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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11082 of 2013

(Arising out of OIA-CCEA-SRT-I-SSP-306-2012-13-U-S dated 06/02/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Neo Structo Construction Pvt Ltd **.....Appellant**
Sunny Side, East Block, Ground Floor, 8/17,
Shaffee Mohammed Road, Rutland Gate, Off Greams Road,
Chennai, Tamil Nadu,

VERSUS

C.C.E. & S.T.-Surat-i **.....Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat-395001

APPEARANCE:
Shri Jigar Shah & Shri Amber Kumarawat, (Advocates) for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

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

Final Order No. A/ 10239 /2023

DATE OF HEARING: 20.01.2023
DATE OF DECISION: 07.02.2023

RAMESH NAIR

The brief facts of the case are that the appellant are interalia engaged in providing taxable services in category of Erection commissioning service, construction services, maintenance and repair service, manpower recruitment and supply service, supply of tangible goods service and goods transport agency service. The appellant have provided services to various clients and some of them are situated in SEZ also. They entered into an agreement with M/s. Reliance Petroleum Limited, a unit situated in SEZ for providing services which were to be consumed within SEZ. They availed the exemption under notification no. 4/2004-ST, the said notification was amended by notification no.9/2009-ST dated 03.03.2009 and it was further amended by way of a substitution vide notification no.15/2009-ST. On

scrutiny of ST-3 returns filed by the appellant, it was noticed that the appellant had shown certain receipts for exempted services under erection commissioning and installation service, further details were called for from the appellant vide letter dated 12.08.2010. On furnishing all the details, a show cause notice came to be issued for the period 03.03.2009 and 20.05.2009 wherein, it was proposed to demand service tax for the service provided to SEZ for the service wholly consumed within their SEZ. It was also proposed to demand interest and to impose penalties. The said show cause notice was adjudicated vide Order-in-Original 37/ADJ/ADC-BA/D/11-12 dated 31.10.2011 whereby, the demand of Rs.27,63,672/- with interest under Section 75 was confirmed and also imposed the penalty under Section 76 & 77. Being aggrieved by the Order-In-Original, the appellant filed appeal before the Commissioner (Appeals) who upheld the Order-In-Original therefore, the present appeal filed before us.

02. Shri Jigar Shah with Shri Ambar Kumarawat, learned counsels appearing on behalf of the appellant at the outset submits that notification no.4/2004-ST was superseded vide notification no.9/2009-ST dated 03.03.2009 whereby, the exemption was granted by way of refund after payment of service tax in relation to specified services. He submits that on this basis, the revenue has contended that the appellant was supposed to pay service tax first and thereafter, should have claimed the refund. It is his submission that this notification was further amended by way of substitution vide notification no.15/2009-ST dated 20.05.2009 wherein, it was provided that the service provided is exempted subject to the service provided by them was wholly consumed within the SEZ. He submits that there is no dispute that the entire service was wholly consumed within SEZ. The notification no.15/2009-ST dated 20.05.2009 being issued by substituting the earlier provision, the same shall have retrospective effect therefore, the supply of service of the appellant is covered by exemption notification

no.9/2009-ST dated 03.03.2009 as amended by notification no.15/2009-ST dated 20.05.2009. He also relied upon the circular no.114/08/2009-ST dated 20.05.2009. Alternatively, he submits that even if it is assumed that there is no exemption notification for the service provided by the appellant, the same shall not be taxable on the ground that SEZ Act provides that any supply of goods and service to SEZ shall not be charged to duty. Since the SEZ Act over rides all other acts by virtue of SEZ Act itself, the supply of services to SEZ unit/developer will not be taxable. In support of his submission, he placed reliance on the following judgments:-

- SRF LIMITED- 2023 (4) TMI 989-CESTAT-New Delhi
- COGNIZANT TECHNOLOGY SOLUTIONS INDIA PVT. LTD.- 2021 (10) TMI 642
- RELIANCE JAMNAGAR INFRASTRUCTURE LIMITED- 2022 (1) TMI 1278
- CUMMINS TECHNOLOGY SOLUTIONS INDIA PVT. LTD.- 2020 (9) TMI 388-CESTAT-New Delhi
- SANGHVI MOVERS LTD.- 2018 (10) TMI 90

03. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the appellant have provided the services to SEZ during the period 03.03.2009 to 20.05.2009, during the said period the exemption to service provided to SEZ was available under notification no. 9/2009-ST which was by way of refund however, subsequently notification no.15/2009-ST dated 20.05.2009 was issued amending the notification no.9/2009-ST wherin, sub-para (c) of para 1 of the notification no.9/2009-ST was substituted. For ease of reference, the said notification is reproduced below:-

Exemption to taxable services provided to a developer or unit of Special Economic Zone - Notification No. 9/2009-S.T., amended

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 9/2009-Service Tax, dated the 3rd March, 2009 which was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section () vide number G.S.R. 146(E), dated the 3rd March, 2009, namely:-

In the said notification,

(A) in paragraph 1, in the proviso,- the sub-paragraph (c), the following shall be substituted, namely

(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,"

(2) for sub-paragraph (d), the following shall be substituted, namely:

"(d) the developer or units of Special Economic Zone claiming the exemption, by way of refund in accordance with clause (c), has actually paid the service tax on the specified services,"

(3) after sub-paragraph (f), the following sub-paragraph shall be inserted, namely:

"(g) the developer or unit of a Special Economic Zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed."

(B) in paragraph 2, for the words, "shall be subject to the following conditions", the words, except for services consumed wholly within the Special Economic Zone, shall be subject to the following conditions" shall be substituted.

From the above amendment, it can be seen that the amendment is explicitly by way of substitution of sub-para (c) in the notification no.9/2009-ST. It is settled law that if any amendment is brought whereby, the earlier terms of the notification is substituted then, such amendment shall be effective from retrospective effect i.e. from the date of original notification accordingly, for the services provided during the period 03.03.2009 to 20.05.2009 substituted sub-para (c) shall apply. As per the sub-para (c) of notification no. 15/2009-ST., if the service provided is for use in authorized operations in the SEZ shall be exempted without opting for the refund by the service

provider subject to the condition the services are consumed wholly within the SEZ. In the present case, the service of erection, commissioning and installation is indeed used and wholly consumed in the SEZ therefore, the appellant is eligible for exemption under notification no.9/2009-ST as amended by notification no.15/2009-ST dated 20.05.2009.

4.1 Without prejudice to the above, we also find that even as per SEZ Act, all the supplies of goods and services made to SEZ are not chargeable to duty or service tax. For this reason also, the demand is not sustainable. This view was also taken in the judgment cited by the appellant in the case of RELIANCE JAMNAGAR INFRASTRUCTURE LIMITED (supra) wherein, the tribunal had made the following observations:-

> *4. We have carefully considered the submissions made by both the sides and perused the record. We find that refund of Rs. 77,669/- in Appeal No. ST/447/2012 was rejected on the ground that construction service was received wholly within the SEZ therefore refund is not governed by Notification No. 09/2009-ST. The contention of the Revenue is that since the service tax which was not payable and if paid, the same cannot be refunded under Notification No. 09/2009.*
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> *We find that once it is admitted that service tax payable on the service received and consumed within SEZ, the same is not taxable and the same is to be refunded even without applying Notification No. 09/2009.*
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> *5. As regards CHA Service, under Appeal No. ST/448/2012, refund of Rs. 1,82,928/- was rejected on the ground that it is not CHA service as the invoice shows various costs such as salaries and other expenses. We find that even though total service charge of CHA was bifurcated under different heads but the fact remains that service was provided by CHA towards CHA service only. Therefore, merely because the invoice is for amount towards various expenses but the same were in relation to CHA service by the CHA, hence, the refund cannot be rejected.*
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> *6. As regards refund of Rs. 5,548/- for the construction service received from Jay Khodiyar in relation to construction of trenching and pipelines, we find that the construction was exclusively for SEZ only. It is very obvious that a part of the same will be outside the premises of the SEZ but that does not mean that service was received for other than authorised operations of SEZ. Accordingly, on the admitted fact that trenching pipeline installed partly in SEZ and partly outside but for use in operation of the SEZ is admissible and the refund of the same is clearly admissible.*

> *7. As per our above observation and discussions the appellant are entitled for the refund. Accordingly, the impugned orders are set-aside and the appeals are allowed with consequential relief.*

05. As per our above discussion and finding, the demand of service tax in respect of services provided to authorized operation of SEZ is not sustainable accordingly, the impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 07.02.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul