

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. I

Service Tax Appeal No. 50349 of 2018

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-242-245-17-18 dated 11.10.2017 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Appellant

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Respondent

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

with

Service Tax Appeal No. 50350 of 2018

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-242-245-17-18 dated 11.10.2017 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Appellant

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Respondent

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

and

Service Tax Appeal No. 50351 of 2018

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-242-245-17-18 dated 11.10.2017 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Appellant

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Respondent

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

and

Service Tax Appeal No. 50352 of 2018

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-242-245-17-18 dated 11.10.2017 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Appellant

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Respondent

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

and

Service Tax Appeal No. 50368 of 2021

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-074-077-2020-21 dated 19.11.2020 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Appellant

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)**Respondent****and****Service Tax Appeal No. 50369 of 2021**(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-074-077-2020-21
dated 19.11.2020 passed by the Commissioner of Customs (Appeals),
Customs, CGST & Central Excise, Indore)**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)**Appellant**

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)**Respondent****and****Service Tax Appeal No. 50370 of 2021**(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-074-077-2020-21
dated 19.11.2020 passed by the Commissioner of Customs (Appeals),
Customs, CGST & Central Excise, Indore)**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)**Appellant**

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)**Respondent****and****Service Tax Appeal No. 50371 of 2021**(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-074-077-2020-21
dated 19.11.2020 passed by the Commissioner of Customs (Appeals),
Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

Appellant

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

Respondent

and

Service Tax Appeal No. 50213 of 2021

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-036-039-20-21
dated 02.09.2020 passed by the Commissioner of Customs (Appeals),
Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

Appellant

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

Respondent

and

Service Tax Appeal No. 50214 of 2021

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-036-039-20-21
dated 02.09.2020 passed by the Commissioner of Customs (Appeals),
Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

Appellant

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

Respondent

and
Service Tax Appeal No. 50215 of 2021

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-036-039-20-21 dated 02.09.2020 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Appellant

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Respondent

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

and
Service Tax Appeal No. 50216 of 2021

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-036-039-20-21 dated 02.09.2020 passed by the Commissioner of Customs (Appeals), Customs, CGST & Central Excise, Indore)

**M/s. Cummins Turbo Technology
(a division of Cummins Technologies
India Ltd.)**

Appellant

Plot No. M 5, Sector 3, SEZ Phase II,
Pithampur 454775 (M.P.)

VERSUS

**Commissioner of Customs, Central
Excise & Central Tax, Indore**

Respondent

Manik Bagh Palace, Post Box No. 10
Indore 452001 (M.P.)

APPEARANCE:

Shri B L Narasimhan, Shri Dhruv Tiwari and Shri S.C. Vaidyanathan, Advocates for the Appellant

Ms. Jaya Kumari, Shri S K Meena, Authorized Representatives of the Department

CORAM :

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 51450-51461/2023**Date of Hearing : 09.10.2023****Date of Decision : 30.10.2023****P.V. SUBBA RAO**

All these twelve appeals pertain to the same appellant and respondent and involve the same issue and, therefore, are being decided together by a common order.

2. Cummins Turbo Technology (A Division Of Cummins Technologies India Pvt. Ltd.)¹ is a unit located in Special Economic Zone² as per the Special Economic Zones Act³, 2005. The same company also has a unit which supplies to domestic area and a corporate office which is registered as an Input Service Distributor⁴. The corporate office receives services and distributes the CENVAT credit of service tax paid on such services to its two units- the domestic unit and the SEZ unit through ISD invoices as per the Service Tax Rules.

3. It is undisputed that the services provided to the SEZ unit are exempted from service tax by section 26 read with section 51 of the SEZ Act. They were also exempted through Notification No. 12/2013 dated 01.07.2013 issued under the

¹**Appellant**

²**SEZ**

³**SEZ Act**

⁴**ISD**

Finance Act, 1994⁵. In respect of those services which were received at the corporate office and the credit was distributed to the SEZ unit through ISD invoices, the SEZ unit took CENVAT credit on these ISD invoices and then filed eight applications for refund of the service tax under Notification No. 12/2013- ST dated 1.7.2013. These applications for refund are the subject matter of dispute in these twelve appeals.

4. The Assistant Commissioner rejected four of the refund claims on the ground that the applications were submitted beyond one year from the date on which the service tax was paid to the service provider and hence were time-barred as per the conditions of the notification. Although the notification empowered the Assistant Commissioner to condone any delay in filing the applications for refund, the Assistant Commissioner had not condoned the delays and rejected the refunds. On appeal, the Commissioner (Appeals), through Order in Appeal dated 11.10.2017⁶ upheld the four orders in original passed by the Assistant Commissioner.

5. **Service Tax Appeals 50349/2018, 50350/2018, 50351/2018 and 50352/ 2018,** have been filed to assail this first impugned order. The details are as follows:

Order in Appeal (impugned order)	IND-EXCUS-000-APP-242-245-17-18 dated 11.10.2017
Orders in Original	1) 01/DC/Refund/ST/Pith/2016-17 dated

⁵ Finance Act

⁶ First impugned order

No.	06.04.2016 2) 27/DC/Refund/ST/16-17 dated 25.10.2016 3) 31/DC/Refund/ST/16-17 dated 18.11.2016 4) 30/DC/Refund/ST/16-17 dated 18.11.2016
Show Cause Notices	1) Dated 26.02.2016 2) Dated 14.10.2016 3) Dated 25.10.2016 4) Dated 25.10.2016
Period of Dispute	January 2015 to March 2016
Refund amount	Rs. 9,57,44,311/-

6. In another four refund applications, the Assistant Commissioner had sanctioned the refunds but did not pay interest on the refunds under section 11BB. The appellant appealed to the Commissioner (Appeals) assailing denial of interest by the Assistant Commissioner. Revenue also filed appeals before the Commissioner (Appeals) assailing the sanction of the refund itself. The Commissioner (Appeals) passed Order in Appeal dated 19.11.2020⁷ rejecting the four appeals filed by appellant seeking interest on the refunds which are the subject matter of the second set of four appeals.

7. **Service Tax Appeals 50368/2021, 50369/2021, 50370/2021 and 50371/2021** have been filed to assail this second impugned order. The details are as follows:

Order in Appeal (impugned order)	IND-EXCUS-000-APP-074-077-2020-21 dated 19.11.2020
Orders in Original No.	1) 09/A.C./Refund/ST/Div-II/2018-19 dated 06.03.2020 ; 2) 12/A.C./Refund/ST/Div-II/2019-20 dated 06.03.2020 ; 3) 11/A.C./Refund/ST/Div-II/2019-20 dated 06.03.2020 ; 4) 10/A.C./Refund/ST/Div-II/2019-20 dated 06.03.2020

⁷ **Second impugned order**

Show Cause Notices	1) Dated 11.04.2017 2) Dated 17.08.2017 3) Dated 20.12.2017 4) Dated 18.05.2018
Period of Dispute	April 2016 to June 2017
Refund amount	Rs. 9,88,55,966/-

8. The Commissioner (Appeals) passed Order in Appeal dated 2.9.2020⁸ allowing the four appeals filed by the Revenue and setting aside the sanction of refunds itself which are the subject matter of the third set of four appeals.

9. **Service Tax Appeals 50213/2021, 50214/2021, 50215/2021 and 50216/2021** have been filed to assail this third impugned order. The details are as follows:

Order in Appeal (impugned order)	IND-EXCUS-000-APP-036-039-20-21 dated 02.09.2020
Orders in Original No.	1) 10/A.C./Refund/Div-II/2019-20 dated 06.03.2020 ; 2) 12/A.C./Refund/Div-II/2019-20 dated 06.03.2020 ; 3) 09/A.C./Refund/Div-II/2018-19 dated 06.03.2020 ; 4) 11/A.C./Refund/Div-II/2019-20 dated 06.03.2020
Show Cause Notices	1) Dated 20.12.2017 2) Dated 18.05.2018 3) Dated 17.08.2017 4) Dated 11.04.2017
Period of Dispute	April 2016 to June 2017
Refund amount	Interest on delayed sanction of refund.

10. Thus, the Orders in Original in the second and third sets of appeals are the same although the impugned orders are different- the second impugned order was passed in the appellant's appeal for interest on refunds and the third

⁸**Third impugned order**

impugned order was passed allowing the Revenue's appeal and setting aside the appeal itself.

Appellant's submissions

11. Shri B.L. Narasimhan, learned counsel for the appellant made the following submissions:

11.1 Any services supplied to either a developer or a unit in an SEZ is exempted from service tax by section 26 of the SEZ Act and by virtue of section 51, this Act prevails over any other law for the time being in force. Therefore, the appellant was not required to pay any service tax at all. Since service tax was paid on the services received through its corporate office under the cover of ISD invoices, the appellant was entitled to the refund and it cannot be rejected on technicalities.

11.2 The exemption notification No 12/2013-ST providing for refund of service tax paid is an extra provision and even in its absence, the appellant was not liable to pay service tax and since it has been paid, it is entitled to refund. Therefore, refund cannot be denied on the ground that some condition of the exemption notification was not fulfilled.

11.3 Although the notification set a limit of one year to file an application for refund, it also empowered the Assistant Commissioner to condone any delay without any limit. In the

facts of the case, the Assistant Commissioner should have condoned, the delay, if any, because the appellant could only file a refund claim after receiving the ISD invoice and it did so soon after receiving it.

11.4 The relevant date for computing the time limit of one year is the date on which the SEZ unit paid the service tax to the service provider. In this case, the SEZ unit had never paid any service tax but its corporate office did so. Therefore, the time limit cannot apply to ISD invoices at all. The notification itself has two tables- one for normal invoices and another for ISD invoices. The table for ISD invoices also requires the proportion of the CENVAT credit distributed to the SEZ unit by the ISD to be indicated. This will never be available until the ISD invoices are issued. It has been held by this Tribunal in **Lupin Limited** versus **Commissioner**⁹ and **CCE and ST Rajkot** versus **Reliance Industries Ltd.**¹⁰ that the time limit under the notification does not apply to ISD invoices for this reason. Even on this ground, the appellant is entitled to the refund.

11.5 Since the refunds were sanctioned beyond three months from the date of application, the appellant is entitled to interest on refunds which may be sanctioned to it.

⁹ 2023-VIL-283-CESTAT DEL-CE

¹⁰ 2021(12) TMI 848-CESTAT, Ahmedabad

11.6. All twelve appeals, therefore, deserve to be allowed and the refund and interest in each and every refund application needs to be sanctioned.

Revenue's submissions

12. Ms. Jaya Kumari, learned authorised representative for the Revenue vehemently supported the impugned orders and submitted that they should be upheld and all twelve appeals may be dismissed.

Findings

13. We have considered the arguments on both sides and perused the records.

14. The question which falls for our consideration is whether the appellant is entitled to refund of service tax paid on various input services which it had received from its corporate office through ISD invoices. The claims for refund were filed under the Service Tax exemption notification No. 12/2013-ST issued for services provided to the developers and units located in the SEZs. Four of the claims were rejected since they had been filed after one year from the date on which the service tax was paid to the service provider and hence they did not meet the time limit set in the exemption notification. Although the notification empowered the Assistant Commissioner to condone the delay, he did not condone it. The

rejection of these four refund claims was upheld by the first impugned order which is assailed in **Service Tax Appeals 50349/2018, 50350/2018, 50351/2018 and 50352/2018.**

15. Four refunds were sanctioned but no interest was paid by the Assistant Commissioner and the appeals against non-payment of interest were rejected by the Commissioner (Appeals) through the second impugned order which is assailed in **Service Tax Appeals 50368/2021, 50369/2021, 50370/2021 and 50371/2021.**

16. Assailing the sanction of the aforesaid four refund claims, Revenue filed appeals before the Commissioner (Appeals) who passed the third impugned order setting aside the sanction of refunds on the ground that the applications were filed beyond one year. This third impugned order is assailed in **Service Tax Appeals 50213/2021, 50214/2021, 50215/2021 and 50216/2021**

17. The two questions to be answered by us are:

- a) Was the appellant entitled to refunds as claimed?
- b) Was the appellant entitled to interest on the refunds?

18. To examine these, it is necessary to examine the relevant laws. The Special Economic Zones are created under the SEZ Act, which effectively treats the SEZ as if it is an area outside India for the purpose of taxes. Section 26 of the SEZ Act provides for exemptions drawbacks and concessions to every developer and entrepreneur. Subject to sub-section (2) of section 26 of this Act, clause (e) of sub-section (1) provides exemption from service tax leviable under Chapter V of the Finance Act, 1994 on the taxable services provided to a developer or unit to carry on the authorised operations in a Special Economic Zone. Sub-section (2) of this section states the Central Government may prescribe the manner and the terms and the conditions subject to which the exemptions, concessions drawback or other benefits shall be granted to the developer or entrepreneur under sub-section (1). Section 51 of SEZ Act states that the provisions of this Act shall have effect notwithstanding in any inconsistent there with contained in any other law for the time being in force or in any instrument having affect by virtue of any law other than this Act. Section 55 of the Act gives a Central Government the power to make the rules under the SEZ Act. The Special Economic Zones Rules, 2006¹¹ have been framed under this section. Rule 31 of the SEZ Rules provides the exemption from payment of service tax on taxable services under section 65 of the Finance Act, 1994 rendered to a developer or a unit by any service provider

¹¹ SEZ Rules

shall be available for the authorised operations in special economic Zones.

19. Thus, the SEZ Act itself provides for exemption from payment of service tax in respect of the services provided for authorised operations to either a developer or to any unit located in the SEZ. This exemption is subject to the manner and the terms and conditions which the Central Government may prescribe.

20. The questions which arise are what is the meaning of an authorised operation and what is the meaning of 'prescribed' under the SEZ Act and what are such prescriptions and whether they have been fulfilled. According to **section 2(c), "authorised operations" means operations which may be authorised under sub-section (2) of section 4 and sub-section (9) of section 15.** There is no dispute in these appeals that the appellant was conducting authorised operations. Thus, the first requirement for exemption under section 26 viz., the authorisation of the operations is met. The second requirement is **the manner, terms and conditions prescribed** subject to which the exemptions are granted to the developer or the unit. The term '**prescribed**' has been defined in section 2(w) as follows:

Section 2

(w) "prescribed" means prescribed by rules made by the Central Government under this Act;

21. Thus, the manner, terms and conditions can be prescribed under the Rules framed under SEZ Act, i.e., under the SEZ Rules. The concerned SEZ Rules are rules 22 and 31 which read as follows.

Rule 22. Terms and conditions for availing exemptions, drawbacks and concessions to every Developer and entrepreneur for authorized operations

(1) Grant of exemption, drawbacks and concession to the entrepreneur or Developer shall be subject to the following conditions, namely:—

(i) the Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earning;

(ii) the Developer and Co-developer shall execute the Bond-cum Legal Undertaking in Form D with regard to their obligations regarding proper utilization and accountal of goods, including goods procured or imported by a contractor duly authorized by the Developer or Co-developer, as the case may be;

(iii) the Bond-cum-Legal Undertaking shall be jointly accepted by Development Commissioner and by the Specified Officer: Provided that the Bond-cum-Legal Undertaking executed by the Unit or the Developer including Co-developer shall cover one or more of the following activities, namely:—

(a) the movement of goods between port of import or export and the Special Economic Zone;

(b) the authorized operations, as applicable to Unit or Developer;

(c) temporary removal of goods or goods manufactured in Unit for the purposes of repairs or testing or calibration or display or processing or sub-contracting of production process or production or other temporary removals into Domestic Tariff Area without payment of duty;

(d) re-import of exported goods.

(iv) The procedure for execution of Bond-cum-Legal Undertaking shall be as under:—

(a) the Bond-cum-Legal Undertaking, where the entrepreneur or Developer is a company shall be executed by the Managing Director of

the company or the Director(s) or any person who has or have been duly authorized for this purpose by a resolution of the Board of Directors of the company and shall be affixed with the common seal of the company; where the entrepreneur is a partnership firm, Bond-cum-Legal Undertaking shall be executed by all the partners or authorized partner(s); where the entrepreneur is a Hindu Undivided Family, the Bond-cum Legal Undertaking shall be executed by the Kartha; and where the entrepreneur is a proprietorship concern, the Bond-cum-Legal Undertaking shall be executed by the proprietor;

(b) the value of the Bond-cum-Legal Undertaking shall be equal to the amount of effective duties leviable on import or procurement from the Domestic Tariff Area of the projected requirement of capital goods, raw materials, spares, consumables, intermediates, components, parts, packing materials for three months as applicable but which will not be levied on account of admission of such goods into the Unit or the amount of effective duties leviable on import or procurement from Domestic Tariff Area of the projected requirements of goods for the authorized operation by the Developer but will not be levied on account of admission of such goods into the Special Economic Zone;

(c) where the value of Bond-cum-Legal Undertaking executed falls short on account of requirement of additional goods, the Unit or the Developer shall submit additional Bond cum-Legal Undertaking;

(d) there shall be no debit and credit, the Bond-cum-Legal Undertaking amount shall be monitored quarterly or yearly on the basis of Quarterly Progress Report or Annual Progress Report submitted by the Developer or Unit, as the case may be, and in case of any shortfall in the Bond cum-Legal Undertaking amount, a fresh or additional Bond cum-Legal Undertaking shall be furnished;

(e) the original of Bond-cum-Legal Undertaking shall be maintained by the office of Development Commissioner and certified copies shall be given to the Specified Officer and Unit or Developer;

(f) the value of the Bond-cum-Legal Undertaking in respect of gems and jewellery units shall be calculated on rates as notified by the Central Government, from time to time;

(g) duly completed Bond-cum-Legal Undertaking executed by the Unit or Developer, in accordance with the rules above, as the case may be, shall be deemed to have been accepted, if no communication is received

within seven working days from the date of its submission.

(2) Every Unit and Developer shall maintain proper accounts, financial yearwise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock: Provided that unit and developers shall maintain such records for a period of seven years from the end of relevant financial year: Provided further that the unit engaged in both trading and manufacturing activities shall maintain separate records for trading and manufacturing activities.

(3) The Unit shall submit Annual Performance Reports in the Form I, to the Development Commissioner and the Development Commissioner shall place the same before the Approval Committee for consideration.

(4) The Developer shall submit Quarterly Report on import and procurement of goods from the Domestic Tariff Area, utilization of the same and the stock in hand, in Form E to the Development Commissioner and the Specified Officer and the Development Commissioner shall place the same before the Approval Committee.

Rule 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.

22. In these appeals there is no dispute that the operations of the appellant were authorised by the Development Commissioner under the SEZ Act nor is there any allegation that any of the conditions laid down in rules 22 and 31 were violated.

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**, 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) *****

(b) *****

(c) *****

(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;

(f) *****

(g) *****

(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, 2006 ¹² ". 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-ServiceTax, 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 authorised**

¹². SEZ Rules

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) *****

(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) *****

(e) *****

(f) *****

(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 Vs. 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 exemption 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."

¹³ 2019(8)TMI 748

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

¹⁴ 2015 (39) STR 0913 (SC)

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. Any amount paid as representing service tax either in the services provided directly to the SEZ units under invoices issued by the service providers or indirectly through the ISD invoices issued by the input service distributor are merely

deposits and need to be refunded. They are like the amount deposited during investigations or before succeeding in appeals against demands or fine or penalty which are subsequently set aside. **The question is, therefore, answered in favour of the appellant and the appellant is eligible to refund of service tax.**

35. Since it has been found that the charging sections under the Finance Act, 1994 itself do not apply to SEZ units and therefore the exemption notification itself is redundant, the alternative submission of the appellant that it had fulfilled the conditions mentioned therein including filing it within time or that if there was delay, there was sufficient grounds for condoning it and that the Assistant Commissioner had sufficient powers and should have condoned the delay, need not be considered.

36. As far as the claim of interest by the appellant on delayed payment of refund under section 11BB of the Central Excise Act, 1944 as made applicable to service tax by section 83 of the Finance Act, 1994 is concerned, we find that once the SEZ unit is out of the purview of the Finance Act, 1994 itself, the provisions for payment of interest under it also do not apply to the refunds in question. **The question of grant of interest is, therefore, answered against the appellant.**

37. In view of the above, all the twelve appeals are disposed of as follows:

- a) The appellant is entitled to refund in all the eight applications.
- b) The refund must be sanctioned and paid in all cases where it has not already been paid.
- c) The appellant is not entitled to interest on any of the refunds.
- d) Service Tax Appeals No. 50349 of 2018, 50350 of 2018, 50351 of 2018 and 50352 of 2018 are allowed and the first impugned order is set aside with consequential refund to the appellant.
- e) Service Tax Appeals No. 50368 of 2021, 50369 of 2021, 50370 of 2021 and 50371 of 2021 are dismissed.
- f) Service Tax Appeals No. 50213 of 2021, 50214 of 2021, 50215 of 2021 and 50216 of 2021 are allowed and the third impugned order is set aside with consequential refund to the appellant.

(Order pronounced in open court on 30/10/2023.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)