concerned, the services provided to a*

developer / SEZ was exempt in terms of Notification 09/2009-ST dated 03.03.2009. The only difference in the mode of exemption was that the service tax was initially paid by the provider and the exemption was claimed by the developer/unit, by way of a refund claim. The ultimate objective was to ensure that 'taxes' are not exported. For this purpose, a procedure has been laid down as per which the SEZ units should get themselves registered with Central Excise and take refund of the taxes paid. It is in this back ground that they are registered with the Central Excise authorities and Notification 9/2009-ST is the procedure prescribed for taking the refunds from the Government.

10. In this case, apparently, the appellants did not want to go by the special route in terms of Notification 9/2009 (ST), provided for SEZ Units. When one considers the fact that the SEZ units are not under the jurisdiction of the regular Central Excise Commissionerate, except for limited purposes of claiming refunds, they cannot choose to operate under Rule 5 of the Cenvat Credit Rules. This is because the set of conditions need to be fulfilled as a normal Central Excise or Service tax registrant vis-à-vis a SEZ registrant are different. The former is more stringent as against practically 'none' for the latter category. Besides what is refunded under Rule 5 of the Cenvat Credit Rules is the accumulated Cenvat credit and not the tax paid on input services, which is governed only by Notification 9/2009-ST."

6. After going through the provisions under CENVAT Credit Rules, 2004, we find that it does not restrict or bar an SEZ to file refund claim of unutilized credit. The ground stated by the authorities below to reject the refund claim does not appear to be legal or proper. We are of the view that the rejection of refund claim cannot be justified. The impugned order is set aside. The appeals are allowed with consequential reliefs if any.

(Pronounced in open court on 10.6.2022)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. ANJANI KUMAR**)
Member (Technical)

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