

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 447 of 2012-DB

[Arising out of Order-in-Original/Appeal No 433-2012-COMMR-A--RBT-RAJ dated 17.07.2012 passed by Commissioner of Central Excise and Service Tax-RAJKOT]

Reliance Jamnagar Infrastructure Limited

.... Appellant

Refinery And Petrochemicals Division,
Village : Meghpar, Motikhavdi, Taluka : Lalpur,
JAMNAGAR, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Rajkot

.... Respondent

Central Excise Bhavan, Race Course Ring Road
Income Tax Office, Rajkot, Gujarat-360001

WITH

SERVICE TAX Appeal No. 448 of 2012-DB

[Arising out of Order-in-Original/Appeal No 422-2012-COMMR-A--RBT-RAJ dated 13.07.2012 passed by Commissioner of Central Excise and Service Tax-RAJKOT]

Reliance Jamnagar Infrastructure Limited

.... Appellant

Refinery And Petrochemicals Division,
Village : Meghpar, Motikhavdi, Taluka : Lalpur,
JAMNAGAR, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Rajkot

.... Respondent

Central Excise Bhavan, Race Course Ring Road
Income Tax Office, Rajkot, Gujarat-360001

AND

SERVICE TAX Appeal No. 449 of 2012-DB

[Arising out of Order-in-Original/Appeal No 423-2012-COMMR-A--RBT-RAJ dated 16.07.2012 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Reliance Jamnagar Infrastructure Limited

.... Appellant

Refinery And Petrochemicals Division,
Village : Meghpar, Motikhavdi, Taluka : Lalpur,
JAMNAGAR, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Rajkot

.... Respondent

Central Excise Bhavan, Race Course Ring Road
Income Tax Office, Rajkot, Gujarat-360001

APPEARANCE :

Mrs. Dimple Gohil, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 15.11.2022

DATE OF DECISION: 28.11.2022

FINAL ORDER NO. A/11756-11758 / 2022

RAMESH NAIR :

The brief facts of the case are that appellant have received services such as construction service, CHA Service in their SEZ on payment of service tax. Subsequently refund claim was filed under Notification No. 09/2009-ST as amended by 15/2009-ST. The Adjudicating Authority rejected the refund claim on the ground that, as regards construction service, the service was wholly consumed within SEZ. Therefore, the same is not governed by Notification No. 09/2009. As regard CHA Service, the refund was rejected by the Adjudicating Authority on the premise and assumption that mention of various costs and expense such as staff salary, office rent, electricity, security services etc. in the invoice of CHA meant that services rendered related to the said cost and expenses was not service of CHA. As regards the construction service related to Appeal No. ST/449/2012, the refund was rejected on the ground that trenching work for irrigation network was not fully within the SEZ and partly outside the SEZ therefore refund was claimed rejected under Notification No. 09/2009-ST. Commissioner (Appeals) upheld the rejection of the refund claims therefore the present appeals.

2. Ms. Dimple Gohil, learned Counsel appearing on behalf of the appellant submits that in respect of Appeal No. ST/447 and 448 of 2012, the Commissioner (Appeals) has admitted that the services were availed wholly within SEZ therefore, he should have allowed the refund. She submits that even though service tax was paid which was otherwise not payable should have been refunded. As regards the CHA Service, she submits that even

though CHA has charged service charges rendered the different cost, salaries and other expenses etc. to the overall service the same was provided by CHA towards CHA service only. Therefore, refund is admissible. As regards the trenching work for irrigation, she submits that service was received for the authorised operation of SEZ. The irrigation project line was installed within SEZ however, part of the same was installed outside but for the purpose of SEZ only. Therefore, even though the entire construction is not at all carried out within SEZ but it was for the SEZ, the refund is admissible.

3. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

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.

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.

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.

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.

(Pronounced in the open court on 28.11.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)