***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

*** HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

*** HONOURABLE SRI JUSTICE P. KESHAVA RAO**

+Writ Petition No.13546 of 2018

Date: -12-2018

#**Between**:

M/s. GMR Aerospace Engineering Limited,
Plot No.1 GMR, Hyderabad Aviation SEZ Limited,
Rajiv Gandhi International Airport, Shamshabad,
Hyderabad and another

… Petitioners

And

Union of India, through the Secretary, Ministry
Of Commerce & Industry, SEZ Section, Udyog
Bhavaan, New Delhi and 5 others

… Respondents

! Counsel for the Petitioner : Mr. S. Niranjan Reddy, Sr. counsel
Appearing on behalf of Rubaina S.
Khatoon

^ Counsel for Respondents : Mrs. Sundari R Pisupati,
Senior standing counsel

<Gist:

> Head note:

? Cases referred

1) AIR 1956 SC 604

2) 2011 (3) SCC 1

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

Writ Petition No.13546 of 2018

ORDER: *(per V. Ramasubramanian, J)*

Challenging an Order-in-Original passed by the Commissioner of Central Tax (5th respondent), confirming the demand of service tax for the period October, 2011 to March, 2016 levied in terms of Section 73 (2) of the Finance Act, 1994 and also challenging three notifications issued by the Government of India, the petitioners have come up with the above writ petition.

2. Heard Mr. S. Niranjan Reddy, learned senior counsel appearing for the petitioners and Smt. Sundari R. Pisupati, learned senior standing counsel appearing for the respondent-Department.

3. The 1st petitioner is engaged in the business of development of MRO facilities for various types of aircrafts as a Co-Developer. The 2nd petitioner is a Developer of GMR Hyderabad Aviation SEZ.

4. The 2nd petitioner was incorporated in December 2007 and was appointed as a Developer of GMR Aviation SEZ and was issued with a Certificate dated 31-05-2010 by the office of the Development Commissioner, who is the 4th respondent herein.

5. The 1st petitioner is a unit set up in the GMR Aviation SEZ and they happen to be a Co-Developer-cum-Unit for maintenance, repair and overhaul services and facilities for various types of

aircrafts. The 1st petitioner was approved as a Co-Developer by a Letter of Approval dated 20-09-2010. The 4th respondent also issued a certificate dated 29-09-2010 to the 1st petitioner, by which the services consumed within the SEZ for carrying out authorised operations were exempt from the levy of service tax.

6. The 2nd petitioner entered into a sub-lease agreement with the 1st petitioner on 01-06-2010 for rendering the services of (1) lease of land of an extent of 24.55 acres for setting up MRO facilities, (2) supply of electricity for commercial operations and (3) supply of water for commercial operations. It is relevant to note here that a lease from the Developer is required under Rule 11 (5) and Rule 18 (2) (ii) of the SEZ Rules.

7. For the services rendered by them, the 2nd petitioner has been raising invoices on the 1st petitioner and they have also been filing their returns and availing exemptions. No service tax is charged and as a consequence, Form A1 and A2 are not filed by the 2nd petitioner, as required by three notifications issued respectively on 01-03-2011, 20-06-2012 and 01-07-2013.

8. However, the concerned authorities of the service tax demanded these forms, to grant the benefit of exemptions and hence, the 1st petitioner requested the issue of the relevant forms with effect from 01-06-2010. But, the Board of Approval, in their meeting held on 08-03-2017 rejected the appeal of the petitioners for the issue of Forms A1 and A2 on the ground that these forms cannot be issued with retrospective effect.

9. Thereafter, the 5th respondent issued a show cause notice dated 12-04-2017 to the 2nd petitioner alleging that the 2nd petitioner was providing the services of the renting of immovable property to the 1st petitioner without obtaining copies of Forms A1 and A2 and that therefore, there was contravention of the provisions of the Finance Act, 1994 resulting in the 2nd petitioner becoming ineligible for the grant of exemption in terms of the notifications.

10. Challenging the order of the Board of Approval dated 08-03-2017 communicated by the letter of Ministry dated 06-04-2017 and also challenging the show cause notice, the petitioner filed a writ petition. The writ petition was disposed of by an order dated 03-01-2018 directing the 5th respondent to consider the case of the petitioners with all objectivity and to pass orders after giving an opportunity of personal hearing.

11. Thereafter, the petitioners filed their objections. However, the 5th respondent passed an Order-in-Original dated 20-02-2018 confirming the demand and also imposing a penalty under Sections 77 and 78 of the Finance Act. The main ground on which the 5th respondent confirmed the demand was that the petitioners were obliged to comply with all the conditions stipulated in three notifications dated 01-03-2011, 20-06-2012 and 01-07-2013 issued under the Finance Act, 1994 to be eligible for the grant of exemption and that since those procedural requirements were not satisfied, the 2nd petitioner was not entitled to exemption. In view of such a stand taken by the 5th respondent, the petitioners have come up with the

above writ petition challenging (1) the notifications dated 01-03-2011, 20-06-2012 and 01-07-2013 issued under the Finance Act, 1994, (2) the decision of the Board of Approval dated 08-03-2017 communicated by the letter dated 06-04-2017 and (3) the Order-in-Original dated 20-02-2018.

12. The main ground on which the petitioners challenge the impugned proceedings is that under Section 26 (1) (e) of the Special Economic Zones Act, 2005, (hereinafter called "the SEZ Act) every Developer and entrepreneur shall be entitled to exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a SEZ. But the grant of exemption will be subject to the terms and conditions as prescribed by the Central Government in terms of sub-section (2) of Section 26. The Central Government has issued a set of Rules known as "**Special Economic Zones Rules, 2006**" in exercise of the power conferred by Section 55. Rule 22 of these Rules stipulates the terms and conditions for availing exemptions by the Developer and entrepreneur in respect of authorised operations. Therefore, the SEZ Act, 2005 and the Rules framed thereunder entitle a unit located in a SEZ to exemption from payment of service taxes and the same cannot depend upon the conditions stipulated in the notifications issued under Section 93 of the Finance Act, 1994. Neither the SEZ Act nor the Rules framed thereunder, make the exemption available under the Act, subject to

fulfillment of conditions stipulated in any other enactment including the Finance Act, 1994.

13. The writ petition is opposed by the respondents on the ground, *inter alia*, (1) that the petitioners have an effective alternative remedy of appeal as against the Order-in-Original; (2) that the SEZ Act, 2005 and the Rules framed thereunder do not constitute a self-contained Code and hence, the fulfillment of the conditions stipulated in the notifications issued under Section 93 of the Finance Act, 1994 is a *sine qua non* for the grant of exemptions and (3) that since the notifications issued under the Finance Act, 1994 do not run contrary to or in conflict with the SEZ Act, 2005 and the Rules framed thereunder, the petitioners are obliged to fulfil even the conditions prescribed by the notifications issued under the Finance Act, 1994.

14. We have carefully considered the above submissions.

15. Let us first take up the question of availability of effective alternative remedy. This issue need not detain us for a long time, since the law is too well settled. Since the refusal of a writ Court to entertain a writ petition under Article 226 of the Constitution of India is not out of a bar of jurisdiction, but on account of a self-imposed restriction, there is no impediment for this Court to entertain a writ petition in cases, (1) where the principles of natural justice are violated; (2) where the impugned action is without jurisdiction and (3) where the impugned action is without the authority of law. The petitioners pitch their claim on the ground that the 5th respondent

had no jurisdiction and that the application of the notifications under the Finance Act, 1994 is without the authority of law. If the petitioners succeed on this ground, we need not drive them to the alternative remedy available under the statute. If they fail on this ground, they can always be directed to avail the alternative remedy.

16. That takes us to the main contention revolving around the SEZ Act, 2005, SEZ Rules, 2006, Finance Act 1994 and the notifications issued by the Government. Before looking at the interplay of all these, it may be useful to first take note of the scheme of the Act. The broad scheme and the features of the SEZ Act, 2005 was taken note of by a Division Bench of the Madras High Court to which one of us (VRSJ) was a party, in **Nokia India Sales Pvt. Ltd., v. the Assistant Commissioner (CT), Sriperumbudur Assessment Circle, Chennai**[1]

> *18. The Parliament enacted the Special Economic Zones Act, 2005 with a view to provide for the establishment, development and management of Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto. Section 3(1) of the Act enables the Central Government, the State Government or any person, either jointly or severally, to establish a Special Economic Zone, for the manufacture of goods or rendering of services or for both or as a free trade and warehousing zone. Section 5 of the Act prescribes the guidelines for notifying an area as a Special Economic Zone. A careful look at Section 5 would show that these guidelines include (i) generation of additional economic activity; (ii) promotion of exports of goods and services; (iii) promotion of investment from domestic and foreign sources; (iv) creation of employment opportunities; (v) development of infrastructural facilities; and (vi) maintenance of sovereignty and integrity of India. The areas falling within the Special Economic Zone may be demarcated into (i) processing area for the manufacture of goods or rendition of services; (ii) area for trading or warehousing purposes; and (iii) non processing areas, other than those covered by the first two items.*
>
> *19. Under Section 7 of the Act, any goods or services exported out of or imported into or procured from the Domestic Tariff Area, are exempt from payment of taxes and duties under all enactments specified in First Schedule. Under Section 15 of the Act, any person intending to set up a unit for carrying on the authorised operations in a Special Economic Zone may submit a proposal to the Development Commissioner. He must, in turn, send the proposal to the Approval Committee. The proposal may be approved by the Committee with or without modifications or it can be rejected.*

[1] 2017 (101) VSP 361 (Mad)

20. Section 26 of the Act (Central) entitles every Developer or Entrepreneur to the exemptions, drawbacks and concessions listed in Clauses (a) to (g) of Sub-Section (1) thereto. Section 29 makes it clear that the transfer of ownership in any goods brought into or produced or manufactured in any unit or the removal thereof from such unit, can be allowed subject to the terms and conditions stipulated by the Central Government.

21. Section 30 of the Central Act makes any goods removed from a Special Economic Zone to the Domestic Tariff Area, chargeable to duties of customs including anti-dumping, countervailing and safeguard duties. It will be of interest to note that Section 30 of the Central Enactment is exactly identical to Section 15 of the TNSEZ Act, 2005.

22. Section 50 of the Central Enactment empowers the State Government, to notify policies for developers and units and also to take suitable steps for enactment of any law, for the purposes of giving effect to the provisions of this Act. The reason as to why the Central Enactment empowers the State Government to enact a law, is that in respect of taxes, levies and duties that could be imposed only by the State Government, by virtue of the relevant entries in List II of the VII Schedule to The Constitution, the Central Government is not competent to grant exemption. Therefore, while the Central Enactment provides for exemption to the units located in SEZs created thereunder, only in respect of the taxes, levies and duties that can be imposed by the Central Government, a State Enactment alone can provide for exemption from payment of taxes, levies and duties that can be imposed exclusively by the State Government.

23. Section 51 of the Central Enactment confers overriding effect upon the Act, vis-a-vis any other law. Section 53 declares a Special Economic Zone to be a territory outside the Customs Territory of India, for the purpose of undertaking the authorized operations. The Special Economic Zone will be deemed to be a port, inland container depot, land station and land customs station under Section 7 of the Customs Act, 1962.

17. In the case on hand, there is no dispute on facts. The undisputed facts are: (1) that the 1st petitioner is a unit set up in GMR Aviation SEZ, (2) that the 1st petitioner is approved as a co-Developer vide Letter of Approval dated 20-09-2010, (3) that the 1st petitioner was issued with a certificate dated 29-09-2010 by the Development Commissioner to the effect that the services consumed within the SEZ for carrying out authorised operations are exempt from the levy of service tax, (4) that the 2nd petitioner is the Developer of GMR Aviation SEZ, as borne out by a certificate dated 31-05-2010 and a Letter of Approval dated 31-05-2010; (5) that as a Co-Developer, the 2nd petitioner entered into a sub-lease agreement with the petitioner on 01-06-2010, for rendering the services of lease

of land, supply of electricity and supply of water and (6) that the services so rendered are by a co-Developer to a Developer, which is a unit located in the SEZ.

18. In the light of the above admitted facts, the only question that arises for consideration is as to whether the availability of exemptions under Section 26 of the SEZ Act would depend not only upon the terms and conditions prescribed under Section 26 (2), but also upon the terms and conditions prescribed in the notifications issued under various enactments such as Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1944, Central Excise Tariff Act, 1985, Finance Act, 1994 and Central Sales Tax Act, 1956 etc., enlisted in clauses (a) to (g) of sub-section (1) of Section 26 of the Act.

19. The only argument of Smt. Sundari R. Pisupati, learned senior standing counsel for the Department is that since SEZ Act, 2005 and the Rules framed thereunder do not constitute a self-contained Code, the availability of exemptions under Section 26 of the Act would certainly depend upon the terms and conditions stipulated in the notifications issued under the respective enactments indicated in clauses (a) to (g) of sub-section (1) of Section 26. But, the contention of Mr. S. Niranjan Reddy, learned senior counsel appearing for the petitioners, is that there is no scope for restricting Section 26, especially when the SEZ Act, 2005 which is also a parliamentary enactment of a later date, is given an overriding effect under Section 51 of the Act.

20. In order to find an answer to this question, one must understand in conceptual terms, what a Special Economic Zone is. As pointed out by the Madras High Court in ***Nokia India Sales, a SEZ (1) is a territory outside the Customs Territory of India for the purpose of undertaking authorized operations and (2) is deemed to be a port, in land container depot, land stations and land customs station under Section 7 of the Customs Act, 1962***. This is by virtue of Section 53 of SEZ Act, 2005. Keeping this core concept in mind, let us now go to the provisions of the Act. Section 7 of the Act exempts from payment of taxes, duties or cess, under all enactments specified in the First Schedule, any goods or services exported out of or imported into or procured from Domestic Tariff Area, by a unit in a SEZ or a developer. But Finance Act, 1994 is not one of the enactments specified in the First Schedule. Therefore, Section 7 has no application to the case on hand.

21. However, Section 26 (1) specifically allows exemptions, drawbacks and concessions to every developer and entrepreneur. These exemptions are confined to the enactments listed in clauses (a), (b), (c), (e), (f) and (g). Section 26 in its entirety reads as follows:

> ***"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).”

22. It may be noted that sub-section (1) of Section 26 begins with the words “subject to the provisions of sub-section (2)”. Sub-section (2) authorizes the Central Government to prescribe the manner in which and the terms and conditions subject to which exemptions shall be granted to the Developer or entrepreneur under sub-section (1).

23. As rightly pointed out by Sri S. Niranjan Reddy, learned senior counsel appearing for the petitioner, the word “***prescribe***” appearing in sub-section (2) of Section 26 has to be understood with reference to the definition of the word “***prescribed***” appearing in

Section 2 (w) of the SEZ Act, 2005. Section 2 (w) of the Act reads as follows:

> *"prescribed" means prescribed by rules made by the Central Government under this Act."*

24. Therefore, the terms and conditions subject to which the exemptions are to be granted under sub-section (1) of Section 26 should be prescribed by the Rules made by the Central Government under the SEZ Act, 2005. Being conscious of this fact, the executive has incorporated Rule 22 in the SEZ Rules, 2006 issued in exercise of the power conferred by Section 55 of the SEZ Act. It is not necessary to extract Rule 22, since there is no dispute about the fact (1) that the petitioners have complied with the prescriptions contained in Rule 22 of the SEZ Rules, 2006 and (2) that Rule 22 of the SEZ Rules 2006 does not stipulate the filing of forms A1 and A2 as prescribed in the three notifications issued under Section 93 of the Finance Act, 1994.

25. In other words, the 5th respondent does not dispute the fact that the petitioners have fulfilled the terms and conditions stipulated in Rule 22 of the SEZ Rules, 2006 and that if those Rules are considered on a stand alone basis, the petitioners would be entitled to the exemptions.

26. Having taken note of the provisions of the SEZ Act and Rules, let us have a look at the Finance Act and the relevant notifications. Section 93 of the Finance Act, 1994 reads as follows:

> ***"93. Power to grant exemption from service tax:***

> *(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.*
>
> *(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order."*

27. A look at Section 93 of the Finance Act, 1994 would show that it has nothing to do with the units located in a SEZ. Section 93 is a general power of exemption available for the benefit of all and sundry. In fact, Section 93 was substituted in its present form by Finance (No.2) Act, 1998 with effect from 16-10-1998. The notifications issued under Section 93 may cover taxable services of any description. Even the units located outside a SEZ are entitled to the benefit of the notifications issued under Section 93 of the Finance Act, 1994, if the conditions stipulated in those notifications are fulfilled.

28. The SEZ Act, 2005 is also a parliamentary enactment issued later in point of time to the Finance Act, 1994 and Section 51 of the Act declares that the provisions of the SEZ Act, 2005 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. Section 51 reads as follows:

> *"**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."*

29. The contention of Smt. Sundari R. Pisupati, learned senior standing counsel is that there is no inconsistency between (i) the terms and conditions prescribed in the notifications issued under Section 93 of the Finance Act, 1994 and (ii) the terms and conditions prescribed in Rules 22 and 31 of the SEZ Rules, 2006, and that therefore, Section 51 of the SEZ Act, 2005 cannot be pressed into service. But this contention is unacceptable.

30. This is for the reason that Section 26 (1) of the SEZ Act made the entitlement to certain exemptions subject to provisions of sub-section (2) of Section 26. Section 26 (1) did not make the entitlement of a Developer to certain exemptions, subject to the provisions of something else other than the provisions of sub-section (2). Therefore, the 5th respondent cannot read Section 26 (1) to mean that the exemptions listed therein are (1) subject to the provisions of sub-section (2) of Section 26, and (2) also subject to the terms and conditions prescribed in the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Tariff Act, 1985 and the Finance Act, 1994. This is especially so, since the authority of the Central Government to prescribe the terms and conditions subject to which exemptions may be granted under Section 26 (1), flows only out of sub-section (2) of Section 26. The word "***prescribe***" is verb. Generally no enactment defines the word "***prescribe***". But the SEZ Act 2005 defines the word "***prescribe***" under Section 2 (w) to mean the rules framed by the Central

Government under the SEZ Act, 2005. The space is also not left unoccupied, as the Central Government has issued a set of Rules known as "**the Special Economic Zones Rules, 2006"**, wherein the Central Government has prescribed the terms and conditions for grant of exemptions under Rule 22. Therefore, there is no question of comparing the terms and conditions prescribed in Rule 22 with the terms and conditions prescribed in the notifications issued under any one of five enactments listed in Section 26 (1) to find out whether there was any inconsistency.

31. Support can be drawn for the above interpretation, from Section 50 of the SEZ Act, 2005 also. Section 50 of the SEZ Act, 2005 enables State Governments to enact laws for the grant of exemption from state taxes, levies and duties. Since a Central Law cannot provide for exemption from the levy of state taxes, Section 50 merely enables the State Governments to enact laws.

32. A combined reading of Sections 7, 26 and 50 of the SEZ Act, 2005, would show that SEZ Act 2005 speaks of three different types of exemptions. They are,-

(1) exemption from payment of taxes under the enactments specified in the First Schedule, in respect of goods and services exported out of, or imported into or procured from a DTA by a unit in a Special Economic Zone or a Developer under Section 7,

(2) exemption from payment of duties under the Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1994,

Central Excise Tariff Act, 1985, Finance Act, 1994, Finance (No.2) Act, 2004 and Central Sales Tax Act, 1956, covered by Section 26 (1); and

(3) exemption from payment of state taxes, levies and duties covered by Section 50, provided there is a state enactment to the said effect.

33. The word "***prescribe***" is used in the present tense in Section 26 (2) and in the past tense in Section 7. Both will have the same meaning as assigned to the word under Section 2 (w). The moment a set of rules is issued either in respect of matters covered by Section 7 or in respect of matters covered by Section 26 (1), there is no scope for invoking any other law for imposing any other condition.

34. The benefit of exemptions granted under the notifications issued under Section 93 of the Finance Act, 1994, are available to any one and not necessarily confined to a unit in a special economic zone. Section 93 of the Finance Act, in that sense is a general power of exemption available in respect of all taxable services. But, Section 26 (1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone. Therefore, the notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in a SEZ qualifies for exemption or not.

35. For driving home her contention that SEZ Act, 2005 and the rules framed thereunder do not constitute a complete Code in

themselves, Smt. Sundari R. Pispuati, learned senior standing counsel relied upon two decisions of the Supreme Court and one decision of the Madras High Court. In **Ravula Subba Rao v. Commissioner of Income Tax, Madras**[2] relied upon by the learned senior standing counsel, the question that arose before the Supreme Court was whether the requirement under the Income Tax Rules (as they existed then) for all partners to sign an application for registration personally, would exclude the applicability of the Powers of Attorney Act, 1882, which empowers every agent to do what the principal is capable of doing. The Supreme Court held in that context that the Income Tax Act is a complete Code in itself and that therefore, the question of importing the Powers of Attorney Act, would not arise.

36. In **Girnar Traders v. State of Maharashtra**[3], relied upon by Smt. Sundari R. Pisupati, learned senior standing counsel, the Supreme Court considered in detail the question as to when the provisions of a statute could be construed as a self-contained code. It was pointed out in the said judgment that if complete machinery or mechanism is not provided under an Act to ensure effective execution of the functions assigned therein, with due protection of the rights of the interested persons, within the framework of law, it may not be possible for the court to hold that such a statute is a self-contained code. But, the Court also pointed out in the said decision that it is not possible to state parameters of universal application,

[2] AIR 1956 SC 604
[3] 2011 (3) SCC 1

which could determine with precision as to whether an Act is a self-contained code or not. In paragraph 35 of the report in **Girnar Traders,** the Supreme Court held that where a law contains a compilation of provisions, which would comprehensively deal with various aspects of the purpose sought to be achieved by that law and its dependence on other legislations is either absent or minimal, the same can be said to be a complete code.

37. Even if apply the parameters indicated in **Girnar Traders,** the case on hand would pass the test. Section 26 (1) of the SEZ Act indicates (1) persons who are entitled to exemptions; (2) the duties in respect which exemption is available; (3) the circumstances under which exemption is available and (4) the provisions of law subject to which the exemptions are available. To put it in simple terms, Section 26 (1) identifying the persons, who are eligible for exemption. They are the Developer and entrepreneur. Section 26 (1) identifies the duties from which exemption is available. They are the duties under the Customs Act, Customs Tariff Act etc. Section 26 (1) also indicates the circumstances under which the exemptions are available. These circumstances vary from clause to clause under Section 26 (1). This can be best understood by providing a tabulation as follows:

Duty exempted	Circumstances under which exempted
1) Duty under Customs Act, 1962	1) on goods imported into or services provided in a special economic zone or a unit to carry on the authorised operations by the Developer or entrepreneur
2) Duty under the Customs Tariff Act,	2) All goods exported from or services

1975	provided from a SEZ or from a unit to any place outside India.
3) Duty of excise under the Central Excise Act, 1944 or Central Excise Tariff Act, 1985	3) All goods brought from DTA to a SEZ or unit to carry on the authorised operations by the Developer or entrepreneur
4) Service tax	4) on taxable services provided to a developer or unit to carry on the authorised operations in a SEZ
5) Securities transaction tax leviable in Finance (No.2) Act, 2004	5) If the taxable securities transactions are entered into by a non-resident through the international financial service centre.
6) Taxes under the Central Sales Tax Act, 1956	6) If such goods are meant to carry on authorised operations by the Developer or entrepreneur.

38. Thus, the SEZ Act clearly indicates the persons who are entitled to the benefit of exemptions. The Act also lists out the duties from which exemption is granted. The Act enlists the operations or activities in respect of which exemption is available.

39. After prescribing all the above three, in Section 26 (1) itself, the Act also empowers the Central Government to prescribe in the form of Rules, the manner in which and the terms and conditions subject to which the exemptions are to be granted. Therefore, all the parameters indicated in **Girnar Traders** are satisfied in Section 26 and the Rules issued thereunder. If the word “prescribe” has not been defined or at least if Section 26 had used the words “prescribed under the relevant statutes” the position would have been different.

40. Inviting our attention to a Circular No.105/08/2008 in F.No.137/168/2008-CX.4, dated 16-09-2008, Smt. Sundari R. Pisupati, learned senior standing counsel contended that there is no exclusion of SEZ in Chapter-V of the Finance Act, 1994 and that the

service tax is applicable on taxable services provided by SEZ units, except those that are exempt by Notification No.4 of 2004. She also drew our attention to the amendment introduced to the SEZ Rules by way of notification in GSR 772 (E), dated 05-08-2016. Under this notification, sub-rule (5) was inserted under Rule 47 of the SEZ Rules, 2006. This sub-rule (5) inserted in Rule 47 of the SEZ Rules 2006 reads as follows:

> *"(5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to unauthorized operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder".*

41. On the strength of the aforesaid circular and the amendment to the Rules, it was contended by the learned senior standing counsel that the machinery provisions for working out refund, drawback etc., are not available either in SEZ Act or the Rules framed thereunder and that therefore, the operation of the Act is subject to the provisions of the other enactments.

42. But, we do not agree. Though the "section title" to Section 26 reads as "exemptions, drawbacks and concessions", clauses (a) to (g) except clause (d) speak only about exemptions. It is only clause (d) of sub-section (1) of Section 26, which speaks about drawbacks and such other benefits. In so far as exemption is concerned, sub-section (1) makes the entitlement of a Developer to exemption, subject only to the provisions of sub-section (2) of

Section 26. Sub-section (2) of Section 26 empowers the Central Government to prescribe both the manner in which as well as the conditions subject to which exemptions may be granted. Therefore, the area relating to exemption is completely occupied by the rules.

43. It is only the issues relating to refund, demand, adjudication, review and appeal, which were left unoccupied by the SEZ Act and the Rules framed thereunder. Realising the vacuum in respect of these specific areas, sub-rule (5) was inserted under Rule 47. Sub-rule (5) of Rule 47 makes a reference to the provisions of the three enactments namely Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 and the Rules made thereunder and the notifications issued thereunder. It is by virtue of this sub-rule (5) that the authorities can fall back upon the Rules and notifications issued under those three enactments. The very fact that sub-rule (5) was inserted would show, that but for its insertion, the respondents cannot fall back upon the Rules framed under the Customs Act etc., for dealing with a question of refund, demand, adjudication etc.

44. The issue can be looked at from another angle also. If sub-rule (5) of Rule 47 had also included the procedure for grant of exemption within its purview, then the stand taken by the Department would be perfectly valid. The very fact that sub-rule (5) of Rule 47 made the Rules and notifications issued under certain Acts applicable only to issues of refund, demand etc., would show that Rules 22 and 31 have independent legs to stand.

Therefore, the writ petition is allowed, the Order-in-Original dated 20-02-2018 is set aside and the notifications in question in so far as they relate to Special Economic Zones, are set aside. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

Date:27-12-2018

Ksn