IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 41743 of 2017

(Arising out of Order-in-Appeal No. 56/2017 dated 21.04.2017 passed by the Commissioner of Central Excise & Service Tax, Large Taxpayer Unit, 1775, J.N. Road, Anna Nagar Western Extension, Chennai – 600 101)

M/s. Cognizant Technology Solutions India Pvt. Ltd. : Appellant
6th Floor, New No. 165, Old No. 110,
Menon Eternity Building, St. Mary's Road,
Alwarpet, Chennai – 600 018

VERSUS

The Commissioner of Central Excise & Service Tax : Respondent
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension, Chennai – 600 101

WITH

(i) Service Tax Appeal No. 41744/2017 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal No. 55/2017 dated 21.04.2017 passed by the Commissioner of Central Excise & Service Tax, Large Taxpayer Unit, 1775, J.N. Road, Anna Nagar Western Extension, Chennai – 600 101)

(ii) Service Tax Appeal No. 40404/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 308 & 309/2017 (CTA-II) dated 31.10.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(iii) Service Tax Appeal No. 40405/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 308 & 309/2017 (CTA-II) dated 31.10.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(iv) Service Tax Appeal No. 40541/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(v) Service Tax Appeal No. 40542/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(vi) Service Tax Appeal No. 40543/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(vii) Service Tax Appeal No. 40544/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(viii) Service Tax Appeal No. 40545/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(ix) Service Tax Appeal No. 40546/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(x) Service Tax Appeal No. 40547/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(xi) Service Tax Appeal No. 40548/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(xii) Service Tax Appeal No. 40549/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(xiii) Service Tax Appeal No. 40550/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(xiv) Service Tax Appeal No. 40551/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(xv) Service Tax Appeal No. 40552/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal Nos. 398 to 409/2017 (CTA-II) dated 26.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

(xvi) Service Tax Appeal No. 40658/2018 (M/s. Cognizant Technology Solutions India Pvt. Ltd.)

(Arising out of Order-in-Appeal No. 413/2017 (CTA-II) dated 30.11.2017 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 2nd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar, Chennai – 600 040)

APPEARANCE:

Shri R. Rajaram, Consultant for the Appellant

Ms. Sridevi Taritla, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 42377-42393 / 2021

DATE OF HEARING: 24.08.2021

DATE OF DECISION: **13.10.2021**

Order : Per Hon'ble Ms. Sulekha Beevi C.S.

The appellant is engaged in providing Information Technology Software Services and holds Service Tax registration for such services as well as services in the nature of Management Maintenance and Repair Services, Business Support Services, etc. The appellant provides services from various premises situated at different locations across the country. They have set up units in Special Economic Zones (SEZ) from where they export services.

1.2 The issue involved in the present appeals relate to 25 SEZ units in regard to which they have filed refund claims. Some of the SEZ units are Chennai MEPZ SEZ

Unit, Kochin Technopolis SEZ Unit, Hyderabad DLF SEZ, Kolkata Bantala SEZ, etc. In the course of authorized operations at the SEZ units, the appellants availed various input services on which they are required to pay Service Tax. In terms of Section 7 of the Special Economic Zones Act (hereinafter referred to as the 'SEZ Act'), 2005, any goods or services exported out of or imported into or procured from the domestic area by a unit in a Special Economic Zone or a developer, are exempted from payment of taxes, Duties or cess leviable under various enactments. The said exemption is provided in two ways, namely: (1) by way of refund of Service tax paid on the 'specified services' received by a unit located in a SEZ or the developer of SEZ and used for the authorized operations and (2) by way of not paying Service Tax *ab initio*. Among the two, the appellant has chosen the option of getting exemption by way of refund. 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, the refund claim can be preferred for refund of Service tax paid on input services used in the authorized operations. The appellant filed its refund claims in terms of the above Notifications which existed during the relevant period in Form A-2.

2. After preliminary scrutiny of the refund claims, the appellants were issued Show Cause Notices/Deficiency Memos proposing to reject the refund claims. After due process of law, the Original Authority rejected a part of the refund claims, which orders came to be upheld by the First Appellate Authority vide orders impugned herein. Aggrieved by such orders, the appellant is now before the Tribunal.

3. On behalf of the appellant, Learned Consultant Shri R. Rajaram appeared and argued the matter. He submitted that the refund claims have been rejected for the following reasons:

(i) The refund claim is filed beyond the time-limit of one year from the date of payment of Service Tax;
(ii) The Chartered Accountant certificate is not signed by the statutory auditor who was engaged during the period to which the refund claim pertains;
(iii) The credit availed on certain services are not eligible as these are not included in the specified list of services; and
(iv) The original invoices have not been submitted.

3.1.1 With regard to the first ground, it is submitted by the Learned Consultant for the appellant that as per Clause 3(e) of Notification No. 12/2013-ST dated 01.07.2013 as amended, under which the refund has *inter alia* been claimed, "the claim for refund shall be filed, within one year from the end of the month in which the actual payment of Service Tax was made by such developer or 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." That though the one-year period is prescribed under Section 11B of the Central Excise Act, 1944 for claiming refund, in terms of the said Notification, the time-limit for filing the refund is not restricted to one-year alone and the same can be extended by the Assistant Commissioner. That this clause provides that the Officer can permit a claimant to file the claim beyond the stipulated period of one year; thus, there is no statutory time-limit for claiming the refund and the rejection on this ground is against the provisions of law.

3.1.2 Learned Consultant for the appellant adverted to the dates on which the refund claims were submitted and argued that all the refund claims were filed within one year from the date of payment of Service Tax. The same were returned by the Department directing the appellant to produce necessary documents. That thereafter, the appellant has re-submitted the refund claims along with

the required documents. That the appellant has filed the refund claims within time and there was no delay in filing the same. When the refund claims had been returned with direction to furnish necessary documents, the Department cannot deny the refund claims and allege that the claim re-submitted is time-barred.

3.1.3 It is asserted by the Learned Consultant that the original claims were returned only for rectifying the defects of not furnishing necessary documents and they were not rejected after considering the merits. The appellant had re-submitted the claims along with necessary documents later. That it is the settled position of law that the date of filing the original claim should be reckoned for computing the period of limitation; that the date of re-submission has been taken as the relevant date for computing the limitation by the Adjudicating Authority, which is erroneous.

3.1.4 To support his argument, he relied upon the following decisions:

(i) M/s. Shasun Pharmaceuticals Ltd. v. Joint Secretary, MF (D.R.), New Delhi [2013 (291) E.L.T. 189 (Mad.)];

(ii) Commissioner of C.Ex., Delhi-I v. M/s. Arya Exports and Industries [2005 (192) E.L.T. 89 (Del.)];

(iii) M/s. United Phosphorus Ltd. v. Union of India [2005 (184) E.L.T. 240 (Guj.)];

(iv) M/s. Chola Pumps v. C.C.E. & S.T., Coimbatore [2018 (1) T.M.I. 485 – CESTAT, Chennai]

(v) M/s. ATC Tyres Pvt. Ltd. v. Commissioner of G.S.T. & Central Excise, Tirunelveli [*2021 (3) T.M.I. 681 – CESTAT Chennai]*

3.1.5 It is also submitted by the Learned Counsel for the appellant that as the exemption from taxes / Duties is provided by the SEZ Act, the condition of time-limit prescribed in the Notification cannot be pressed into application to deny the claim of refund. He relied upon

the decision 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.)*. That the Tribunal in the case of *M/s. ATC Tyres Pvt. Ltd. (supra)* held that the provisions of the SEZ Act, 2005 would prevail over the conditions prescribed in the Notifications which are issued under Section 93 of the Finance Act, 1994. That for this reason also, the view taken by the authorities below that the refund is time-barred cannot sustain.

3.2. The second ground for rejection of the refund claims is that it is alleged by the Department that the Chartered Accountant certificate was not signed by the statutory auditor, who was engaged for the relevant period of the refund claims. The Learned Counsel for the appellant explained that the financial statements for the relevant years were signed by M/s. Lovelock and Lewes and the auditor certificate in this case was issued by M/s. Price Waterhouse & Co. That M/s. Lovelock and Lewes and M/s. Price Waterhouse & Co. are part of the same firm. As per Notification Nos. 17/2011-S.T. dated 01.03.2011 and Notification No. 40/2012 dated 20.06.2012, the appellant has to furnish the certificate of the statutory auditor of the SEZ unit/developer; that at the time of filing the applications for claiming refund, M/s. Price Waterhouse & Co. were the statutory auditors and accordingly, the above requirement of the Notification has been complied with. The appellant has furnished the certificate of the auditor who was engaged at the time of making the refund claims. That the Department was of the view that certificate of the auditor who was engaged during the relevant time when the services were provided has to certify the financial statements. He argued that the intention of the Notification is for certification of the transactions by the auditor, who is the statutory auditor at the point of time when the certification is done. That since the auditor who was engaged at the time of filing the refund claims has certified the statements, the

authorities below ought not to have rejected the refund claims on this ground.

3.3.1 The third ground for rejection of the refund claims is that certain services are not included in the list of 'specified services'. It is submitted by the Learned Consultant for the appellant that all the services were used for authorized operations by the appellant and these services have been approved as 'specified services' by the Unit Approval Committee (UAC) / Development Commissioner of SEZ. That the authorities below then cannot apply their own view to hold that such services are not specified services for authorized operations.

3.3.2 He relied upon the decision 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* and *M/s. Tata Consultancy Services Ltd. v. Commissioner of Central Excise & ST (LTU), Mumbai* reported in *2013 (29) S.T.R. 393 (Tri. – Mumbai)* to support his above argument.

3.4.1 The fourth ground on which the refund has been rejected is that the appellant has not produced the original invoices. It is asserted by the Learned Consultant for the appellant that the appellant had produced photocopies of the invoices. That the appellant has various other premises and the invoices on the basis of 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.

3.4.2 Further, that non-submission of original invoices, if at all, is only a procedural lapse when sufficient evidence of payment of Service Tax is produced. The substantive benefit cannot be denied for a procedural lapse. 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"*

3.4.3 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.

3.4.4 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.)*

4.1 On the other hand, Ms. Sridevi Taritla, Learned Authorized Representative, appeared on behalf of the Department. She submitted that the refund claims were filed by the appellant on the last day without any supporting documents. That therefore, these claims were returned to the appellant with a deficiency memo, the details of which are tabulated as under:

Sl. No	Appeal No.	Period	Appeal before Commr. (Appeals) No. & dt.	Notifn. Under which refund claim is filed	Last date to file claim	Original date of filing claim by appellant	Date of return of claim by Dept.	Reference of Deficiency Memo issued by Dept.	Date of re-submission of the claim	No. of days delay in submission of refund claims
1.	ST/ 40541-40552/ 2018	April 2013	115/2016 (P) dt. 04.11.2016	Refund claims filed under Notification No. 40/2012-S.T. dated 20.06.2012	30.04.14	30.04.14	09.05.14	C.No.IV/16/632/2014 LTG, VI dt.09.05.14	07.01.16	617
2.		Oct 2012	116/2016 (P) dt. 14.11.2016		31.10.13	31.10.13	08.11.13	C.No.IV/16/704/2013 LTG, VI dt.08.11.13		798
3.		Aug 2012	111/2016 (P) dt. 14.10.2016		31.08.13	30.08.13	06.09.13	C.No.IV/16/6/2013 LTG, VI dt.06.09.13		859
4.		Sep 2012	113/2016 (P) dt. 31.11.2016		30.09.13	30.09.13	08.10.13	C.No.IV/16/495/2013 LTG, VI dt.08.10.13		829
5.		July 2012	116/2016 (P) dt. 04.11.2016		31.07.13	31.07.13	08.08.13	C.No.IV/16/482/2013 LTG, VI dt.08.08.13		890
6.		Dec 2012	117/2016 (P) dt. 04.11.2016		31.12.13	31.12.13	08.01.14	C.No.IV/16/601/2014 LTG, VI dt.08.01.14		737
7.		Mar 2013	118/2016 (P) dt. 04.11.2016		31.03.14	31.03.14	04.04.14	C.No.IV/16/621/2014 LTG, VI dt.04.04.14		647
8.		Feb 2013	119/2016 (P) dt. 04.11.2016		28.02.14	28.02.14	07.03.14	C.No.IV/16/611/2014 LTG, VI dt.07.03.14		678
9.		June 2013	120/2016 (P) dt. 04.11.2016		30.06.14	30.06.14	07.07.14	C.No.IV/16/637/2014 LTG, VI dt.07.07.14		556
10.		Jan 2013	121/2016 (P) dt. 04.11.2016		31.01.14	31.01.14	10.02.14	C.No.IV/16/606/2014 LTG, VI dt.10.02.14		706
11.		Nov 2012	122/2016 (P) dt. 04.11.2016		30.11.13	29.11.13	06.12.13	C.No.IV/16/712/2013 LTG, VI dt.06.12.13		768
12.		May 2013	123/2016 (P) dt. 04.11.2016		31.05.14	30.05.14	05.06.14	C.No.IV/16/635/2014 LTG, VI dt.05.06.14		586

4.2 That all the refund claims were re-submitted only after a lapse of many months. That even on resubmission of the refund claims, they were not supported by necessary documents, as prescribed in paragraph 3(f) of the Notification. That the appellant has not furnished any reasons for the delay in re-submission of the refund claims.

4.3 She referred to paragraph 2.4 of the CBEC's Excise Manual of Supplementary Instructions, 2005 to argue that the claim can be processed only if the necessary documents are filed along with the claim for refund. Since the claims were not supported by requisite documents, they were returned within the time-limit of 15 days, as prescribed in paragraph 3.2 of the CBEC's Excise Manual of Supplementary Instructions, 2005

4.4 She relied upon the decision in *M/s. KLA India Public Ltd. v. Commissioner of Central Excise, Meerut-I* reported in *2016 (41) S.T.R. 511 (Tri. – Del.)* and argued that the Tribunal has held that the time-limit is to be computed only with reference to the date on which the refund claim is submitted after removing defects and not with reference to the date on which the claim was originally submitted.

5. Heard both sides.

6.1 The first issue is that the refund claims are time-barred. In the Order-in-Appeal dated 26.11.2017, in page 3 of the order, "Table-B" shows the date on which the refund claims were originally filed, returned by the Department and thereafter re-submitted by the appellant. The said table is reproduced as under:

Sl. No.	Appeal No/Date	Last date to file the claim	Original date of filing of claim by the appellant	Claim returned Date by the respondent	Date of resubmission of the claim by the appellant
1	**2**	**3**	**4**	**5**	**6**
1	115/2016	30.04.2014	30.04.2014	09.05.2014	07.01.2016
2	110/2016	31.10.2013	31.10.2013	08.11.2013	
3	111/2016	31.08.2013	30.08.2013	06.09.2013	
4	113/2016	30.09.2013	30.09.2013	08.10.2013	
5	116/2016	31.07.2013	31.07.2013	08.08.2013	
6	117/2016	31.12.2013	31.12.2013	08.01.2014	
7	118/2016	31.03.2014	31.03.2014	04.04.2014	
8	119/2016	28.02.2014	28.02.2014	07.03.2014	
9	120/2016	30.06.2014	30.06.2014	07.07.2014	
10	121/2016	31.01.2014	31.01.2014	10.02.2014	
11	122/2016	30.11.2013	29.11.2013	06.12.2013	
12	123/2016	31.05.2014	30.05.2014	05.06.2014	

6.2.1 It is not disputed that all claims had been filed on or before the last date for filing the refund claims. These were returned by issuing Deficiency Memo since the appellant had not furnished necessary documents. The Deficiency Memo dated 10.07.2013 reads as under:

> " *Please refer to your letter CTS/LTU/028/2013/GK dated 28th June, 2013 under which a refund claim for Rs.91,96,902/- has been filed in terms of Notification No. 17/2011-ST dated 01-03-2011 claiming refund of service tax paid on the services used in the authorised operations of SEZ.*
>
> *Preliminary scrutiny of refund is done and it is noticed that the following documents were not filed along with the claim.*
>
> *(i) Original input service documents required under the Notification.*
>
> *(ii) Documentary proof of payment of service tax.*
>
> *In view of the above**, the refund claim is returned herewith**."*
>
> (Emphasis in original)

6.2.2 It can be seen from the above Deficiency Memo that the refund claim is returned to the appellant. There is no decision on merits; there is no application of mind or a speaking order rejecting the claim. The Learned Authorized Representative for the respondent has referred to the CBEC's Excise Manual of Supplementary Instructions, 2005 to argue that if a claim has been returned, the same has to be re-submitted within the prescribed period. However, it is seen that in the Deficiency Memo issued to the appellant, the Department has not referred to such Excise Manual of Supplementary Instructions or prescribed any time-limit within which the appellant has to re-submit the refund claim.

6.2.3 The appellant has re-submitted the claim on 25.08.2015 and different dates. A specimen of such re-submission letter is reproduced as under:

CTS/LTU/084/2015/GK 25th August 2015

The Deputy Commissioner of Central Excise & Service tax
Large Taxpayer Unit
1775, Jawaharlal Nehru Inner Ring Road
Anna Nagar Western Extension
Chennai – 600 101

Dear Sir,

Sub: Refund of service tax for services received by Special Economic Zones – June 2012

Please refer to your deficiency memo C.No.IV/16/471/2013-LTG-VI(B) Dated 10th July 2013 issued to our refund claim of service tax under Notification 17/2011 – ST for the month of June 2012 respectively.

In this regard, herewith with please find the resubmission of Original Form A for claiming refund of Service tax paid on specified services for the month of June 2012 and Chartered Accountant Certificate as a Documentary proof of payment of Service tax.

We Request you to please process our refund claim at the earliest and oblige.

Thanking You,

Yours Faithfully,

For Cognizant Technology Solutions India Private Limited

R Gopakumar
Authorised Signatory

COGNIZANT TECHNOLOGY SOLUTIONS INDIA PVT. LTD. CHENNAI

6.3 It is argued by the Learned Consultant for the appellant that they have establishments located in various locations and collection of all documents, correlation and preparation of refund claims require much time. We have to say that even though the appellant has taken longer time for re-submission, the refund claims have been filed within reasonable time.

6.4.1 The Hon'ble High Court of Delhi in the case of *Commissioner of C.Ex., Delhi-I v. M/s. Arya Exports and Industries (supra)* has held that the date of filing is the date on which the claim is filed initially, even if presented without documents. The Tribunal in the case of *M/s. Balmer Lawrie & Co. Ltd. v. Commissioner of C.Ex., Kolkata-VI reported in 2015 (315) E.L.T. 100 (Tri. – Kolkata)* considered a similar issue and held that when the claim has been filed within the limitation period of one year and returned by the Department for removal of defects, the date of subsequent re-submission cannot be taken as the date on which the claim is filed afresh. In the present case, the appellant has filed the refund claims originally within a period of one year and therefore, the date on which the claims were re-submitted along with documents cannot be considered to be the date of filing claim so as to deny the refund on the ground of limitation.

6.4.2 The Hon'ble jurisdictional High Court in the case of *M/s. Shasun Pharmaceuticals Ltd (supra)* had occasion to analyse a similar issue with regard to rebate claims filed by the assessee therein. The claims were filed by the assessee on 05.11.2007 and the same were returned on 28.12.2007, seeking specific clarifications with regard to the date of shipment of the goods. The petitioner had furnished proper documentary evidence in regard to this and thereafter filed the claims along with necessary documents and clarifications on 23.12.2008. Show Cause Notice was issued proposing to reject the rebate claims on the ground of limitation alleging that the claims had

been filed only on 23.12.2008 which is beyond the period of one year as prescribed in Section 11B of the Central Excise Act, 1944. The Hon'ble High Court held that in view of the fact that the rebate claim scheme has been introduced as a beneficial scheme to encourage exports, it has to be construed in a liberal manner and the relevant date for calculating the period of limitation should be taken as 05.11.2007, when the claims were originally presented.

6.5.1 It would also not be out of place to mention the Circular No. 1063/2/2018-CX dated 16.02.2018 issued by the Central Board of Excise and Customs (CBEC) with regard to the acceptance of the Orders of higher fora, namely, the Supreme Court, High Courts and the CESTAT:

> *"**Sub: Orders of Supreme Court, High Courts and CESTAT accepted by the Department and on which no review petitions, SLPs have been filed– reg**.*
>
> *.*
>
> *.*
>
> *.*
>
> ***4. Decision of the Hon'ble High Court of Gujarat dated 17.12.2015 in the matter of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014 [2015-TIOL-2859-HC-AHM-CUS]***
>
> *4.1 Department has accepted the order of the Hon'ble High Court of Gujarat in the case of Apar Industries (Polymer Division) vs Union of India in Special Civil Application No. 7815 of 2014. The issue examined in the order is as follows, Manufacturer exporter, M/s Apar Industries (Polymer Division) filed Rebate claims in incorrect format under Rule 19 instead of as required under Rule 18. The same was re-filed correctly but department held that the subsequent filing was time barred. The Hon'ble Court held that the intention of claiming rebate was clear and first application should have been treated by the department as rebate application. Whatever defect arose from the incorrect*

filing could have been rectified. In such situations, re-submission should be seen as a continuous attempt and therefore in the matter department was directed to examine the rebate claims of the petitioner on merits."

(Emphasis applied)

6.5.2 As per the above Circular, the Department has accepted the view taken by the Hon'ble High Court of Gujarat in the matter of *M/s. Apar Industries (Polymer Division) v. Union of India [2015-TIOL-2859-HC-AHM-CUS]* that re-submission should be seen as a continuous attempt and therefore, the subsequent filing after the claim has been returned cannot be construed as time-barred.

6.6.1 Be that as it may, 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;

(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)

6.6.2 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.”

6.6.3 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.

6.6.4 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 — 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)

6.6.5 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 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.

6.6.6 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.

6.6.7 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.

.

.

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."

6.6.8 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.

6.7 We therefore hold that the rejection of refund claims on the ground of being time-barred cannot sustain and requires to be set aside, which we hereby do.

7.1 The second issue is that the auditor's certificate is not signed by the statutory auditor who was engaged during the period when the refund is claimed. Learned Consultant for the appellant has explained that the auditor's certificate has been issued by M/s. Price Waterhouse & Co. who were engaged at the time of filing the applications for claiming refund, who were the statutory auditors at that point of time.

7.2 When the statutory auditor has given the certificate, we do not find any error so as to deny the refund on the allegation of the certificate not being issued by the proper person as required in the Notification. The rejection of refund claims on this ground is set aside.

8. The third issue on which the refund has been rejected is that the services are not used 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 by the authorities below 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.

9. The fourth 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.

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

(Order pronounced in the open court on **13.10.2021**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Sdd