Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.12749 of 2019

(Arising out of OIA-AHM-EXCUS-002-APP-83-86-19-20 dated 09/10/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD)

INTAS PHARMACEUTICALS LTD **.....Appellant**
Corporate House Near Sola Bridge, S.G. High Way, Thaltej
Ahmedabad, Gujarat

VERSUS

C.S.T.-SERVICE TAX – AHMEDABAD **.....Respondent**
7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

WITH

i. **Service Tax Appeal No. 12750 of 2019 (INTAS PHARMACEUTICALS LTD)**
ii. **Service Tax Appeal No. 12751 of 2019 (INTAS PHARMACEUTICALS LTD)**
iii. **Service Tax Appeal No. 12752 of 2019 (INTAS PHARMACEUTICALS LTD)**

APPEARANCE:
Shri Willingdon Christian, Advocate for the Appellant
Shri J A Patel, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/10512-10515 /2022

DATE OF HEARING: 12.05.2022
DATE OF DECISION:12.05.2022

RAJU

The appeals are filed by M/s. Intas Pharmaceuticals Ltd against partial rejection of refund claim and denial of interest thereon. The details of Order-In-Original and the amount involved are as under:-

Sr. No.	OIO No. & Date	Period	Rejected Amount of Refund (Rs.)
1.	GST-06/Refund/61/AC/RJM/Intas/18-19 dtd. 4.12.2018	July to September, 2016	2,07,720/-

2.	GST-06/Refund/48/AC/RJM/Intas/18-19 dtd. 10.10.2018	October to December, 2016	33,24,832/-
3.	GST-06/Refund/49/AC/RJM/Intas/18-19 dtd. 10.10.2018	January to March, 2017	1,03,846/-
4.	GST-06/Refund/54/AC/RJM/Intas/18-19 dtd. 23.10.2018	April to June, 2017	3,77,929/-

02. The appellants are located in SEZ and received some services for authorised operations. In terms of Notification No.12/2013-ST, they claimed refund of the service tax paid by the service provider. The learned counsel pointed out that some amount of refund has been sanctioned and balance rejected on the ground that some services were not identified as specified services by the Approval Committee. The learned counsel relied on the decision in their own case reported in 2013 (32) STR 543 (Tri-Ahmd.) wherein, the benefit on such service were allowed on the following grounds:-

> ***"11.*** *On 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 'c' 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."*

2.1 It was argued by learned counsel that the SEZ Act allows duty free receipt of services required for the authorized operations. He pointed out that Notification No.12/2013-ST provides the route of refund of such service tax paid. He also pointed out that there is no requirement of approval of any specified service by approval committee in the SEZ Act. He stated that this

requirement arise only by virtue of clause 3(I) of Notification No.12/2013-ST dated 01.07.2013. He pointed out that section 51 of the SEZ Act provides that the provisions of the act would have overriding effect on any other law for the time being in force. He pointed out that Rule 31 of the SEZ Rules, 2006 grants exemption from service tax on admissible services rendered to the Developer or an unit by way of any service provider for the authorized operations in SEZ. He pointed out that this provision have been interpreted by Tribunal in the following cases:-

- MAKERS MART Vs. CCE &ST- 2016 (43) STR 309 (Tri-Del.)
- ZYDUS HOSPIRA ONCOLOGY PVT. LTD. Vs.- 2013 (30) STR 487 (Tri.-Ahmd.)
- HARMAN CONNECTED SERVICES CORPORATION INDIA PVT. LTD. Vs. CCT- 2021 (49) GSTL 11 (Tri.-Bang.)
- MAHINDRA ENGINEERING SERVICE LTD. Vs. CCE- 2015 (38) STR 841 (Tri.-Mum.)

2.2 He further pointed out that all these refund are granted under Section 11B of the Central Excise Act and consequently, they are also entitled to interest in terms of Section 11BB of the Central Excise Act.

03. Learned AR relies on the impugned order. Learned AR also relied on the Tribunal's decision in the case of KOLLAND DEVELOPERS PVT. LTD.- 2016 (44) S.T.R. 65 (Tri.-Mumbai) wherein, the benefit of refund was not allowed on the services not approved as specified services by the approval committee. He also relied on the decision of the Hon'ble Apex Court in DILIP KUMAR & COMPANY- 2018 (361) E.L.T. 577 (S.C.) to assert that the notification have to be read strictly. He pointed out that notification No. 12/2013-ST clearly restricts the exemption only to specified services approved by the approval committee.

04. I have considered the rival submissions. I find that in the appellant's own case vide order reported in 2013 (32) STR 543 (Tri-Ahmd.), the benefit of refund has been allowed in respect of services not listed as a specified services approved by the approval committee. In Para 11 of the said order, following has been observed :-

> ***11.*** *On 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 'c' 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.

It is seen that identical decisions have been made in the following decision of tribunal:-

- MAKERS MART Vs. CCE &ST- 2016 (43) STR 309 (Tri-Del.)
- ZYDUS HOSPIRA ONCOLOGY PVT. LTD. Vs.- 2013 (30) STR 487 (Tri.-Ahmd.)
- HARMAN CONNECTED SERVICES CORPORATION INDIA PVT. LTD. Vs. CCT- 2021 (49) GSTL 11 (Tri.-Bang.)
- MAHINDRA ENGINEERING SERVICE LTD. Vs. CCE- 2015 (38) STR 841 (Tri.-Mum.)

4.1 On the contrary, learned AR has relied on the decision in the case of KOLLAND DEVELOPERS PVT. LTD (supra). It is seen that in the said case, the decisions of Division Bench on identical issues were not cited and therefore, that decision was passed without taking note of the fact that the issue was covered by decisions of the Division Bench in many cases listed by learned counsel.

4.2 In view of the above, I find that the appellants are entitle to refund in respect of services received by them for the authorized operations even if, such services are not listed as a specified services in the list approved by the Approval Committee.

4.3 The appellants have also sought interest on delay in payment of refund in terms of Section 11BB. The learned counsel has relied on the decision of

the RANBAXY LABORATORIES LTD.- 2011 (273) ELT 3 (SC), in the said decision following has been observed :-

> ***9.*** *It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.*
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> ***10.*** *It is a well settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. [See: Cape Brandy Syndicate v. Inland Revenue Commissioners, [1921] 1 K.B. 64 and Ajmera Housing Corporation & Anr. v. Commissioner of Income Tax, (2010) 8 SCC 739].*

4.4 In the instant case, I notice that there is no specific mechanism provided for notification No. 12/2013-ST. Consequently, all these refund would be governed by Section 11B and therefore, the appellant would be entitle to interest in terms of Section 11BB in terms of decision of Hon'ble Apex Court in case of RANBAXY LABORATORIES LTD (supra).

05. The appeals are consequently allowed in the above terms.

(Dictated & Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

Mehul