CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 86575 of 2019

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/516/18-19 dated 28.02.2019 passed by the Commissioner(Appeals), Customs, Excise & GST, Nagpur)

M/s. Tal Manufacturing Solutions Ltd. .....Appellant
Sector 3, Village Kalkuhi Mihan SEZ
Nagpur

VERSUS

Commissioner of Central Excise, Nagpur .....Respondent
GST Bhavan, Civil Lines, Telangkhedi Rd
Nagpur

APPEARANCE:

Shri Jay Chheda, Advocate for the appellant
Shri Prabhakar Sharma, Superintendent (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: A/86273/2023

DATE OF HEARING : 20.07.2023
DATE OF DECISION : 31.08.2023

Per: AJAY SHARMA

This appeal has been filed assailing the Order-in-Appeal dated 28.02.2019 passed by Commissioner (Appeals), Customs, Excise & GST, Nagpur by which the learned Commissioner (Appeals) upheld the denial of refund claim to the appellant.

2. The issue which arises for consideration herein is whether the lower authorities are justified in rejecting the refund claims

of SEZ Units/Developers either on the ground of filing beyond the prescribed period of one year or on the ground that since for that specific quarter they have already filed the refund claims earlier, second claim for the same quarter cannot be entertained?

3. The appellant, a SEZ unit at Nagpur, is engaged in the business of manufacture of floor beams and its components used in aeroplanes. They had obtained letter of approval from the Development Commissioner, SEZ and were carrying out authorised operations in SEZ. According to the appellant, during the year 2013-14 their accounting software and data got corrupted and became unreadable and as a result of which they were not able to file their refund claim during that year. For the subsequent periods i.e. from year 2014 upto the year 2016 they failed to file refund claim for some input services invoices as they did not collate all the details of such invoices for this period while filing data as, according to them, the data was voluminous and all the requisite documents were not available at one place.

4. As per appellant, during the year 2017-18 they undertook thorough internal audit of all refund claims filed and correlated them with the invoices and at that time they realized that they have not filed the refund claims for the years 2013-14 to 2016-17 and therefore belatedly they filed the refund claim of Rs.39,15,006/- on 28.3.2018 for the period 2013-14 to 2016-17 in accordance with the Notification No.12/2013-ST dated

1.7.2013 with request letter for condonation of delay in submission of service tax refund application, which resulted in the issuance of the show cause notice dated 29.5.2018 proposing to reject the refund claims on various grounds including the ground of limitation and for some on the ground that since they have already filed the refund claim in respective quarters, therefore not eligible to claim refund in respect of invoices pertaining to those quarters. The said show cause notice culminated into the Order-in-Original dated 15.6.2018 rejecting the refund claims filed by the appellant which was upheld by the Commissioner (Appeals) vide impugned order dated 28.2.2019.

5. According to learned counsel since their software data was corrupted and its recovery took substantial time therefore there was delay in filing refund claims. He also submits that all the conditions mentioned in the notification (supra) have been satisfied by them and all the invoices, on which they have claimed refund, have been filed by them and the same have been verified also by the concerned authority. No doubt has been raised on the genuineness or otherwise of those invoices. Learned counsel also submits that as per Section 26 of the Special Economic Zone Act, a unit in SEZ is eligible to receive services without payment of any tax/duty and that Rule 31 of SEZ Rules, 2006 mandates that a unit in SEZ is exempted from payment of service tax on services received by any service provider which are used by the said unit for authorised operations in the SEZ and since there is no dispute about the

authorised operations therefore the appellant are entitled for refund claimed by them. Learned counsel further submits that the conditions prescribed in notification (supra) cannot be used to deny the refund when the conditions prescribed in SEZ Act have been fulfilled by the appellant. The justification provided by the appellant for not filing refund claim of certain invoices for the quarters for which they have already filed the refund claims earlier, was resignation of the concerned employee who used to collate data from physical invoice copies and physical bank accounts. Per contra learned Authorised Representative reiterated the findings recorded in the impugned order and prayed for dismissal of Appeal. According to learned Authorised Representative, refund claims were rightly rejected on the ground of time bar and some on the ground that two refund claims cannot be filed for the same quarter. He submits that in the notification (supra) no power has been vested with the authorities concerned for condonation of delay as it specifically mentioned that '*the claim for refund shall be filed within one year from the end of the month in which actual payment service tax was made'.* The notification (supra) is neither inconsistent with Section 26 nor section 51 ibid or Rule 31 ibid, rather it complements them. Learned Authorised Representative also submits that in support of certain refund claims the appellant failed to submit copy of bank statements evidencing payments made to the service providers and for certain refund claims they

even failed to submit the copies of invoices despite ample opportunities granted to the appellant.

6. I have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions/synopsis and case laws placed on record. The Special Economic Zones Act, 2005 (the 'SEZ Act') and Special Economic Zone Rules, 2006 (the 'SEZ Rules') contain the relevant procedures relating to SEZs. In order to appreciate the contentions advanced by learned Counsel and learned Authorized Representative, it will be appropriate to refer the relevant provisions viz. Sections 26 & 51 of the SEZ Act and Rule 31 of SEZ Rules which are reproduced hereunder:

> *"**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 : –*
> *……..*
> *…….*
> *(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;*
> *……..*
> *……..*
> *(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)."*
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> *Xxx xxx xxx*
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> *"**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."*

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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."*

7. 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 clause (e) therein 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 thereof provides an overriding effect to the provisions of the SEZ Act. Whereas Rule 31 ibid provides that exemption from payment of service tax on taxable services under the Finance Act, 1994 rendered to a developer or a unit by any service provider shall be available for the authorised operations in Special Economic Zones. There is no dispute that in view of Section 51 ibid, the provisions of Section 26 ibid and Rule 31 ibid have overriding effect over any other law/Act which is inconsistent with these provisions. It is pertinent to note that the Notification dated 1.7.2013 (supra), which lays down the conditions relied upon by Revenue herein, has been issued in exercise of the powers conferred under 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, which is complete code in itself, the condition for refund imposed under the Notification (supra) issued under the Finance Act are certainly inconsistent with the SEZ Act. A

combined reading of Section 26(1)(e) ibid r/w Rule 31 ibid would show that the only condition required for availing exemption from payment of Service Tax by a SEZ unit/ Developer is that the taxable service should be used for carrying out the authorized operations by the SEZ Unit/Developer. There is no dispute that the operations of the appellant were authorised under the SEZ Act and there is no allegation anywhere that any of the conditions laid down under Rule 31 have been violated.

8. Another issue involved herein is whether there is any requirement of filing refund claim in same quarter under exemption Notification when the Service Tax itself was exempted by Section 26 ibid? According to me so far as the requirement of filing of refund under the exemption notification (supra) is concerned, the same is irrelevant as the exemption notification itself is not necessary when the service tax is exempted. The refund can be denied or service tax can be charged only if the service is not for authorised operations of the SEZ unit, which is not the case of department anywhere. This issue was also examined by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh in the matter of *GMR Aerospace Engineering Limited and another* v. *UOI & Ors.; 2019 (31) G.S.T.L. 596 (A.P.)* in which the second petitioner therein i.e. 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) ibid, every Developer was entitled to exemption from service tax under Chapter-V, 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 u/s. 93 of the Finance Act. The issue was ultimately decided by the Hon'ble High Court in favour of the Petitioners therein. The relevant paragraphs of the said decision are reproduced hereunder:-

> "12. The main ground on which the petitioners challenge the impugned proceedings is that under Section 26(1)(e) of the Special Economic Zones Act, 2005, (hereinafter called "the SEZ Act) every Developer and entrepreneur shall be entitled to 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 SEZ. But the grant of exemption will be subject to the terms and conditions as prescribed by the Central Government in terms of sub-section (2) of Section 26. The Central Government has issued a set of Rules known as *"Special Economic Zones Rules, 2006"* in exercise of the power conferred by Section 55. Rule 22 of these Rules stipulates the terms and conditions for availing exemptions by the Developer and entrepreneur in respect of authorised operations. Therefore, the SEZ Act, 2005 and the Rules framed thereunder entitle a unit located in a SEZ to exemption from payment of service taxes and the same cannot depend upon the conditions stipulated in the notifications issued under Section 93 of the Finance Act, 1994. Neither the SEZ Act nor the Rules framed thereunder, make the exemption available under the Act, subject to fulfillment of conditions stipulated in any other enactment including the Finance Act, 1994.
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> 17. In the case on hand, there is no dispute on facts. The undisputed facts are : (1) that the 1st petitioner is a unit set up in GMR Aviation SEZ, (2) that the 1st

petitioner is approved as a co-Developer vide Letter of Approval dated 20-9-2010, (3) that the 1st petitioner was issued with a certificate dated 29-9-2010 by the Development Commissioner to the effect that the services consumed within the SEZ for carrying out authorised operations are exempt from the levy of service tax, (4) that the 2nd petitioner is the Developer of GMR Aviation SEZ, as borne out by a certificate dated 31-5-2010 and a Letter of Approval dated 31-5-2010; (5) that as a Co-Developer, the 2nd petitioner entered into a sub-lease agreement with the petitioner on 1-6-2010, for rendering the services of lease of land, supply of electricity and supply of water and (6) that the services so rendered are by a Co-Developer to a Developer, which is a unit located in the SEZ.

18. In the light of the above admitted facts, the only question that arises for consideration is as to whether the availability of exemptions under Section 26 of the SEZ Act would depend not only upon the terms and conditions prescribed under Section 26(2), but also upon the terms and conditions prescribed in the notifications issued under various enactments such as Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1944, Central Excise Tariff Act, 1985, Finance Act, 1994 and Central Sales Tax Act, 1956 etc., enlisted in clauses (a) to (g) of sub-section (1) of Section 26 of the Act.

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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."

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 Act, 2005. Being conscious of this fact, the executive

has incorporated Rule 22 in 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.

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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 5th 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 five enactments listed in Section 26(1) to find out whether there was any inconsistency.

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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."

9. A similar issue came up for consideration before the Principal Bench of the Tribunal in the matter of *SRF Ltd. vs. CC,C.Ex.&S.T., New Delhi;* 2022 (64) G.S.T.L. 489 (Tri. - Del.) and was decided in favour of the assessee therein. The relevant paragraphs of the said decision are reproduced hereunder:-

"23. 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.

24. 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.

25. 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 certain cases. Section 66B provides for levy of service tax on all services other than those in the negative list after 2012. 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

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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…

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.*

41. The status of exemption notifications which are issued when the tax sought to be levied is out of the ambit of charging section itself was considered by the Supreme Court in *Commissioner of Central Excise and Customs, Kerala* v. *Larsen & Toubro Limited* [2015 (39) S.T.R. 913 (S.C.)]. The case before the Supreme Court, in brief, was as follows. Service tax was levied under Chapter V of the Finance Act, 1994 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 composite 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 was no charge on works contract service prior to 1-6-2007 because Works Contracts Services were a

separate species 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. 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.
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> 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.

42. The refunds in these appeals were also rejected by the impugned orders on a few other grounds which we now proceed to examine. It has been asserted that either the approval of the UAC was not obtained for the services at all or that it was obtained after the invoice for which the refund was claimed. The approval of the UAC for the input services is a requirement under the exemption notifications. As we have found that the exemption notifications themselves are redundant and that the exemption was available under Section 26 of the SEZ Act itself, this cannot be a ground for rejection of refund.

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48. Thus, as the charge of service tax under the Finance Act, 1994 on the services provided for authorised operations of the appellant are overridden by section 51 of the SEZ Act, 2005, any exemption notifications for such services as well as the conditions laid down in them are redundant. Service tax, if any, paid on such input services for authorised operations

> need to be refunded to the appellant. We also find no force in the other grounds raised for denying the refund of service tax paid and discussed above."

10. In view of the aforesaid decisions it is settled and can be safely said that availability of exemptions under Section 26 ibid would depend only upon the terms and conditions prescribed under the SEZ Act or Rules framed thereunder and cannot be restricted by the terms or conditions including limitation as prescribed in the notification (supra). Since exemption from payment of service tax on taxable services rendered to a Developer or a Unit by any service provider shall be available for the authorized operations in a Special Economic Zone therefore the appellant, for those services, are not liable to pay any tax/duty as Article 265 of the Constitution of India specifically provides that no tax or duty can be either levied or collected except by authority of law. Since it is not the case of the department that the appellant is not carrying out authorised operations in SEZ, therefore exemption cannot be denied to them and they are entitle for refund. But the genuineness or otherwise of the refund claims, after examining the invoices and other relevant documents, cannot be done at this stage as the same have to be verified by the authority concerned for which the matter needs to be remand.

11. Therefore, in view of the discussions made in preceding paragraphs, the impugned order is set aside and the matter is remanded to the Adjudicating Authority to the limited extent

mentioned hereinabove in order to enable the said authority to grant the refund claim, after carefully verifying the relevant supporting documents and after following the principle of natural justice. The appellant is directed to produce all the relevant documents including invoices to the adjudicating authority, if not provided already, in support of their refund claim.

12. The appeal is accordingly disposed of on the above terms.

(Pronounced in open Court on 31.08.2023)

(Ajay Sharma)
Member (Judicial)

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