

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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 13750 of 2013-SM

(Arising out of OIA-180/2013-STC-/SKS/COMMR-A-/AHD dated 22/08/2013 passed by Commissioner of Central Excise, Customs and Service Tax-SERVICE TAX - AHMEDABAD)

Zydus Hospira Oncology Pvt Ltd

Plot No. 3, Pharmez-Sez, Sarkhej-Bavla Highway,
Village- Matoda, Taluka- Sanand,
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.S.T.-Service Tax – Ahmedabad

7 th Floor, Central Excise Bhawan, Nr. Polytechnic
Central Excise Bhavan, Ambawadi,
Ahmedabad, Gujarat - 380015

.....Respondent

APPEARANCE:

Shri Dhaval Shah, Advocate appeared for the Appellant

Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11621 /2023

DATE OF HEARING: 28.03.2023

DATE OF DECISION: 28.07.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for refund claim under Notification No. 09/2009-ST dated 03.03.2009 as amended by Notification No. 15/2009-ST dated 25.05.2009 in respect of input services namely out of pocket expenses collected by the service provider, rent-a-cab service and convention service. The issue also involved is that whether the rejection of refund claim on the ground that in invoice issued by the service provider the item code does not tally with one mentioned in the enclosed gate pass is correct or otherwise.

2. Shri. Dhaval K Shah, learned Counsel appearing on behalf of the appellant submits that as regard the service such as out of pocket expenses collected by the service provider, rent-a-cab service and convention service,

the learned Commissioner (Appeals) has rejected the claim on the ground that these services are not related to authorized operation in the SEZ. It is his submission that all these services were received by the unit in SEZ for authorized operation in the SEZ. It is his submission that the appellant had no activity other than operation in SEZ therefore, all the services received by the appellant are in relation to authorized operation in the SEZ. He further submits that all these services are specified in the approval list of the development Commissioner, for this reason also refund cannot be rejected.

2.1 As regard the rejection of claim on the ground that item code does not tally with the enclosed gate pass. He submits that the pre- authenticate challan is a specified requirement related to the unit located under the notified SEZ only. It is not a practice and also not practically possible for the service provider to give reference to each and every pre-authenticated challan in the invoices raised by them. He place reliance on the following judgments:-

- Zydus Hospira Oncology Pvt Ltd – 2013 (STR) 487 (Tri. Ahmd)
- Barclays Global Service Centre Pvt Ltd – 2018 (362) ELT 889 (Tri. Bom)
- Tega Industries Ltd- 2022 (67) GSTL 81 (Tri.Ahmd)

3. Shri Ajay Kumar Samota, learned Superintendent appearing on behalf of the Revenue reiterates the finding of the impugned order

4. I have carefully considered the submission made by both sides and perused the records. I find that the main issue is that whether the services of rent-a-cab service, convention service, out of pocket expenses were used for authorized operation of the SEZ of the appellant's unit. I find that these services were received by the appellant even though outside the SEZ but these services are directly for use of the entire business activity of the

appellant located in SEZ. It is not the case of the department that these services were used by any other person other than the appellant. Therefore, in my considered view all these services were indeed used for the authorized operation of SEZ hence rightly eligible for refund under Notification No 09/2009-ST. Accordingly, I hold that the appellant is entitled for the refund in respect of these services.

4.1 As regard the amount of Rs. 3090/- the charge of the department is that the item code between the invoice and the enclosed gate pass does tally. I find that it is finding of the Commissioner (Appeals) that the appellant have not made any explanation to this discrepancy in their appeal. Moreover, in the present appeal also I do not find any ground made on this issue therefore, in absence of any explanation by the appellant I do not incline to give any benefit on this count. Accordingly, the rejection of refund claim of Rs. 3090/- is maintained.

5. As per my above discussion and finding, the appeal is partly allowed in above terms.

(Pronounced in the open court 28.07.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

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