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(2021) 10 CESTAT CK 0031

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 41157, 41158, 41159, 41824, 41825, 41826, 41827, 41828, 41829 Of 2015

M/s. Cognizant Technology Solutions India Pvt. Ltd. — APPELLANT

Vs

Commissioner Of Central Excise And Service Tax — RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

li>Export of Services Rules, 2005 — Rule 4
Special Economic Zones Act, 2005 — Section 7, 26, 26(1), 51
Finance Act, 1994 — Chapter 5, Section 93
Special Economic Zones Rule, 2006 — Rule 27, 31
Service Tax Rules, 1994 — Rule 4(A)(1)
Central Excise Act, 1944 — Section 3

Citation : (2021) 10 CESTAT CK 0031

Hon'ble Judges : Sulekha Beevi C.S., J;P.V. Subba Rao, Technical Member

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Brief facts are that the appellant is engaged in providing IT Services and is registered with the Service Tax Department as a provider of Information Technology Software Services, Business Auxiliary Services, Management Maintenance and Repair Services, etc. The appellant operates under STPI / SEZ scheme from various premises located in India. For such operation, the appellant has procured Customs bonded warehouse licence / Central Excise Registration and are constituent members of LTU, Chennai since 24.12.2007. They procure capital goods like computers/servers, parts and accessories of such goods, both indigenously as well as through import, without payment of Duty by obtaining procurement certificates/C.T.-3. Most of the taxable services rendered by them are exported and they avail exemption from payment of Service Tax in terms of Rule 4 of the Export of Services Rules, 2005. For the remaining taxable services rendered to customers in India, the appellants pay Service Tax under centralized registration for all their locations. The appellants availed credit of the Service Tax paid on input services used in providing output services. A portion of the said

input service credit was utilized towards payment of Service Tax for the services provided by them in the domestic market.

2. As the input services were availed in Special Economic Zone (SEZ) units, they were eligible to claim exemption from payment of Service Tax on such input services (specified services) used by them for their authorized operations. For different periods, as shown in the table below, the appellants filed refund claims of the Service Tax paid on input services as per Notification No. 09/2009-ST dated 03.03.2009, as amended vide Notification No. 15/2009-ST dated 20.05.2009 superseded by Notification No. 17/2011-ST dated 01.03.2011 in Form A-2. Part of the refund claims were rejected by the authorities below, against which the appellant is now before the Tribunal.

Sl. No.	Appeal No.	Period	Amount of Refund rejected (in Rs.)
1.	ST/41157/2015	October 2010	33,75,236/-
2.	ST/41158/2015	November 2010	13,15,403/-
3.	ST/41159/2015	December 2010	45,89,115/-
4.	ST/41824/2015	January 2011	20,07,814/-
5.	ST/41825/2015		

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February 2011

26,81,468/-

6.

ST/41826/2015

March 2011

50,68,658/-

7.

ST/41827/2015

April 2011

35,17,396/-

8.

ST/41828/2015

May 2011

13,81,953/-

9.

ST/41829/2015

June 2011

13,99,970/-

4. In Service Tax Appeal Nos. 41157 to 41159 of 2015 as well as Service Tax Appeal Nos. 41824 to 41829 of 2015, the reason for rejection is common and therefore, are discussed together, as under.

5.1.1 At the outset, Learned Consultant Shri R. Rajaram, appearing on behalf of the appellants, argued that the Notifications under which the refund claims are filed are issued under the provisions of the Finance Act, which is a mere methodology to pass on the benefit which is enshrined in the Special Economic Zones Act (hereinafter referred to as the 'SEZ Act'), 2005 and allied rules. Section 26 of the said Act provides exemption from Service Tax under Chapter 5 of the Finance Act, 1994 on taxable services provided to a developer or unit to carry on the authorized operations in SEZ. Thus, the SEZ Act and Rules confer an independent and substantive right on the assessee to claim refund and the same would prevail over the conditions stated in the Notifications. That Section 51 of the SEZ Act, 2005 has an overriding effect and therefore, the conditions in the Notifications have to be liberally interpreted.

5.1.2 He submitted that the refund cannot be denied when it is established that

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the services were provided to SEZ units. He referred to the decision of the Hon'ble High Court of Telangana and Andhra Pradesh in the case of M/s. GMR Aerospace Engineering Ltd. & anor. v. Union of India & ors. reported in 2019 (31) G.S.T.L. 596 (A.P.) to argue that the conditions in the Notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service to deny the substantive benefit of exemption from Duties and taxes contained in Section 26 of the SEZ Act, 2005. He submitted that the Tribunal in the case of M/s. Metlife Global Operations Support Center Pvt. Ltd. v. Commissioner, Service Tax reported in 2020(12) TMI 1069 - CESTAT, New Delhi referred to the said judgement. That the Tribunal in the case of M/s. DLF Assets Pvt. Ltd. v. The Commissioner, Service Tax, Delhi-I in Service Tax Appeal No. 50368 of 2016 [Final Order No. 50853 of 2020 dated 22.09.2020 - CESTAT, New Delhi] had relied upon the above decision of the Hon'ble High Court of Telangana and Andhra Pradesh and observed that the conditions set out in the Notification were not required to be examined in view of the provisions of the SEZ Act.

6.1 Learned Consultant for the appellant further submitted that in the above appeals, the first ground for rejection of the major amount of refund claim is that the services did not appear to be services used in relation to authorized operations. He adverted to paragraph 13 and 14 of the Order-in-Original No. 283/2012-AC(RF) dated 31.08.2012; that the table in paragraph 13 gives the list of services which were used for authorized operations by the appellant. The services are in the nature of vehicle rentals, team outings, seminars/external training, professional services, etc. In paragraph 14, it is noted by the Original Authority that all the services given in the above table are approved as 'specified services' for authorized operations by the UAC/Development Commissioner. However, at the end of paragraph 14, the Original Authority has concluded that these services appear to facilitate the travel requirements/entertainments of the appellant's personnel, staff or workmen and therefore, cannot be said to have been used for authorized operations. He argued that once the Unit Approval Committee (UAC) has approved the list of services, the Original Authority cannot re-examine whether such services can be considered to be 'specified services' for the authorized operations. The refund has been rejected merely stating that there is no nexus established by the appellant with the output service and that these services are used for travel requirements/entertainment of personnel and staff of the appellant-company.

6.2 He relied upon the decision of the Tribunal in the case of M/s. Tata Consultancy Services Ltd. v. Commissioner of Central Excise & ST (LTU), Mumbai reported in 2013 (29) S.T.R. 393 (Tri. - Mumbai) as well as the decision of the Tribunal in the case of M/s. Metlife Global Operations Support Center Pvt. Ltd. cited supra.

7.1 The second ground for rejection of refund is that the appellant has not produced the original invoices while filing the refund claim. It is submitted by him that the appellant has various other premises and the invoices on the basis of

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which refund has been claimed are received from respective vendors in such premises; that it is a time-consuming task to correlate such invoices and provide the complete original invoices for verification by the Adjudicating Authority. That the appellant is in possession of all the original invoices.

7.2 Further, that non-submission of original invoices, if at all, is only a procedural lapse, for which the substantive benefit cannot be denied. It is asserted by the Learned Counsel that the appellants have submitted the photocopies of all these invoices. Notification No. 17/2011-ST only mandates the proof of payment for the specified services used for authorized operations and the Service Tax paid, in original. The relevant part of the Notification is reproduced as under:

"3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:-

...

(f) ...

(ii) invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of Finance Act or rules made thereunder, in the name of the Developer or Unit of a SEZ, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original"

7.3 It is argued by the Learned Consultant for the appellant that once it is established beyond doubt that the services are provided to the SEZ unit, then substantive benefit of refund should not be denied by applying the terms and conditions of the Notification. Further that in the Show Cause Notice, the Department has not disputed that the services were provided to SEZ units.

7.4 To support his contentions that photocopies can also be accepted as proof of payment of tax / Duty, Learned Consultant relied upon the decision in M/s. Tata Motors Ltd. v. Commissioner of Central Excise, Customs & Service tax, Bangalore-I reported in 2019 (6) TMI 943 - CESTAT, Bangalore as well as the decision of the Hon'ble High Court of Madhya Pradesh in Union of India v. M/s. Kataria Wires Ltd. reported in 2009 (241) E.L.T. 31 (M.P.)

8.1 Learned Authorized Representative Ms. Sridevi Taritla appeared on behalf of the Department. She supported the findings in the impugned orders. With regard to the first issue, it is submitted by her that the services in the nature of rent-a-cab, outdoor catering, event management, hall hiring, subscription, cleaning, immigration cost, etc., are not used in relation to their authorized operations. That these services only facilitate the travel requirements/entertainment of the appellant's personnel, staff or workmen. That such services are not related to the activity of software development. As per Rule 27 of the SEZ Rules, 2006, concessions/benefits provided under Section 7 or Section 26 of the SEZ Act, 2005 will not be available if consumed for the personal use of the officials, workmen, staff, owners or any other person in relation to a unit or developer.

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That therefore, the authorities below have rightly rejected the refund in respect of these services.

8.2 Countering the arguments of the Learned Counsel for the appellant in regard to non-production of original invoices for claim of refund, it is submitted by the Learned Authorized Representative for the Department that invoice is the basic document under Rule 4(A)(1) of the Service Tax Rules, 1994 to ascertain the parties involved in the transaction, nature of services rendered and the Service Tax paid. That therefore the refund can be allowed only on the basis of the original invoices. As per Notification No. 17/2011-ST, it is mandatory to produce the original invoices and that the said Notification does not permit production of copies of invoices. That the authorities below have correctly rejected the refund claim when the original invoices were not produced.

9. Heard both sides.

11. The first and foremost issue is as to whether the conditions stipulated in the Notifications can be taken as a ground for rejecting the refund claim.

12.1 Section 26 of the SEZ Act, 2005 reads as under:

"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:-

(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 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 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 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 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) 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;

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(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 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 (23 of 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 (74 of 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)."

(Emphasis applied)

12.2 Section 51 of the SEZ Act, 2005 reads as under:

"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."

12.3 It is pertinent to note that in exercise of the powers conferred under sub-section (2) of Section 26 of the Act, no conditions have been prescribed in regard to the manner to claim exemption from payment of Service Tax for the services provided to SEZ units. The Notifications issued by the Ministry of Finance, which provides to file refund claim of Service Tax, are not issued under Section 26(2) of the SEZ Act, 2005, but under Section 93 of the Finance Act, 1994 (power to grant exemption from payment of Service Tax). When Section 26 of the SEZ Act, 2005 is read with Section 51 of the Act, there is an absolute exemption from taxes and Duties granted for the reason that Section 51 of the SEZ Act has an overriding effect. The conditions prescribed in the various Notifications issued under Section 93 of the Finance Act, 1994, therefore, cannot be pressed into application so as to deny the substantive benefit of exemption envisaged in Section 26 of the SEZ Act, 2005. The Service Tax Notifications, though issued under Section 93 of the Finance Act, actually intends to give effect to the benefit of exemption envisaged under Section 26 of the SEZ Act, 2005.

12.4 A fleeting look into the Notification would help to appreciate better. Notification No. 04/2004-S.T. dated 31.03.2004 (superseded) is reproduced as under:

"Service tax exemption to services provided to a Developer or units of Special Economic Zone -

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Notification No. 17/2002-S.T. superseded

In exercise of the powers conferred by sub- section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue), No. 17/2002-Service Tax, dated the 21st November, 2002, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 21st November, 2002, vide, G.S.R. 777(E), dated the 21st November, 2002, except as respects things done or omitted to be done before such supersession, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service of any description as defined in clause (90) of sub-section (1) of section 65 of the said Act provided to a developer of Special Economic Zone or a unit (including a unit under construction) of Special Economic Zone by any service provider for consumption of the services within such Special Economic Zone, from the whole of service tax leviable thereon under section 66 of the said Act, subject to the following conditions, namely :-

(i) the developer has been approved by the Board of Approvals to develop, operate and maintain the Special Economic Zone;

(ii) the unit of the Special Economic Zone has been approved by the Development Commissioner or Board of Approvals, as the case may be, to establish the unit in the Special Economic Zone;

(iii) the developer or unit of a Special Economic Zone shall maintain proper account of receipt and utilisation of the said taxable services.

Explanation. - For the purposes of this notification, -

(1) "Board of Approvals" means the combined Board of Approvals for export oriented unit and Special Economic Zone units, as notified in the Official Gazette, from time to time by the Government of India in the Ministry of Commerce and Industry;

(2) "developer" means a person engaged in development or operation or maintenance of Special Economic Zone, and also includes any person authorised for such purpose by any such developer;

(3) "Special Economic Zone" means a zone specified as Special Economic Zone by the Central Government in the notification issued under clause (iii) of Explanation 2 to the proviso to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944)."

(Emphasis applied)

The conditions in the subsequent Notifications are also similar. Any Notification if issued in terms of sub-section (2) of Section 26 of the Act, the terms and conditions of the Notification would be binding and applicable for claiming the exemption. The conditions prescribed in the Notifications issued under Section 93

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of the Finance Act, 1994 - Notification No. 04/2004-ST dated 31.03.2004, Notification No. 09/2009-ST dated 03.03.2009 superseded by Notification No. 17/2011-ST dated 01.03.2011, cannot be pressed into application on the appellant to deny the benefit of exemption when there is no dispute that the services have been received/provided to SEZ units.

13.1 This issue as to whether the terms and conditions prescribed in the Service Tax Notifications will prevail over Section 26 of the SEZ Act, 2005 read with Section 51 of the SEZ Act, 2005 was analysed by the Hon'ble High Court of Telangana and Andhra Pradesh in the case of M/s. GMR Aerospace Engineering Ltd. (supra). This Tribunal in the case of M/s. TVS Logistics Services Ltd. v. The Principal Commissioner of Service Tax, Chennai South reported in 2021 (8) TMI 450 - CESTAT, Chennai has applied the above decision of the Hon'ble High Court of Telangana and Andhra Pradesh and held that Section 51 of the SEZ Act, 2005 has an overriding effect. The denial of the benefit of exemption by relying upon procedural requirement of a Notification would be against the provisions laid down in the SEZ Act.

13.2 The Tribunal in the case of M/s. DLF Assets Pvt. Ltd. (supra) has held as under:

"17. The Notification dated March 3, 2009 has been issued in exercise of the powers conferred by section 93 (1) of the Finance Act. It is for this reason that it has been contended by learned Counsel for the appellant that the said Notification dated March 3, 2009 would not have any relevance to the case of the appellant when it sought exemption from payment of service tax under the provisions of section 26(1)(e) of the SEZ Act read with rule 31 of the SEZ Rules.

18. The contention advanced by the learned Counsel for the appellant has force. As noticed above, 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 the exemption at (e) 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 of the SEZ Act provides for an overriding effect to the provisions of the SEZ Act. The provisions of section 26 read with rule 31 of the SEZ Rules thus, have overriding effect over anything inconsistent contained in any other law for the time being in force, which would include the Finance Act. It needs to be noted that the Notification dated March 3, 2009 has been issued in exercise of the powers conferred by section 93 of the Finance Act. Thus, when the services rendered by the appellant are fully exempted from service tax in terms of ST/52470/2016 the provisions of the SEZ Act, the condition of exemption by way of refund imposed under the Notification issued under the Finance Act would be inconsistent with the provisions of the SEZ Act. It also needs to be noted that the SEZ Act was enacted in 2005, much after the enactment of the Finance Act in 1994.

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21. Thus, what follows is that the Commissioner was not justified in examining whether the conditions set out in the Notification dated March 3, 2009 were satisfied or not for grant of any exemption from service tax. Section 26(2) of the SEZ Act does provide that the Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions shall be granted to the Developer under sub-section (1) but what is important to notice, and as was also observed by the Andhra Pradesh High Court, the word "prescribe" would mean "prescribed by rules made by the Central Government under the SEZ Act," in view of the definition of "prescribed" under section 2(w) of the SEZ Act. The Notification dated March 3, 2009, which has been issued under section 93 of the Finance Act, therefore, has no application."

13.3 Again, the above decision was referred to by the Tribunal in the case of M/s. Metlife Global Operations Support Center Pvt. Ltd. (supra). Applying the above decisions, we have to hold that the terms and conditions of the Notifications (04/2004-ST, 09/2009-ST and 17/2011-ST, as applicable for different periods) cannot be pressed into application to deny the substantive benefit of exemption enshrined in Section 26 of the SEZ Act, 2005.

14. Be that as it may, the first issue on which the refund has been rejected is that the services are not used for authorized operations. In paragraph 14 of the Order-in-Original, it is categorically stated by the Adjudicating Authority that all the services listed in the table have been approved as 'specified services' for authorized operations. When the services have been approved for authorized operations by the authority competent to do so, then the Department cannot deny the refund stating that it does not appear that the services are used for authorized operations. The view taken in paragraph 14 by the Original Authority to deny the refund is not supported by any cogent reasons. We therefore hold that the rejection of refund on this ground is not justified. The rejection of refund on this ground is set aside.

15. The second issue is with regard to the non-submission of original invoices. The relevant condition in the Notification has already been noticed above. The appellant asserts that they have produced the photocopies of all the invoices. The requirement as per the Notification is to produce proof of payment of Service Tax. If the photocopies of the invoices establish the transaction as well as the payment of Service Tax, the Department ought not to have rejected the refund claim stating that original invoices are not produced. We therefore cannot agree with this view taken by the authorities below. If the appellant produces proof of payment of Service Tax, the same should be considered. However, this issue is remanded to the Adjudicating Authority, who shall re-consider this issue after verifying the copies of the invoices/documents produced by the appellant.

16. The appeals are partly allowed and partly remanded, as indicated above, with consequential benefits, if any.

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(Order pronounced in the open court on 13.10.2021)

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