CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. III

Excise Appeal No. 51193 of 2020

(Arising out of Order-in-Appeal No. IND-EXCUS-000-000-APP-044-045 dated 16.09.2020 passed by the Commissioner (Appeals), Customs, Central Goods & Service Tax and Central Excise, Indore (M.P.)

M/s Lupin Limited **Appellant**
Plot No. 2, Indore Special Economic Zone
Phase-II, Misc. Zone, Apparel Park
Pithampur, Dist Dhar (M.P.)

VERSUS

Commissioner of Central Goods & Service Tax & Central Excise **Respondent**
29, Bharatpuri, Administrative Area
Ujjain (M.P.)

AND

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Ujjain (M.P.)

APPEARANCE:

Sh. Bharat B. Raichandani and Sh. Deepak Kumar Khokhar, Advocates for the appellant

Sh. Rakesh Agarwal, Authorised Representative for the respondent

CORAM:

HON'BLE SH. P. V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER Nos. 50388 – 50389/2023

DATE OF HEARING: 21.02.2023
DATE OF DECISION: 23.03.2023

BINU TAMTA:

The present appeal arises out of the remand proceedings. Earlier this Tribunal by order dated 09.12.2019 was pleased to remand the matter to the original authority to verify the date on which the appellant, SEZ unit made the payment of service tax and whether the impugned claims are within the time limit and if not whether the delay could be condoned.

2. Having reconsidered the two issues, the adjudicating authority vide order dated 29.05.2020 rejected the applications claiming refund of service tax paid on input services as barred by limitation. Being aggrieved, the appellant filed the appeal, however it was rejected by the Commissioner (Appeals) vide order dated 16.09.2020. Hence the appellant has filed the present appeal before this Tribunal.

3. Briefly stated, the appellant is engaged in the manufacture and export of pharmaceutical products at their unit in SEZ, Pithampur, having Letter of Approval (LA) for undertaking authorised operations within SEZ at Pithampur. The head office of the appellant is in Mumbai which has been registered as Input Service Distributor (ISD). Under Notification No. 12/2013-ST dated 01.07.2013, the appellant filed two applications in Form A-4 claiming refund of service tax paid on input services received in SEZ unit, i.e.

i) on 10.10.2017 for a sum of Rs 17,61,17,668/ for the period January 2017 to March 2017 and

ii) on 28.03.2018 for a sum of Rs 95,02,081/ for the period April 2017 to June 2017.

4. The adjudicating authority vide order dated 12.03.2019 sanctioned the refund of Rs. 12,39,33,099/- for the period January 2017 to March 2017 and rejected the remaining claim of Rs. 5,21,62,728/- being time barred. Similarly, for the period April 2017 to June 2017 the adjudicating authority sanctioned the refund of 44,64,081/- towards service tax paid on the specified services used for authorised operations in SEZ and rejected the refund of Rs.50,15,384/- being time barred vide order dated 15.05.2019. The appeal filed by the Appellant before the Commissioner (Appeals) also met the same fate as per the order dated 18.6.2019.

5. We have heard the Learned Counsel for the appellant and also the authorised representative of the revenue and have perused the records. The basic question that arises in the present case is whether the claim for refund of service tax paid on input services has been filed within the time limit in terms of para 3 (III) (e) of the Notification No 12/2013-ST dated 01.07.2013 and if the same is hit by latches, is the appellant entitle to condonation of delay.

6. The main argument of the learned Counsel for the Appellant is that SEZ Act, 2005 being a special statute prevails over any other Act. Referring to series of judgements, he submitted that for calculating the time limit of one year in terms of the Notification No. 12/2013, the date of ISD invoice should be considered, as the SEZ unit comes to know of the tax pertaining to Table II services only after receiving the said ISD invoices.

a) SRF Ltd., vs. Commissioner of Cus., C. Ex., & S.t. LTU, New Delhi 2022 (64) GSTL 489 (Tri. Del.)

b) Wabco India Ptd vs. Commissioner -2021 (54) GSTL 37 (Tri.Chen)

c) DLF Assets Pvt. Ltd. Vs. Commissioner, Service Tax, Delhi-I 2021 (45) GSTL 176 (Tri. Del.)

d) GMR aerospace Engineering Ltd., vs. Union of India 2019 (31) GSTL 596

e) ATC Tyres Pvt. Ltd., vs. Commissioner of GST & CE, Tirunelveli 2021-VIL-106-CESTAT-CHE-ST

f) CCE vs. Reliance Industries Ltd.-2019-TIOL-1754-CESTAT-AHM

g) Himatsingka Linens vs. CCE -2019-TIOL-508-CESTAT-BANG

h) Commissioner of Central Excise and Service Tax, Rajkot vs. Reliance Industries Ltd.,-2022-TIOL-19-CESTAT-AHM

i) Government of Kerala vs. Mother Superior adoration convent 2021-TIOL-156-SC-MISC

j) Commissioner of Central Excise and Service Tax, Rajkot vs. Reliance Industries Ltd. -2022-TIOL-19-CESTAT-AHM

7. In rebuttal, the main thrust of the Learned Authorised Representative was on the scope of remand as the matter was remanded by this Tribunal on limited issue to ascertain the time limit after verifying the date of payment of service tax and in the event of any delay, whether the same could be condoned. Referring to the decisions in **J.J. Meridian Industries Ltd. Vs. CCE - 2015 (325) ELT 417 (SC**), and **Commissioner of C. Ex. Trichy** Vs. **Rukmani Pakkwell Traders -2004 (165) ELT 481 (SC),** he relied on the general principles of interpretation of the exemption notification, to say that it has to be construed strictly and also pleaded the doctrine of approbation and reprobation. On the issue of delay, he submitted that it is a matter of discretion and the Tribunal should not interfere unless the order is arbitrary, capricious or unjust and relied on **Sonali Steels & Alloys (P) Ltd.,** Vs. **Union of India -2000 (123) ELT 493 (Mad.)**, **Goyal Traders** Vs. **Commr. of C. Ex., & Cus. Ahmedabad -2001 (136) ELT 1401 (Tri. Mumbai)** and **Bombay Pharma Products** Vs. **Collector of Customs, Bombay – 1988 (34) ELT 691 (Tri.)**. In the written submissions filed by the revenue, it is submitted that the impugned notification having been declared as

non-existent in the case of **GMR** (supra) and in **SRF** (supra), the present appeal needs to be dismissed.

8. Before examining the case on merits, we need to peruse the observations made by the Tribunal while remanding the matter to the adjudicating authority. Para 6 of the order dated 09.12.2019 is in following terms:

> "6. The bare perusal makes it clear that the relevant date from which is to reckon the period of limitation is the end of the month in which the SEZ Unit paid the Service Tax. It is the case of the appellant that from the date of the payment of service tax by him his refund claim is well within the period of limitation. From the order under challenge, it is clear that date of invoice to the ISD of appellant SEZ is taken as the starting point for the period of limitation. The date of payment of Service Tax is, however, not available on the record. It is not possible for us to verify as to whether the date of invoice and date of payment of service tax are same or not. In the given circumstances, we deem it appropriate that matter be remanded back to the original adjudicating authority to verify as to what is the date on which the appellant, the SEZ Unit made the payment of service tax and then to adjudicate as to whether the impugned claims are within the time limit or not".

9. The adjudicating authority while considering the matter on remand, misconstrued the observations of this Tribunal and the submissions of the appellant that the date of invoice to the ISD has been wrongly taken as the relevant date for computing the period of one year and on the issue of condonation of delay the order of the adjudicating authority is silent. We feel that the adjudicating authority dealt with the matter with very closed mind and misconstrued the argument made by the appellant with reference to the applicability of the notification which have been noted in Para 17.6 of the earlier OIO dated 12.03.2019 which is quoted below:-

> "17.6. I find that it is the contention of the claimant that the limitation is applicable only in refund claim pertaining to ISD credits, payment to the service provider is made by the ISD and not the SEZ unit, time limitation of one year period would not apply in case of refund claim filed for ISD credits. From the plain reading of the above clause, I find that for deciding the time limit, the month in which actual payment of service tax has been made by the SEZ unit to the registered service provider is to be seen. There is nothing in the above clause which suggests that time limit of one year will not apply to an ISD. The above said notification lists out certain conditions subject to which refund of service tax would be available."

Thus, what falls from above is that the appellant referred to the applicability of limitation only to a case where payment was required to be made by the SEZ unit to the service provider but where payment was made by the ISD to the service provider, the time limit of one year would not apply. The adjudicating authority fell in error in arriving at the conclusion that under Para 3(III)(e) of the Notification the relevant date should be the actual payment by the ISD to the service provider and neither the date of invoice of ISD nor the date of payment by the SEZ unit to its Head office, i.e. ISD can be taken note of. Therefore, the adjudicating authority proceeded to justify its earlier order by quoting the paras from there and concluded:

> "14.6. In view of the above reproduced paras of the two original adjudication orders, I find it pertinent to mention that the date of actual payment of service tax by the ISD to the service providers was and is available on record. Therefore, in accordance with Para 3(III)(e) of Notification No. 12/2013-ST dated 01.07.2013 time limit of one year was calculated from the end of the month in which actual payment of service tax was made by the ISD to the registered service provider. I find that ISD had made payment of service tax amount of Rs. 5,21,60,728/- (Rs.5,20,63,537/- + Rs. 97,191/-) to the service providers on various dates prior to 01.10.2016 whereas, the claim applicable was made on 10.10.2017. Therefore, there is no doubt in my mind that the claim of Rs. 5,21,60,728/- (Rs.5,20,63,537/- + Rs.97,191/-) is time barred in view of para 3(III)(e) of Notification No. 12/2013-ST dated 01.07.2013 which prescribes time limit of one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider. Accordingly, claim of Rs. 5,21,60,728/- (Rs.5,20,63,537/- + Rs. 97,191/-) is liable to be rejected. I find it pertinent to mention that the claimant vide letter dated 17.05.2018 had already withdrawn the claim of Rs. 97,191/- on account of being time barred. I find that the claimant during the course of personal hearing held on 18.03.2020 has submitted that the said claim of Rs. 97,191/- stands withdrawn and it was mistakenly included in the appeal before the Hon'ble CESTAT. It is strange that if the refund claim of Rs. 97,191/- out of the claim of Rs. 5,21,60,728/- is admittedly time barred in claimant's own view then how the remaining amount can be within the time limit on the same criteria of the date of payment by ISD to the service providers".

10. The condonation of delay was rejected as according to the adjudicating authority no new grounds have been presented by the claimant for reconsideration. This reasoning of the Adjudicating Authority seems to be unreasonable as there cannot be any new grounds for the condonation of delay, as on today. The grounds on which a party may seek condonation of delay cannot change with the passage of time, however, the same needs to be examined in the light of the law prevalent on the point, particularly in the facts

of the present case where we are dealing with the special statute of beneficial nature. The Adjudicating Authority took a very conservative approach in taking the view against the condonation of delay.

11. The Commissioner (Appeals) in a very routine manner reaffirmed the findings of the adjudicating authority both on the applicability of the limitation as well as on the condonation of delay by the impugned order. Hence the appellant has challenged the said order in the present appeal before this Tribunal.

12. We are conscious of the scope of the remand order and the order passed in the present case on 19.12.2019, however keeping in view the law as enunciated by the various decisions of the High Court and the Tribunal, we find that the issue is no longer *res-integra* and the present controversy stands settled.

13. Before referring to the case laws we would like to refer to the relevant provisions of the Notification under consideration:-

> "3. This exemption shall be given effect to in the following manner:
>
> (I) The SEZ Unit or the Developer shall get an approval by the Approval Committee of the list of the services as are required for the authorised operations (referred to as the 'specified services' elsewhere in the notification) on which the SEZ Unit or Developer wish to claim exemption from service tax.
>
> (II) The *ab-initio* exemption on the specified services received by the SEZ Unit or the Developer and used exclusively for the authorised operation shall be allowed subject to the following procedure and conditions, namely:-
>
> (a) the SEZ Unit or the Developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, along with the list of specified services in terms of condition (I);
>
> (b) on the basis of declaration made in Form A-1, an authorisation shall be issued by the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be to the SEZ Unit or the Developer, in Form A-2;

(c) the SEZ Unit or the Developer shall provide a copy of said authorisation to the provider of specified services. On the basis of the said authorisation, the service provider shall provide the specified services to the SEZ Unit or the Developer without payment of service tax;

(d) the SEZ Unit or the Developer shall furnish to the jurisdictional Superintendent of Central Excise a quarterly statement, in Form A-3, furnishing the details of specified services received by it without payment of service tax;

(e) the SEZ Unit or the Developer shall furnish an undertaking, in Form A-1, that in case the specified services on which exemption has been claimed are not exclusively used for authorised operation or were found not to have been used exclusively for authorised operation, it shall pay to the government an amount that is claimed by way of exemption from service tax and cesses along with interest as applicable on delayed payment of service tax under the provisions of the said Act read with the rules made thereunder.

(III) The refund of service tax on (i) the specified services that are not exclusively used for authorised operation, or (ii) the specified services on which ab-initio exemption is admissible but not claimed, shall be allowed subject to the following procedure and conditions, namely:-

(a) the service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] shall be distributed amongst the SEZ Unit or the Developer and the DTA unit (s) in the manner as prescribed in rule 7 of the Cenvat Credit Rules. For the purpose of distribution, the turnover of the SEZ Unit or the Developer shall be taken as the turnover of authorised operation during the relevant period.

(b) the SEZ Unit or the Developer shall be entitled to refund of the service tax paid on (i) the specified services on which ab-initio exemption is admissible but not claimed, and (ii) the amount distributed to it in terms of clause (a).

(c) the SEZ Unit or Developer who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, or the said Act or the rules made thereunder, shall file the claim for refund to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, the as the case may be, in Form A-4;

(d) the amount indicated in the invoice, bill or, as the case may be, challan, on the basis of which this refund is being claimed, including the service tax payable thereon shall have been paid to the person liable to pay the service tax thereon, or as the case may be, the amount of service tax payable under reverse charge shall have been paid under the provisions of the said Act;

(e) the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such Developer or SEZ Unit to the registered service provider or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit;

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FORM A-4

[Refer condition at S.No.3 (III)(c)]

Application for claiming refund of service tax paid on specified services used for authorised operations in SEZ under notification No.12/2013-Service Tax dated 1st July, 2013

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TABLE –I

Sl. No.	Description of taxable service	Name and address of service provider	STC No. of service provider (indicate "self" if reverse charge applies to the specified service)	Invoice* No.	Date	Value of service	Service tax + cesses paid
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Total amount claimed as refund						

Table-II

S.No.	Description of taxable service	Name and address of service provider	STC No. of service provider	Invoice* No.	Date	Value of service	Service tax + cess amt.	Amount distributed to the SEZ Unit/ Developer out of the amount mentioned at column No. (8) (claimed as refund)	Document* under which amount mentioned at column (9) was distributed to the SEZ Unit/Developer	
									No.	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Total Amount									

14. The Special Economic Zone Act, 2005 is a special statute basically enacted for the establishment of SEZ providing special benefits by way of exemptions with a view to promote the Exports. Section 26 of the SEZ Act read with Rule 31 of SEZ Rules, 2006 provides wholesale exemption from payment of duties under the Central Excise Act, Customs Act and from Service Tax under the Finance Act, 1994 on taxable services provided to SEZ units / developers for carrying on authorised operations in a Special Economic Zone. Further, section 51 of the SEZ Act gives overriding effect to the provisions of the Act. For the present controversy, the SEZ Act overrides the charging sections of other taxing laws. In other words, there is no legal sanctity to levy any duty or tax on the units in SEZ. The intention of the Legislature in granting exemption from levy

of duties and taxes was to ensure that the SEZ units function burden free. The whole object is to boost the SEZ units.

15. The High Court of Andhra Pradesh in **GMR Aerospace Engineering Limited** Vs. **Union of India- 2019 (31) GSTL 596 (A.P.)** after analysing the provisions of the SEZ Act, 2005 and the provisions of the Finance Act, 1994 concluded that the notification issued under section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in SEZ qualifies for exemption or not. Following the said principle, the Tribunal in the case of **DLF Assets Pvt. Ltd.** Vs. **Commissioner** -**2021 (45) GSTL 176 (Tri.)** affirmed the view that it is not necessary to examine whether the conditions set out in the notification issued under section 93 of the Finance Act was satisfied or not for grant of any exemption from service tax.

16. Subsequently, the Tribunal in **SRF Ltd**., Vs. **Commr. of Cus. C. Ex. & S.T., LTU New Delhi -2022 (64) GSTL 489 (Tri. Del.)** dealt with the issue of entitlement of refund of service tax where some of the services were directly provided to and paid for by the SEZ unit while certain other services were provided to the head office which was registered as an Input Service Distributor (ISD) and on examining the various provisions of the SEZ Act, observed that there is duplication as the Act itself provides for exemption of central excise duty, customs duty and the service tax, however there are exemption notifications issued under the respective laws subject to certain conditions. It is relevant to take note of some of the paras of the said decision:-

> "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. It reads as follows:

"51.(1) 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.

38. Thus, insofar as supplies for authorized 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 authorized 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 A4rticle 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.

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47. In one case, the claim for refund was alleged to have been filed beyond one year from the date of the invoice and it was not filed in the same quarter as required under the exemption notification. So far as the requirement of filing in the quarter under the exemption notification is concerned, this condition is irrelevant as the exemption notification itself is not necessary and the service tax is exempted by Section 26 of the SEZ Act itself. As far as the period of one year for filing refund of service tax is concerned, learned Counsel submits that although the invoice is dated 21.08.2014, it had paid the service tax only on 26.10.2015 before which it could not have claimed refund. The claim was made in January, 2016. We, therefore, find that there was no delay in filing the refund claim."

17. Similarly, in **Commissioner of Central Excise and Service Tax** Vs. **M/s Reliance Industries Ltd.**,- **2019 (26) GSTL 34 (Tri. Ahmd.)** one of the issues related to compliance of Clause (e) of para 3 (III) of the Notification No. 12/2013-ST in respect of the refund of service tax paid on specified services that were common to both SEZ and ISD, the Tribunal observed that refund in respect of services covered in Table II of Form A can be preferred by the SEZ unit only after the ISD in the DTA distributes the tax pertaining to invoices under which services common to the SEZ and the DTA unit have been received, as it is only after the ISD issues the invoice distributing the tax credit that the SEZ is made aware of the tax liability pertaining to the said invoices.

18. In so far as the issue of limitation of one year for filing the refund claim is concerned the same stands answered by the Tribunal in the case of **CCEx & ST, Rajkot** Vs. **Reliance Industries Ltd. 2022-TIOL-19-CESTAT-AHM**, whereby it has been clarified that the condition under para 3 (III) (e) of the Notification for filing the refund claim within one year is applicable only in respect of refund claimed under Table I of Form A-4. For Table II, the refund claim can be filed when the SEZ unit receives the ISD invoices as the format in Table II particularly the specifications in column 9,10 and 11, required that refund cannot be filed without the ISD invoices. Further, it was held that no time limit has been prescribed for issuing ISD invoices under Rule 7 of Cenvat Credit Rules, 2004 for distributing credit under ISD invoices. It was then concluded that for a minor procedural lapse, if the SEZ unit is burdened with duties or taxes the whole objective of SEZ scheme will stand defeated. It is necessary to quote the relevant paras from the aforesaid decision which resolves the controversy:-

> "4.8 On careful perusal of the above notification, we find that though in Para 3 (III)(e) there is a condition that the refund claim should be filed within one year from the actual date of payment of service tax to the registered service provider however, the discretion to extend the said time limit is vested with the Assistant Commissioner/Deputy Commissioner of Central Excise. Firstly, as we observed above, the Deputy Commissioner has rightly extended the time limit on the cogent reason. Secondly the condition (e) of Para 3 (III) of Notification is applicable only in respect of the refund claimed under Table-I of Form A-4. From the Table-II, coloumn 9, 10 & 11 it clearly provides that only amount distributed to the SEZ Unit/Developer needs to be claimed as refund and detail of documents such as ISD Number and date has to be mentioned. As per the said format, the refund claim 25 | P a g e ST/12056/2019 ST/CO/10766/2019 under table-II can only be filed when the SEZ Unit receives the ISD Invoices. In the present case there is no dispute that the respondent has filed the refund claim within one year from the date of ISD Invoices. It is clear that without the ISD Invoices, refund cannot be filed. As per the format of Table- II in such case it is impossible to file a refund claim from the date of actual payment of service tax to the service provider therefore, the condition prescribed under clause (e) of Para 3 (III) is applicable only in respect of Table-I of Form A-4. The conditions prescribed under clause (a) to (h) are for the refund filed under Table-I & II therefore, obviously all such conditions shall not be applicable for refund made under Table-I & II both. Some conditions shall apply to Table-I and some shall apply to Table-II. For example, clause (a) shall be applicable only in respect of common service used for SEZ as well as operations in DTA where the refund has to be claimed under Table-II of Form A-4 whereas, this condition is not applicable in a case of input service used exclusively in SEZ and refund claim is made in Table-I of Form A-4. Clause (b) on the other hand is applicable to both refund covered under Table-I as well as refund covered under Table-II of Form A-4. Similarly, clause (c), (d), (f) and (g) are equally applicable to refund covered under Table-I and Table-II of Form A-4 of the notification. However, on bare

perusal of clause (e) it is clear that the same is applicable only for refund covered under Table-I of Form A-4 since the Table-II only covers refund of common credit distributed by an ISD/Head Office. Therefore, in our clear view Para 3 (III)(e) of notification neither can be made applicable in respect of refund made under Table-II nor it is applicable. As regard delay in issuing the ISD Invoices firstly, there is no time limit prescribed under Rule 7 of Cenvat Credit Rules, 2004 for distributing credit under ISD Invoices nor any dispute was raised as regard the time and manner of issue of ISD Invoices at the end of ISD Registrant therefore, there is no illegality in issuance of ISD Invoice belatedly. In view of above, we are of the clear view that clause 3(III)(e) of Notification No.12/2013-ST is not applicable in respect of refund claim made on the basis of ISD Invoice in Table-II of Form A-4 appended to the said notification.

4.9 Without prejudice to our above findings, we also find that as per the condition Para 3(III)(e) of notification, the claim for refund shall be filed within one year from the end of the month in which actual payment of service tax was made by such developer or SEZ Unit to the registered 26 | P a g e ST/12056/2019 ST/CO/10766/2019 service provider. From this condition, it is mandatory that the payment of service tax has to be made by the SEZ Unit. In the present case, only the services covered under the Invoices which are exclusively used by the SEZ Unit and refund of which claimed under Table-I payment of service tax is directly made by the SEZ to the service provider. However, in case all the services which are attributed to the SEZ Unit as well as DTA Unit of the respondent company the payment was made by the Head Office of the respondent SEZ Unit and the credit related to service attributed to the SEZ unit was distributed through ISD Invoice to the respondent's SEZ Unit. In this case payment was not made by the respondent's SEZ Unit therefore, the condition of clause (e) of Para (III) of the notification shall not apply for the reason that the said clause is applicable only in a case where the payment of service tax is directly made by the SEZ to the service provider when the services are exclusively used in the SEZ unit. Legislators intention is very clear that one year period is applicable only in case of payment directly made by SEZ Unit and not in a case where the Head Office of the SEZ unit is making the payment.

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4.11 In the case of expenses of all services received by SEZ Unit can be ascertained only on the basis of input service distribute invoices, on the basis of which the SEZ unit's books of accounts can be maintained properly and correctly therefore, the ISD Invoice is the only document for all the 27 | P a g e ST/12056/2019 ST/CO/10766/2019 purposes for the SEZ Units. As per the above intention of Rule 19(7), the SEZ Unit is a separate legal entity. The words used in clause (e) of Para (III) of notification that prescribes one year from the date of payment by the SEZ Unit should be construed directly and according to which the one year period for filing refund shall apply only in case where the payment is directly made by SEZ Unit for which Table-II is prescribed for claiming the refund in that condition (e) shall be applied in case of refund made in Table-II of Form A-4 accordingly, the condition of Para 3(III)(e) of notification is clearly not applicable in case of refund claim made by the respondent in Table-II of Form A-4 appended to the notification."

19. We may also like to note that the general principles of interpretation of the exemption notification that it has to be construed strictly shall not really apply to the SEZ units which are otherwise exempted from the liability of the various duties under the main statute itself. The avowed object of providing such exemptions has to be the guiding principle for the applicability and the interpretation of the Notification to the SEZ units.

20. Applying the law as interpreted by the various judicial decisions to the facts of the present case, we find that :

i) the appellant is engaged in the manufacture and export of pharmaceutical products at their SEZ unit in Pithampur.

ii) the appellant had obtained the necessary Letter of Approval for undertaking authorised operations within the SEZ.

iiii) the appellant has an ISD unit, i.e., Head office in Mumbai

iv) the appellant receives various input services for carrying out authorised operations within the SEZ

v) the invoices are raised by the service provider / vendor either directly to the appellant or through the ISD unit, i. e. Head office.

vi) section 26 (1) of the SEZ Act, 2005, specifically provides for exemption of all duties and taxes and so the notification issued under section 93 of the Finance Act, 1994 cannot be pressed into to deny the benefit of exemption by way of refund.

viii) there is difference in the particulars to be provided for refund claims under Table I with that of Table II as the refund in respect of services covered in Table II of Form A4 can be preferred by the SEZ unit only after the ISD in the DTA distributes the tax pertaining to invoices under which services common to the SEZ and the DTA units have been received.

21. From the aforesaid, it is evident that the appellant fulfilled the criterias of eligibility to claim refund of the service tax paid on input services in terms of the Notification No 12/2013-ST. Infact it is not the case of the revenue that the appellant is not eligible to make such claims. Their only objection is to the claim being filed beyond the period of one year as per the notification. We are of the considered opinion that once the appellant is found to be eligible to claim the refund, the substantive conditions are complied with and the condition of time limit for making the claim under the notification being only a procedural requirement, needs to be construed liberally. Considering the beneficial object of establishing the SEZ tax free, without any burden of duties, the procedural lapse, if any, cannot be the basis to deny the refund to the appellant. The exemption is intended to be absolute is further evident from para 3 (II) of the

Notification which provides for ab-initio exemption. This strengthens our conclusion that the SEZ Act and the Rules read with the notification is intended to be a beneficial policy for the SEZ , therefore has to be construed liberally. In our view we are supported by the decision of the Apex Court in Government of **Kerala & Anr.** Vs. **Mother Superior Adoration Convent** (supra), where it has been held that the beneficial purpose of the exemption must be given full effect to and before interpreting a statute, "we must first ask ourselves what is the object sought to be achieved by the provision and construe the statute in accordance with such object". The Court went ahead to hold that in the event of any ambiguity in such construction, such ambiguity must be in favour of that which is exempted. On the principle that there is a clear distinction between exemptions which are to be strictly interpreted as opposed to beneficial exemptions having the purpose of encouragement or promotion of certain activities, the Court relied on several decisions. It is relevant to quote the para from the said judgment:

> "16. However, there is another line of authority which states that even in tax statues, an exemption provision should be liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has come beneficial reason behind it. In such cases, the rationale of the judgements following Wood Papers (supra) does not apply. In fact, the legislative intent is not to burden the subject with tax so that some specific pubic interest is furthered."

22. The finding given by the adjudicating authority in the order in original dated 29.5.2020 that for the period January 2017 to March 27, the refund claim was filed on 10.10.2017 and for the period April 2017 to June 2017, the refund claim was filed on 28.3.2018 and in certain cases payments were made to the registered service providers by the ISD before one year prior to the date of filing the refund claims and so the refund claims have been filed beyond statutory period of one year is unsustainable. In view of the accepted

principle as enunciated in the above referred decisions, the date of the invoice is the relevant date for computing the time limit of one year.

23. From what has been observed by the adjudicating authority is that for the period January to March 2017, service tax was paid prior to 01.10.2016 and the refund claim was filed on 10.10.2017 and therefore it is beyond the period of one year. Even, if one calculates the actual delay the same appears to be somewhere around 10 days or so. Similarly, for the period April to June, 2016 service tax was paid prior to 01.03.2017 and refund claim was filed on 28.03.2018. In both the cases, the delay is neither exorbitant nor unreasonable which on the face of it cannot be condoned. We are, therefore of the view that the adjudicating authority should have considered the issue of condonation of delay taking a wider and liberal approach. It is the well established principle that the eligibility criteria laid down in an exemption notification are required to be construed strictly, however once it is found that the applicant satisfies the same, the exemption notification should be construed liberally, **G. P. Ceramics Pvt. Ltd** Vs. **Commissioner, Trade Tax, UP 2009 (2) SCC 90**, **Associated Cement Companies Ltd.,** Vs. **State Bihar 2004 (7) SCC 642, Commissioner of Customs (Preventive), Mumbai** Vs. **M. Ambalal & Company 2011 (2) SCC 74.**

24. It is also relevant to refer the decision of the Apex Court in **Suksha International** Vs. **Union of India 1989 (39) ELT 503**, observing that interpretation restricting the scope of beneficial provision should be avoided so that it may not take away with one hand what the policy gives with the other.

25. Also in **Formica India** Vs. **Collector of Central Excise 1995 (77) ELT 511**, the Apex Court observed that once a view is taken that a party would have been entitle to the benefit of the notification had they met with the requirements of the concerned rule, the proper course was to permit them to do so rather than denying to them the benefit on the technical grounds that the time when they could have done so had elapsed.

26. In the facts of the present we allow the refund claims of the appellant. The impugned order is, accordingly, set aside and appeal stands allowed.

(Order pronounced on 23rd Mar., 2023).

(P. V. Subba Rao)
Member (Technical)

(Binu Tamta)
Member (Judicial)

Pant