CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.56769 of 2013

(Arising out of Order-in-Appeal No.341/CE/APPL/NOIDA/12/1375 dated 29/10/2012 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

M/s EXL Services SEZ BPO Solutions (P) Ltd.,.....Appellant
(Ground to Third Floor, Oxygen Complex,
Tower-B, Aachivis SEZ, Plot No.7, Sector-144, Noida, U.P.)

VERSUS

Commissioner of Customs & Central Excise, Noida Respondent

(C-56/42, Sector-62, Noida, U.P.)

APPEARANCE:

Shri Atul Gupta, Advocate &
Shri Prakhar Shukla, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70068/2023

DATE OF HEARING : 25 August, 2023
DATE OF PRONOUNCEMENT : 30 August, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.341/CE/APPL/NOIDA/12/1375 dated 29.10.2012 of the Commissioner (Appeal) Custom, Central Excise and Service Tax Noida. By the impugned order Commissioner (Appeal) has upheld the Order-in-Original No.R-15/Div-I/2012-13 dated 11.04.2012 vide which Assistant Commissioner Central Excise Division - I has rejected the refund claim filed by the appellant for an amount of Rs.20,08,913/-.

2.1 Appellant is operating from its units located in SEZ NOIDA and SEZ Jaipur. They are having centralized registration and are

providing taxable services under the category of Business Auxiliary Service from both locations.

2.2 For providing these services to the clients of its parent companies located in the USA, appellant receives various input services.

2.3 Appellant filed an application on 23.03.2011 for refund of service tax of Rs 21,35,146/- under Notification No 9/2009-ST dated 03.03.2009, in respect of the service tax paid on services used in authorized operations in SEZ during the period October 2010 to December 2010. After scrutiny of the refund claim it was observed that the refund claim is not admissible to the appellant on following grounds:

I. The default list of services for the SEZ unit located at NOIDA for authorized operation is approved by the office of the Development Commissioner, NSEZ Noida on 25.02.2011 i.e. after the claim period. Moreover, Para II of the said letter clearly states that "no exemption/ concession can be availed of prior to date of acceptance of Bond cum LUT (Form H)

II. As per condition no (f) of Notification No 9/2009-ST dated 03.03.2009 the refund claim should be filed within six months from the date of actual payment of service tax to the service providers. Annexure I attached with the application does not show the actual date of payment of service tax to the service provider.

2.4 A show cause notice dated 27.07.2011 was issued to the appellant asking them to show cause as to why the refund claim be not rejected. After considering the submissions made by the appellant Assistant Commissioner has vide his order in original referred in para 1 held as follows:

"Order

i) I sanction the claim of service tax to the extent of Rs 1,26,233/- filed by M/s EXL Services BPO Solutions (P)

Limited, Ground Floor to Third Floor, Oxygen Complex Tower B Aachivis SEZ, Plot No 7 Sector 144 Noida, on 23.03.2011 under Notification No 09/2009 - Service Tax dated 03.03.2009 accordingly, cheque no 490383 dated 11.04.2012 for Rs 1,26,233/- (Rupees One Lac Twenty Six Thousand Two Hundred and Thirty Three only) is enclosed herewith.

ii) I reject the claim of service tax to the extent of Rs 20,08,913/- filed by M/s EXL Services BPO Solutions (P) Limited, Ground Floor to Third Floor, Oxygen Complex Tower B Aachivis SEZ, Plot No 7 Sector 144 Noida, on 23.03.2011 under Notification No 09/2009 - Service Tax dated 03.03.2009 on the ground mentioned herein above."

2.5 Aggrieved by the above order appellant preferred appeal before Commissioner (Appeal), who has by the impugned order dismissed the appeal.

2.6 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Atul Gupta and Shri Prakhar Shukla Advocates for the appellant and Shri Santosh Kumar Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- The purpose of show cause notice frustrated as the refund was rejected on the ground beyond the allegations made in the show cause notice.
- The reason for denial of refund on services consumed wholly withing teh SEZ is not sustainable because
    - The service tax was not payable in terms of SEZ Act, which has overriding effect, thus refund of such service tax paid was otherwise also admissible;
    - Otherwise also the exemption from service tax was available, so, if the same is paid is required to be refunded;
    - The notification requirement is that input service is to be approved. It is not required that the SEZ unit

should have sought the approval for the same specifically when such a default list of input services were issued and input service was approved.

- The insurance service was an approved service therefore the same was eligible for refund.

3.3 Arguing for the revenue learned authorized representative reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of the arguments.

4.2 For dismissing the appeal of the appellant impugned order observes as follows:

"4.1 I have gone through the impugned order, the appeal & its enclosures …….. I am of the opinion that the appellant's appeal is based on following four issues:

i) Whether the impugned order has traveled beyond the show cause notice dated 27/07/2011 (hereinafter referred as the SCN) issued to the appellant.

ii) Whether the refund claim under the notf no 9/2009 in respect of input service wholly consumed within the SEZ is admissible.

iii) Whether the refund claim in respect of services of Scientific & technical Consultancy and Custom House Agent, which were not mentioned in the application of the Appellant to SEZ Authority, though the said services were mentioned in the list of services approved by the SEZ Authority (also referred to as "Default List") was admissible.

iv) Whether insurance auxiliary services, which is not mentioned in the list of services, approved by the SEZ Authority, cane be treated as included under General Insurance Service, which appears in the list of approved services by the authority. If so whether the refund claim in respect of Insurance Auxiliary service is admissible.

4.2 I will take up the first issue. I agree that in the SCN, the allegations mentioned as Sl No (ii) to (iv) have not be explicitly mentioned nor they have been discussed in the SCN, but the SCN has show caused the appellant using the following lines "....as to why the refund claim to the extent of Rs 21,35,146/- should not be rejected under notification no 9/2009 dated 03/03.2009. For the sake of clarity the Notification No 9/2009 dated 03/03/2009 is reproduced as under:

…

The impugned order on the basis of the above referred conditions, has denied the refund claim of rs 20,08,913/- as alleged at sl no (ii) to (iv) of the para 4.1. My view in this regard is that the SCN has show caused for violation of the notf no 9/2009 dated 03/03/2009 which contains the aforesaid mentioned two conditions. Therefore it is not mandatory that allegation should be first explicitly be detailed in the SCN & only then the O-I-O should discuss them. It is elementary principle of jurisprudence that charges should be brought home to the assessee and his defence reply should be sought to examine an issue in accordance with law. In the present case the appellant were asked to show cause for violation of Notf No 9/2009 dated 03/03/2009. Therefore I hold the view that mention of the concerned notification in teh show cause notice means that violation of its any conditions automatically covered under the said show cause notice. Hence the appeal of the appellant on this particular issue cannot be admitted.

4.3 Now I take up the issue of the admissibility of the refund claim under the notf no 9/2009 in respect of input services wholly consumed within the SEZ. The impugned order has denied the refund claim on the input services, wholly consumed within SEZ for its authorized operations & have suggested that the said refund should have been claimed under the provisions of Section 11 B of the Central Excise Act, 19444 made applicable to service tax vide section 83 of the Finance Act, 1994. I agree with the adjudicating authority.Initially notification no 9/2009-ST

provided the exemption for wholly consumed services within SEZ and outside SEZ by way of refund - which required that the service provider should first pay service tax and then SEZ unit seek refund thereof, and then the said notification was amended by Notification No 15/2009-ST to provide additional relief to the SEZ units with respect to the services wholly consumed within SEZ so that the requirement of first paying service tax and then seeking refund thereof may be dispensed with. Further it is also not disputed that to give effect to this objective , the words ëxcep[t for services consumed wholly within SEZ" were inserted by the amending NN-15/2009 in the exemption NN 9/2009-ST at certain places. The insertion of clause providing complete relief regarding the wholly consumed services cannot be construed as mere technical condition. It is also not procedural in nature. Therefore the ratio of judgment in the case of Mangalore Chemical Fertilizers limited vs deputy Commissioner [1991 (55) ELT 437 (SC)] regarding waiver of provision of statute which are procedural & technical in nature are not applicable here. Contrary to it the provision of statute providing complete relief regarding the wholly consumed services are substantive, mandatory & based on consideration of policy & non observance of it, may jeopardize the very purpose of providing such relief. Therefore the ratio of judgment of the Mangalore Chemical Fertilizers limited vs deputy Commissioner [1991 (55) ELT 437 (SC)] to that extent is applicable in this case. Hence I am in conformity with the opinion of the adjudication authority.

4.4 The proviso (a) of the notification No 9/2009-ST states "the developer or units of Special Economic Zone shall get the list of services specified in clause (105) of section 65 of the said Finance Act as are required in relation to the authorized operations in the Special Economic Zone, approved from the Approval Committee (hereinafter referred to as the specified services)". The appellant was required to submit its list of input services which it wanted to be approved. The appellant such lists vide its letter dated 10/06/2010. The NSEZ authorities approved the default list of the services consumed inside the zone as well

as outside the zone, vide letter dated 23.02.2011. The list contains the Scientific Technology Consultancy Services & Customs House Agent Services. The adjudicating authority has denied the refund of the service tax paid on such services under the plea that the said service was not applied by the appellant in their application dated 10.06.2010. I also agree with this view point. The appellant, complying with the proviso (a) of the notification No 9/2009-ST had applied to the approval committee with a list of the specified services, but the said list did not include the Scientific Technology Consultancy Services & Customs House Agent Services. These two services were included in the default list of services, by the approving committee on 23/02/2011, well before 23/03/2011, date on which the appellant filed its refund. However the fact remains that the appellant for the relevant period i.e. October 2010 to December 2010 did not envisage refund claim of the service tax paid on the said two services, that's why it did not apply for inclusion of these two services in their application for approved list of services. Since the appellant did not apply for the said two services, the applicability of the default list retrospectively in respect of the said two service is not as per law. Therefore, for the period prior to 23/02/2011, the appellant is not entitled to claim refund of service tax paid on Scientific Technology Consultancy Services & Customs House Agent Services, as it failed to comply with the proviso (a) of the notification No 9/2009-ST.

4.5 The appellant has submitted that the invoices pertaining to the "employees medical insurance" have been taken by the adjudicating authority as the Insurance Auxiliary Service invoices just because of the fact that because of a clerical error, the refund application mentioned the category of service as insurance auxiliary, while the invoices clearly reflected that the services were those of the employee insurance which were covered under the category of general insurance services. The appellant has not enclosed the copy of the said invoices to substantiate its claim though they made two written submissions

regarding the appeal under consideration. Hence I go by the available submissions & evidences on record. The two default lists, approved by the approval committee of the respective SEZ's, does not include the insurance auxiliary service. Therefore the adjudication authority rightly rejected the refund claim of the appellant regarding the insurance auxiliary service. The appellant in their appeal have themselves stated that by clerical mistake they mentioned the "employee medical insurance" as Insurance Auxiliary Service. The fact that the refund claim was sought in respect of Insurance Auxiliary service is clear from the above quoted submission of the appellant. In such a scenario the decision taken by the adjudicating authority, in terms of condition no 2 (g) "the refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services required in relation to the authorized operations in the Special Economic Zone as approved by the Approval Committee". Further it remains a fact that the insurance auxiliary service did not find place in the default list. Hence the refund claim of the service tax paid on insurance auxiliary service is not admissible."

4.3 It is settled law that the show cause notice should contain the specific allegation and mere mention of notification number will not suffice. Reference is made to following decisions of the Hon'ble Apex Court.

A. Ballarpur Industries Ltd. [2007 (215) ELT 489 (SC)]

"21. *…. However, it is made clear that Rule 7 of the Valuation Rules, 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show cause notice, it would not be open to the Commissioner to invoke the said rule."*

B. Toyo Engineering India Limited [2006 (201) ELT 513 (SC)]

"16. *…. These grounds did not find mention in the show cause notice as well. The Department cannot travel beyond the show cause notice. Even on the grounds of appeals these points have not been taken."*

4.4 Further, we find that the only issue for consideration in the present case is whether the claim for refund made in terms of the notification No 9/2009-ST dated 03.03.2009 can be denied just for the reason that the the taxable services in respect of the which the claim has been made, are not mentioned in the list of specified services approved by the SEZ authorities. The scheme of SEZ Act, provides for exemption from payment of all taxes to the developer of SEZ or the Units operating in the SEZ. Notification No 9/20009-ST does not provide for any further exemption but provides a mechanism for operation of the said scheme, where a service provider has provided the taxable services to the Unit located in SEZ, on payment of service tax. The conditions specified in the sad notification need to be read accordingly. Article 265 of the Constitution clearly lays down that *"No taxes can be levied without the authority of law."* When the developer of SEZ and units located in the SEZ have been given exemption from payment of all the taxes then any levy and collection of the taxes from such units is without any authority in law and thus contravenes the Article 265. In such a scenario, the amount so collected needs to be refunded to the person from whom such tax has been collected. The condition specified in proviso (a) to the notification only provides a manner for verification that the services in respect of which the refund claim has been made were received by the SEZ developer or the SEZ Unit. There can be many other ways by which the said claim with regards to the receipt of these services by the SEZ unit can be verified. Till the time the factum of receipt of these services by the SEZ unit is not disputed the denial of refund of service tax paid on any service received by such unit would be contrary to

the provisions of Article 265 of the Constitution. In the present case revenue has not disputed the receipt of these services by the SEZ Unit, hence denial of the refund claim in respect of these three services for the reason that they did not find mention in the list of specified services approved by the SEZ authority cannot be upheld.

4.5 We also find that the issue involved in the present appeal is no longer res-integra. Similar view has been expressed by the tribunal in following cases

A. In case of Metlife Global Operations Support Center (P) Ltd. [2021 (46) GSTL 418 (T-Del)] following has been held:

"40. This issue relates to proviso (a) of the notification dated March 3, 2009. It provides that the Developer or Units of SEZ shall get the list of services specified in Section 65(105) of the Finance Act as are required in relation to the authorized operations in the SEZ, approved from the UAC.

41. It has been pointed out by Learned Counsel for the appellant that the output services rendered by the SEZ unit of the appellant were only for authorized operations. The contention of the Learned Counsel for the appellant, therefore, is that not only does the impugned order not contain any specific finding or quantification, but even otherwise the requirement of grant of approval by the UAC cannot be considered as a mandatory condition to override the exemption that has been granted under Section 26 of the SEZ Act and the SEZ Rules framed thereunder. It is, therefore, the contention that the Commissioner (Appeals) committed an illegality in rejecting the refund applications filed by the appellant.

42. Learned authorised representative has, however, submitted that the appellant is not entitled to the refund.

43. The records indicate that the appellant had during the relevant period only one operating unit in the SEZ. All the input

services were, therefore, used by the appellant for the authorized operations, namely, BPO (ITES) as per the specific condition prescribed under the SEZ Act for seeking exemption from service tax and the letter dated June 19, 2008. The output services rendered by the SEZ unit of the appellant is for authorized operations. It is not the case of the Department that the output services have been used for services other than authorized operations nor any finding to this effect has been recorded. Thus, the service tax paid on all input services used for rendition of such output services are available for claim of refund in terms of the substantive provisions of the SEZ Act.

44. In any case, the conditions imposed by the notifications issued under the provisions of the Finance Act are merely directory in nature.

45. This issue has been considered time and again. In Mast Global Business Services India Pvt. Ltd. v. Commissioner of Central Tax [2018-TIOL-3115-CESTAT-BANG], the Tribunal held that the SEZ Act had an overriding effect, in view of the provisions of Section 51 of the SEZ Act, over all other laws and, therefore, the ground for rejecting the refund claims was not tenable in law and even otherwise, approval from UAC was only procedural in nature and not a mandatory condition. The relevant portion of the decision of the Tribunal is reproduced below :

"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 to SEZ which is a mandatory condition 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 of SEZ is not a mandatory requirement as the SEZ Act vide Section 51 of SEZ Act will have overriding effect over the provisions of any other law. Therefore, keeping in

view, the intention of the Government in enacting the SEZ Act and giving special fiscal concessions to 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 hold that the SEZ Act has a overriding effect over other laws. Therefore, this ground on the basis of which refund claims have been rejected is not tenable in law."

(emphasis supplied)

46. In M/s. ONGC Mangalore Petrochemicals Limited v. Commissioner of Central Excise & Central Tax, Mangalore Commissionerate [2019-VIL-140-CESTAT-BLR-ST], the Tribunal again held :

"6. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant being SEZ is entitled to refund of Service Tax paid on input service used for authorized operations. Further, I find that as per Notification No. 12/2013-S.T., dated 1-7-2013, the only requirement is that the appellant is required to file the list of approved services which have been used by them for authorized operations. Further, in this case, I find that the appellant has subsequently obtained the approval from the Unit Approval Committee of the SEZ and the said certificate is placed on record but the Commissioner (A) has held that the said approval was obtained from the competent authority on 25-10-2011 and therefore, after the approval, he has allowed the refund and prior to that he has rejected the same. Further, I find that in view of the settled legal position by various decisions relied upon by the appellant, conditions of approval from UAC is not a mandatory requirement as per SEZ Act vide section 51 of the SEZ Act which has an overriding effect over the provisions of any other law. Further, I find that it is only a procedural requirement to get the approval from the Unit Approval Committee and is not

a mandatory condition as per the SEZ Act which has an overriding effect over other laws."

(emphasis supplied)

47. In SE Forge Ltd. v. Commissioner of Central Excise, Coimbatore [2019 (365) E.L.T. 560 (Tri. - Chennai)], a Division Bench of the Tribunal observed that in view of the provisions of Section 26 of the SEZ Act, the notifications issued under the Finance Act cannot deprive a person from exemption of service tax. The Tribunal further held that the requirement for obtaining approval of UAC is only a procedural requirement for claiming the substantive benefit of exemption from service tax. The Department was, therefore, not justified in rejecting the claim. The relevant portion of the decision is reproduced below :

"5. The issue that arises for consideration is whether the appellant is eligible for refund of service tax paid on Renting of Immovable Property Service. The original authority has rejected the refund on the ground that on the date of filing of the refund claim, the said services, viz; Renting of Immovable Property Services were not approved by the Development Commissioner, as required under Notification No. 9/2009 as amended. As per the notification, exemption is allowed in relation to authorised operations in SEZ, provided the developer or units of SEZ shall get the list of services which are required in relation to the authorised operations approved from the Approval Committee. The appellant although requested for approval of 106 services initially, the Assistant Commissioner had approved only 37 services which was only default list or rather a general list applicable to all SEZ. It is seen that Development Commissioner has approved the list including Renting of Immovable Property Services vide letter dated 15-9-2009. It is not disputed that Renting of Immovable Property Service was availed by the appellant for the disputed period. The invoices shows the payment of service tax on such services. The Approval

Committee has approved such services vide their letter dated 15-9-2009. The requisite for obtaining approval is only a procedure to be complied with, for the substantive benefit of exemption from payment of service tax. When the services have been approved, the benefit of exemption cannot be denied. Section 26 of the SEZ Act, lays down provisions for exemption from duties and taxes. Section 51 of the said Act provides for overriding effect. Therefore the immunity provided from paid service tax cannot be taken away by the procedural prescriptions of Notification No. 9/2009 or 15/2009. These notifications are calibrated to enable recipients of taxable services of SEZ, etc., to get benefit of exemption of the service tax. In any case, since the appellants have obtained approval for the said services, we find that the error would only be a procedural infraction which can be condoned. The substantive benefit cannot be denied for a procedural lapse. The claim of Rs. 967/- being given up by appellant is not considered in this appeal."

(Emphasis supplied)

48. Thus, the Commissioner (Appeals) was not justified in rejecting the refund claims on this ground."

B. In case of SRF Ltd [2022 (64) GSTL 489 (T-Del)] tribunal held as follows:

"36. Special Economic Zones created under the SEZ Act are on a different footing because the SEZ Act itself exempts goods and services supplied for authorised operations to developers and units in the SEZs from the Customs Duty, Central Excise Duty and Service Tax. The provisions of SEZ Act prevail over any other law. Section 26(1) of the SEZ Act, 2005 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 Custom 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;

xx xx xx

(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;

37. Thus, Section 26(1) of the SEZ Act is inconsistent with the three charging sections viz., Section 3 of the Central Excise Act, 1944, Section 12 of the Customs Act, 1962 and Sections 66, 66A and 66B of Chapter V of the Finance Act, 1994. In addition to the general principle of a specific law (pertaining to SEZ) prevailing over the general law (levying customs, central excise or service tax) and the later enactment (such SEZ Act, 2005) prevailing over the earlier enactments (Central Excise Act, 1944, Customs Act, 1962 and Finance Act, 1994), in the SEZ Act, the Parliament has explicitly resolved this inconsistency between the laws. 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.

38. 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.

39. The charging sections, having been overridden by the SEZ Act passed by the Parliament, 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.

40. Therefore, there is no need for any exemption notifications under any of these three Acts nor is it necessary to fulfil any conditions of any of the conditions laid down in 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 Section 51 of the SEZ Act, overridden the charge in the other laws."

C. Mumbai Bench in case of ECLERX Service Ltd [2023 (72) GSTL 99 (T-Mum) Affirmed in 2023 (72) GSTL 4 (Supreme Court)] held as follows:

2. It was alleged that between June 2009 and February 2011, the appellant herein had rendered 'taxable service' valued at Rs. 80,16,46,587 on which the liability of Rs. 8,25,69,598 should have been discharged and, in accordance with Notification No.

9/2009-S.T., dated 3rd March 2009 and as amended by Notification No. 15/2009-S.T., dated 20th May 2009, claimed as a refund thereafter upon compliance with the conditions specified therein. Likewise, it was alleged that for the period from 1st March 2011 to 14th June 2011, the appellant herein had rendered taxable service valued at ` 16,86,45,901 on which tax liability of ` 1,73,70,528 should have been discharged and, in accordance with Notification No. 17/2011-S.T., dated 1st March 2011, should have been backed by Form A-1 which, upon scrutiny, was found to have been verified only on 14th June 2011. It is further alleged that the appellant herein, for the period from 1st July 2012 to 31st March 2013 had availed of exemption against form A-I which, having been dated only on 29th August 2012, precluded the privilege between 1st July 2012 and 28th August 2012 during which taxable service valued at ` 12,92,07,189 was rendered without discharging liability of ` 1,59,70,009. In sum, the recovery of ` 11,59,10,135 was ordered on account of breach of condition in the respective notifications embodying the procedure by which the appellant could have availed exemption from service tax on supply of services to units in Special Economic Zones (SEZ).

….

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

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

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

(b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for

the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;

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

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

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

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

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

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

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

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

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

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

4.5 In view of the decisions as above we do not find any merits in the impugned order and set aside the same.

5.1 Appeal is allowed.

(Pronounced in open court on-30/08/2023)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp