(2015) 11 CESTAT CK 0022

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal Nos. 2556, 2557, 2682 Of 2012

Markers Mart Prince Exports		APPELLANT
	Vs	
C.C.E And S.Tax., Jaipur II		RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:
Special Economic Zones Act, 2005 — Section 7, 26, 26(e), 93(1)

Citation : (2015) 11 CESTAT CK 0022

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : O.P. Aggarwal, Rajeev Gupta

Final Decision : Allowed

Judgement

1. These appeals are filed against rejection of refund claims of Rs.51,298/- and Rs.45,052/- in case of Makers Mart and Rs.62,109/- in case of Prince

Exports. The refund claims were filed in terms of Notification No.9/2009-ST, dated 03.03.2009.

2. Rejection of the refund of Rs.51,298/- was upheld on the ground that list of specified services required in relation to the authorised operation in the

Special Economic Zone (SEZ) as approved by the Approval Committee is primary and foremost condition for sanction of refund claim for the want of

which the primary adjudicating authority rightly rejected the refund claim in terms of Notification No.9/2009-ST. The refund of Rs.45,052/- was

rejected by the appellate authority on the ground (i) part of the refund Rs.3,584/- was time-barred as the refund claim was filed after expiry of six

months from the date of making actual payment of service tax and (ii) list of specified services required in relation to the authorised operations in SEZ

as approved by the approval committee is required to be submitted with the application for refund in terms of para 2(g)(i) of Notification No.9/2009-

ST which was not submitted. As regards the refund of Rs.62,109/-, it was rejected on the ground of non-submission of list of specified services

required in relation to the authorised operations in SEZ as approved by the Approval Committee which was required to be submitted along with the

application for refund in terms of para 2(g)(i) of Notification No.9/2009-ST and part of the claim (Rs.37,168/-) was also rejected on the ground that

the refund claim was filed more than 6 months after the date of making payment of service tax and the proof of payment of service tax was not given.

3. The appellant has contended that the ground of rejection namely non-submission of list of authorised operations was considered by CESTAT in the

case of Intas Pharma Ltd vs. C.S.T. - 2013 (32) STR 543 (Tri - Ahmedabad) and was found to be untenable. As regards the time-bar, the appellant

stated that Commissioner (Appeals) was fully empowered to condone the delay in filing claims which in these cases should have been condoned.

4. We have considered the contentions of the appellant. As regards the ground of non-submission of the approved list of authorised operations which

is a condition in notification No.9/2009 - ST, we find that the issue has been discussed and analysed and settled in favour of the asessees in the case

of Intas Pharma (supra) wherein it was held that under :

11. On true and fair construction of Notifications 9/2009 and 15/2009 issued under Section 93(1) of the Act, considered in the light of the

overarching provisions of Sections 7 and 26(e) of the 2005 Act, the conclusion appears compelling that neither Notification 9/2009 nor

15/2009 disentitle immunity to Service Tax enjoined by the provisions of the 2005 Act. It therefore appears that Notification Nos. 9/2009

and 15/2009 merely contour the process by which the benefit of exemption/ immunity to tax is operationalised. Notification Nos.9/2009 and

15/2009 have provided a facilitative regime whereby a developer or units of SEZ, as recipients of taxable service are enabled the facility of

claiming refund of Service Tax, remitted by taxable service providers in relation to the taxable services provided to a unit in a SEZ. On this

harmonious construction, the immunity to Service Tax provided under Section 7 or 26 of the 2005 Act cannot be so interpreted as to be

eclipsed the procedural prescriptions of Notification No.9/2009 or 15/2009. These

Notifications are calibrated to enable recipients of

taxable services (exempt from liability to tax under the provisions of the 2005 Act), to claim refund of the Service Tax, wherever assessed

and collected by Revenue or remitted otherwise by the taxable service provider, inadvertently. Considered in the light of this analysis, the

substituted provisions, of clause/sub-paragraph 'c' of Notification No.15/2009 cannot be inferred to have imposed any disability on the

recipient of services consumed wholly within the SEZ, from seeking refund of Service Tax remitted on such transactions, by the providers of

such services.

5. As regards the issue of time-bar the appellant has contended that in one case there is a delay of 2 days because of the intervening Saturday and

Sunday and the claim was filed on Monday. Further the Assistant/Deputy commissioner had power to condone the delay in terms of para 2(f) of

notification No.9/2009 - ST which reads as under:

The claim for refund certified within 6 months or such extended period as the Asst Commissioner of Central Excise or the precursors and

excise as the case may be shall permit from the date of actual payment of service tax by such developer or unit to service provider.

Having regard to the nature of refunds and quantum of delay, we are of the view that the delay not being unreasonable deserved ID be condoned in

terms of the aforesaid para 2(f) of Notification No.9/2009-ST.

6. In view of the foregoing, we set aside the impugned orders and allow the appeals with consequential relief.

