IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40349 of 2021

(Arising out of Order-in-Appeal No. 07/2021 dated 03.02.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals), Coimbatore, Circuit Office, Madurai, 4, Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai – 625 002)

M/s. ATC Tires Private Limited : Appellant
Plot No. A-2, SIPCOT Industrial Growth Centre,
Gangaikondan, Tirunelveli District – 627 352

VERSUS

Commissioner of G.S.T. and Central Excise : Respondent
No. 4, Lal Bahadur Shashtri Road, Central Revenue Buildings,
Madurai – 625 002

APPEARANCE:

Ms. R. Charulatha, Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40664 / 2023

DATE OF HEARING: 12.07.2023

DATE OF DECISION: 10.08.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the assessee assailing the Order-in-Appeal No. 07/2021 dated 03.02.2021 passed by the Commissioner of G.S.T. and Central Excise (Appeals), Coimbatore, Circuit Office, Madurai, whereby the first appellate authority has upheld: -

(1) The denial of *ab initio* exemption from Service Tax under Notification No. 12/2013-ST dated 01.07.2013 for works contract services, security services and rent-a-cab services;

(2) Consequential demand of Service Tax of Rs.13,14,846/-;

(3) Interest under Section 75 of the Finance Act, 1994; and

(4) Penalty under Section 78 *ibid.*

2.1 Brief facts leading to the present dispute are that the appellant being a part of the Alliance Tire Group (ATG), is a leading manufacturer of global off-highway tyres. The Corporate Office of the appellant is in Mumbai and the appellant also has two manufacturing units in India: one is an Export Oriented Undertaking (EOU) located at Dahej, Gujarat and the other one is a Special Economic Zone (SEZ) unit located at SIPCOT SEZ, Tirunelveli. The present dispute pertains to the appellant's SEZ unit.

2.2 The SEZ unit i.e., the appellant, had obtained a Letter of Approval dated 03.07.2019 issued by the Central Government under Section 3 of the Special Economic Zones Act, 2005 (hereinafter referred to as the 'SEZ Act'), as per which the approval so granted was for carrying out authorized operations of manufacturing pneumatic tyres of rubber, tyre flaps and inner tubes of rubber.

2.3 It appears that there was an audit of the appellant's books of account by the Audit Team of the Service Tax Department during July 2018 and November 2018, during which various issues were pointed out and it is a matter of record that the appellant did file its reply to each of such issues pointed out during the course of audit.

3. It appears that not satisfied with the explanation, a Show Cause Notice dated 15.04.2019 was issued proposing *inter alia* to demand Service Tax along with interest and penalty.

4. It appears that the appellant filed its detailed reply dated 28.01.2020 countering all the allegations contained

in the Show Cause Notice and also denying any Service Tax liability as proposed in the Show Cause Notice.

5.1 During adjudication, the Joint Commissioner, having considered the explanations filed by the appellant, appears to have dropped a major extent of the demand, but however, has sustained the demand to the extent of Rs.19,89,449/- along with interest and penalty. Vide Order-in-Original No. 05/JC/ST/2020 dated 19.03.2020, the Joint Commissioner has held that the works contract services and security services were not used in furtherance of authorized operations in the SEZ and that the impugned services were consumed outside the SEZ, while also confirming the demand insofar as renting of motor vehicle service was concerned.

5.2 Aggrieved by the said demand, it appears that the appellant preferred an appeal before the first appellate authority and the first appellate authority granted a partial relief, but however, sustained the demand to the extent of Rs.13,14,846/- along with applicable interest and penalty. Vide impugned Order-in-Appeal No. 07/2021 dated 03.02.2021, the first appellate authority-Commissioner (Appeals) has, however, dropped the demand of Service Tax on the renting of motor vehicles.

6. It is against the partial sustenance of demand in the impugned Order-in-Appeal that the present appeal has been filed before this forum.

7. It is ascertained during the course of arguments that the Department has not filed any appeal against the dropping of demand of Service tax on renting of motor vehicles by the first appellate authority.

8. Heard Ms. R. Charulatha, Ld. Advocate for the appellant and Shri M. Ambe, Ld. Deputy Commissioner.

9.1 Ld. Advocate would submit at the outset that the demand has been confirmed on the ground that the appellant did not comply with the requirements of

Notification No. 12/2013 *ibid*.; but however, the Hon'ble Telangana High Court in the case of *M/s. GMR Aerospace Engineering Ltd. v. Union of India [2019 (31) G.S.T.L. 596 (A.P.)]* has held that the Notification could not be pressed into service to find out whether a unit in a SEZ qualifies for exemption or not.

9.2 She would contend that the very Chennai Bench of the CESTAT in the appellant's own case for a different period vide Final Order No. 41394-41395 of 2021 dated 17.03.2021 *[2021 (3) TMI 681 – CESTAT, Chennai]* has, following the decision in *M/s. GMR Aerospace Engineering Ltd. (supra)*, granted exemption from payment of Service Tax.

9.3 She would also contend that the lower authorities have travelled beyond the Show Cause Notice in confirming the demand by observing that the services in question were consumed outside the SEZ, which allegation was never put across to the appellant in the Show Cause Notice.

9.4 Ld. Advocate would rely on the decision of the Hon'ble Delhi High Court in the case of *M/s. Jindal Stainless Ltd. v. Union of India [2017 (51) S.T.R. 130 (Del.)]* wherein it has been categorically held that exemption from Service Tax is available even if the services are consumed outside the SEZ so long as the services are used for authorized operations and that words cannot be added to the statute when there was no express requirement in the SEZ Act and the SEZ Rules that only services which are consumed within the SEZ would be exempted from payment of Service Tax.

9.5 Without prejudice to the above, the Ld. Advocate would submit that the requirement that services should be consumed within the SEZ, contained in the earlier Notifications, was superseded by the Notification in question i.e., Notification No. 12/2013 *ibid.*, and therefore, the authorities have clearly erred in relying on the

conditions prescribed in the earlier Notifications since the same were clearly *non est* as being superseded.

10. *Per contra*, Ld. Deputy Commissioner supported the findings of the lower authorities. He would also draw our attention to Section 26(1)(e) of the SEZ Act to contend that the exemption from Service Tax on taxable services is provided to a developer or a unit to carry on authorized operations in a Special Economic Zone, but however, in the case on hand, the impugned services having been consumed outside the SEZ, the orders of the lower authorities could not be disturbed.

11. Having heard the rival contentions, we find that the only issue to be decided by us is: whether the demand confirmed by the first appellate authority is sustainable?

12.1 The above issue revolves around the interpretation of Section 26(1)(e) of the SEZ Act vis-à-vis Notification No. 12/2013-ST dated 01.07.2013 and hence, it is most appropriate to refer to the same: -

> *"Section 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) …*
> .
> .
> .
>
> *(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;"*

> " *Notification No. 12/2013-S.T., dated 1-7-2013*
>
> *In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) read with sub-section (3) of section 95 of Finance (No. 2), Act, 2004 (23 of 2004) and sub-section (3) of section 140 of the Finance Act, 2007 (22 of 2007) and in supersession of the notification of the*

Government of India in the Ministry of Finance (Department of Revenue), No. 40/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 482(E), dated the 20th June, 2012, 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 services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.

2. The exemption shall be provided by way of refund of service tax paid on the specified services received by the SEZ Unit or the Developer and used for the authorised operations:

Provided that where the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax ab initio, subject to the conditions and procedure as stated below.

3. This exemption shall be given effect to in the following manner :

(I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.

(II)The ab initio exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely :-

(a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);

(b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service

provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which ab initio exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely :-

(a) the service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the Cenvat Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.

(b) the SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which ab-initio exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).

(c) the SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;

(d) the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;

(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

(f) the SEZ Unit or the Developer shall submit only one claim of refund under this notification for every quarter :

Explanation. - For the purposes of this notification "quarter" means a period of three consecutive months with the first quarter beginning from 1st April of every year, second quarter from 1st July, third quarter from 1st October and fourth quarter from 1st January of every year.

(g) the SEZ Unit or the Developer who is not so registered under the provisions referred to in clause (c), shall, before filing a claim for refund under this notification, make an application for registration under rule 4 of the Service Tax Rules, 1994.

(h) if there are more than one SEZ Unit registered under a common service tax registration, a common refund may be filed at the option of the assessee.

(IV) The SEZ Unit or Developer, who intends to avail exemption or refund under this notification, shall maintain proper account of receipt and use of the specified services, on which exemption or refund is claimed, for authorised operations in the SEZ.

…"

12.2 It is clear from Section 26(1)(e) that the exemption is available to carry on authorized operations in a Special Economic Zone. Clause (2) of the Notification *ibid.* states that the exemption shall be provided by way of refund of Service Tax paid on the specified services received by the SEZ unit or developer and used for the authorized operations. It is clear from the above Section as well as Notification that there is no specific mention that the services are to be consumed in a SEZ to avail the benefit of Notification No. 12/2013 *ibid.*

12.3 We find from the impugned order that the Ld. Commissioner (Appeals) has given his findings on the ground that the services were found to be not eligible for availing this exemption as they were received / carried out outside the SEZ zone. He has not found that the services were not used for authorized operations. Revenue has also not filed any appeal against the impugned order.

13.1 The Hon'ble Telangana High Court in the case of *M/s. GMR Aerospace Engineering Ltd. (supra)*, while examining Notifications issued under Section 93 of the Finance Act, 1994 and the benefit of exemption flowing therefrom, has held as under: -

> *"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."*

13.2 In the case of *M/s. Norasia Container Lines v. Commissioner of Central Excise, New Delhi [2011 (23) S.T.R. 295 (Tribunal – Delhi)]*, the Ld. co-ordinate Delhi Bench had an occasion to consider a more or less similar issue, but however in the context of Notification No. 04/2004-S.T. dated 31.03.2004 vis-à-vis Section 26 *ibid.* After hearing the rival contentions, the Ld. Bench has held as under: -

> *"5. It is clear from the above provision that* ***there is no restriction regarding the consumption of the services and the exemption is extended*** *to the services rendered to a unit in the SEZ for the purpose of authorised operation in the SEZ.*
>
> *6. ….*
>
> *7. This Rule also states that exemption from service tax is available to services rendered to a unit in the SEZ for the authorised operations. There is no dispute that the*

containers provided to the units in the SEZ have been used by such units for the authorised operations, namely, for bringing inputs for manufacture and carrying the finished goods out of SEZ for export purposes. Therefore, we are of the view that the impugned services relating to supply of containers in the SEZ are exempt from payment of Service tax. We, accordingly, set aside the impugned order and allow the appeals. The Stay applications also stand disposed of."

(Emphasis supplied)

14.1 Here, in the case on hand, the following services have been disputed.

S. No.	Services	Description of the said service	Reason for denial
(a)	Works Contract Services procured for fulfilment of Corporate Social Responsibility	Procured services for the construction of toilers and repair and maintenance of the school premises in villages nearby their factory. (Undertook the above as part of their CSR activities under Section 135 of the Companies Act, 2013).	Services were received outside the SEZ and the services were not in relation to authorized operations of the SEZ.
(b)	Works Contract Services procured for construction of dormitory for employees	Procured services for construction of dormitory to be used for accommodation of employees of the appellant.	Services were received outside the SEZ area.
(c)	Security Services	Procured security services for guarding the appellant's factory premises. The security personnel are also engaged in guarding the dormitory.	Services were received outside the SEZ area.
(d)	Renting of motor vehicle	Obtained services for daily transportation of employees to the manufacturing facility.	Procedure for filing the forms A.1, A.2 and A.3 stipulated in the Notification was not complied with within the stipulated time.

14.2 The demand insofar as item (d) above is concerned, the same has been deleted by the Commissioner (Appeals) and therefore, our discussion is restricted to the other services at (a), (b) and (c).

15. As regards item (a) above, the explanation of the appellant, as could be picked up from the documents placed on record, reveals that the same relates to the services procured for construction of toilets and repair and maintenance of school premises in the villages near their factory – as part of their Corporate Social Responsibility (CSR) activity within the meaning of Section 135 of the Companies Act, 2013. We also find that works contract service, as undertaken above, has direct nexus with the activities of the appellant carried on in the SEZ inasmuch as the same is towards the fulfilment of CSR obligations.

16.1 We also find that the location of the SEZ unit of the appellant is in a remote area, due to which they had to employ migrant labourers who did not have accommodation to stay during the period of their employment with the appellant. For this reason, the appellant provided place of stay for such labourers and there is no dispute that such labourers were working with the SEZ unit of the appellant. Therefore, the appellant had to construct dormitory where such workers / employees could be accommodated.

16.2 The appellant has also taken a stand that CSR activities have been recognized as being closely connected with business and has also placed reliance on a decision of the Hon'ble Madras high Court in the case of *Commissioner of Income Tax v. M/s. Madras Refineries Ltd. [2003 (11) TMI 47 – Madras High Court]* wherein the Hon'ble High Court has held that business also includes concrete expression of care and concern for the society at large and the people of the locality in which the business is located; that being known as a good corporate citizen brings goodwill of the local community; that money spent for bringing drinking water as also for establishing or improving the school meant for the residents of the locality in which the business is situated must be regarded as being towards the business concerns of the assessee.

16.3 Taking a cue from the above decision of the Hon'ble High Court, we find that CSR activities are intricately linked with the appellant's business and hence, must be regarded as contributing for carrying out authorized operations in the SEZ and consequently, the same are also covered under Section 26(1)(e) of the SEZ Act.

17. The appellant has its SEZ in a remote place where security becomes necessary and therefore, they procured security services for guarding not only their factory premises, but also the dormitory which was meant for accommodating the labourers working with the appellant's SEZ unit.

18. The disputed activities, which are discussed in the above paragraphs, according to us, can never be construed as having been consumed outside the SEZ.

19. From the above guiding principles laid down by judicial fora as well our findings in the above paragraphs, we have to hold that there is no requirement that the impugned services should be consumed in the SEZ alone, so long as the services are being used for authorized operations and therefore, the demand raised and confirmed cannot sustain.

20. In view of our above discussions, we have to set aside the impugned order, not only for the reason that the Notification in question has been misinterpreted, but also for the reason that the Order-in-Original has clearly traversed beyond the Show Cause Notice which was also upheld vide impugned Order-in-Appeal.

21. In the result, the impugned order is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **10.08.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd