(2021) 03 CESTAT CK 0047

Customs, Excise And Service Tax Appellate Bangalore

Case No: Service Tax Appeal No. 20386 Of 2020

M/s Harman Connected Services Corporation India Pvt Ltd		APPELLANT
	Vs	
Commissioner Of Central Tax, Bengaluru East		RESPONDENT

Date of Decision: March 24, 2021

Acts Referred:

- Finance Act, 1994 - Section 93(1)
- Special Economic Zones Act, 2005 - Section 7, 26, 26(e), 50(1), 51

Hon'ble Judges: S.S. Garg, J

Bench: Single Bench

Advocate: Deepak Kumar Jain, C.V. Savitha

Final Decision: Allowed

Judgement

1. The present appeal is directed against the impugned order dated 05.08.2020 passed by the Commissioner (Appeals) whereby the Commissioner

(Appeals) has rejected the refund claim of the appellant primarily on the ground that the appellant has failed to fulfill the conditions of Notification

No.12/2013-ST dated 01.07.2013.

2. Briefly the facts of the present case are that the appellants are registered under Service Tax for providing taxable services viz. Information

Technology Software Services. The appellant had filed a refund claim on 26.09.2016 for an amount of Rs.62,69,973/- for the period October 2015 to

December 2015 towards refund of service tax paid on various input services (specified services) set to have been used for authorized operations of

the SEZ units during quarter in terms of Notification No. 12/2013-ST dated 01.07.2013 as amended by Notification No.07/2014-ST dated 11.07.2014,

Notification No.02/2016-ST dated 03.02.2016 and Notification No.30/2016- ST dated 26.05.2016. After following the due process, the Assistant

Commissioner of Central Tax vide Order-in-Original dated 23.05.2018 sanctioned the refund of Rs.50,55,989/- and rejected the refund of

Rs.12,13,983/- on the ground that certain specified services were not mentioned in the Approved List issued by the Development Commissioner of

SEZ. Aggrieved by the said order, the appellant filed appeal before the Commissioner who rejected the same. Hence, the present appeal.

3. Heard both the parties and perused the records of the case.

4. Learned Consultant for the appellants submitted that the impugned order is not sustainable in law as the same has been passed without properly

appreciating the provisions of SEZ Act and the definition of Input Service. He further submitted that the Respondent has wrongly rejected the input

tax credit of Rs.12,13,983/- for the reason that the services such as â€œBusiness Auxiliary Servicesâ€ and â€œManagement and Business

Consultancy Servicesâ€ are not included in the list of specified services required for authorized operations as issued by the Development

Commissioner, SEZ. He further submitted that input services of â€œBusiness Auxiliary Serviceâ€ and â€œManagement and Business Consultancy

Serviceâ€ are required for export of taxable output services and merely because they are not mentioned in the Approved List of authorised services

by the Development Commissioner, it cannot be considered that these are not used for authorized operations. He further submitted that SEZ Act 2005

overrides the Finance Act 1994 and Notification issued under the said Act. He further submitted that Notification No.17/2011-ST dated 11.03.2011,

Notification No.40/2012-ST dated 20.06.2012 and Notification No.12/2013-ST dated 01.07.2013 is only a mechanism to claim the refund of service

tax paid by the assessee and it 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 provider of such services. He further submitted that the only test to be carried out

shall be whether these services have been used for authorized operations and it is clearly evident from the documents produced by the appellant which

provides that these services are used for providing authorized services hence the refund of service tax paid on said services ought to have been

granted. He further submitted that subsequently, Development Commissioner has included the specified services in the Default List of services. In

support of his submissions, he relied upon the following decisions: Â

Â· Commissioner of Central Excise Mangalore Commissionerate Vs Mangalore SEZ Ltd., 2017 (49) STR 311 (Tri. Bang.) (2017-TIOL-310-

CESTAT) Â

Â· Intas Pharma Ltd. Vs CST, Ahmedabad, 2013 (32) STR 543 (Tri. Ahmd.) Â

Â· Reliance Industries Ltd. Vs CCE, Mumbai-I, 2016 (41) STR 465 (Tri. Mumbai) Â

Â· Mahindra Engineering Service Ltd. Vs CCE, Pune-I, 2014-TIOL-2534- CESTAT-MUM Â

Â· Union of India Vs Makers Malt, 2017 (51) STR J132 (Raj.)

Â· Target Corporation India Pvt. Ltd. Vs Asst. Commissioner of Service Tax, Bangalore (OIA No. 161 to 166/2017)

5. On the other hand, learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that the only ground on which refund has been

rejected is that the said specified services are not included in the Default List and services approved by the Development Commissioner of SEZ.

Further, I find that there is no dispute that the said services have been used by the appellant for authorized operation in the SEZ. Further, I find that

not mentioning the said services in the Approved List is only a technical defect and it should not debar the substantive benefit to the assessee who has

utilized those services for carrying out authorized operation. I also note that both the input services have been subsequently included by the

Development Commissioner of SEZ in the List of default services. This issue has been considered by the Tribunal in number of cases and in the case

of Commissioner of Central Excise Mangalore Commissionerate Vs Mangalore SEZ Ltd. cited supra, the CESTAT has held as under:

â€œThe Governmentâ€™s intention is clear that the SEZ units should either not require to pay or if paid they are eligible for refund. Mere

not mentioning the services in Annexure II & III is only a technical one which should not debar the substantial benefi.t In this case, it is

clear that the appellant who had availed the services inside the SEZ were not liable to pay service tax and the appellant who had paid the

Service Tax for the services availed within SEZ should not be penalized for the same. Therefore, denying the eligible refund to the appellant

on the ground that services availed by the appellant were not listed in the annexure II & III is not justified. Therefore, I am inclined to allow

the refund in respect of the above services. The amendment to the notification No.09/2009 by Notification No.1/2009 was beneficial in

nature so that the units do not have to first pay the service tax and then come forward for refund if entire services were wholly consumed

witcedural prescriptions of Notification No.9/2009 or 15/2009. These Notifications are calibrated to enable recip.

6.1. Further, in the case of Intas Pharma Ltd. Vs CST, Ahmedabad cited supra CESTAT has held as under:

â€œOn 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 â€˜câ€™ 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.â€

6.2. The same analogy of Intas Pharma has been followed by the CESTAT Mumbai in the case of Reliance Industries Ltd. Vs CCE, Mumbai-I, cited

supra. Further, in the case of Mahindra Engineering Service Ltd. Vs CCE, Pune-I cited supra, CESTAT Mumbai has held as under:

â€œIt is also noted that the SEZ Act, clearly provides under Section 50(1) that it will have overriding effect over the provisions of any other

law. As both the SEZ Act and Service Tax Act, have been passed by Parliament, the provisions of Section 51 have to be given effect to. The

reliance placed on the DHL Logistic Pvt. Ltd. (supra) by the A.R. relates to exemption notification No.4/2004 which did not incorporate the

refund mechanism. On the other hand, in the case of Intas Pharma Ltd. Vs CST reported in 2013 (32) STR 543 (Tri. Ahmd.)=2013- TIOL-

1091-CESTAT-AHM, it was held that provisions of SEZ Act have overriding effect. Therefore, there appears to be no reason to deny the

refund claim.â€

6.3. Further, in the case of Union of India Vs Makers Malt cited supra, CESTAT has held as under:

â€œIn view of provisions of SEZ Act, 2005, services supplied to SEZ are immune from Service Tax and conditions of notification granting

exemption by way of refund cannot override this immunity. Thus refund cannot be denied on ground of non-filing of authorised list of

operations.â€

6.4. Further, in the case of Target Corporation India Pvt. Ltd. Vs Asst. Commissioner of Service Tax, Bangalore cited supra, Learned Commissioner

has held has under:

â€œNon-inclusion of said services in the list can be viewed as a procedural lapse since the adjudicating authority has clearly stated in the

order that apart from the above said criteria, the claims on the said services suffer no other infirmity.â€

7. In view of various decisions cited supra squarely covering the issue in favour of the appellant, I hold that the impugned order is not sustainable in

law and in view of ratio of various decisions cited supra, I set aside the impugned order by allowing the appeal of the appellant.

(Order pronounced in the open court on 24/03/2021)