CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. IV

Service Tax Appeal No. 40099 of 2014
(Arising out of Order-in-Appeal No. TNL-CEX-000-APP-240-13 dated 30.09.2013 passed by the Commissioner of Central Excise (Appeals-I), Madurai)

M/s. ATC Tires Private Limited **...Appellant**
Plot No. A 2, SIPCOT Industrial Growth Centre,
Gangaikondan, Tirunelveli – 627 352.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tractor Road, NGO A Colony,
Tirunelveli 627 007.

APPEARANCE :
Shri. Raghav Rajeev, Advocate for the Appellant
Ms. G. Krupa, Authorized Representative for the Respondent

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

FINAL ORDER No. 40889/2026

DATE OF HEARING: 01.07.2026
DATE OF DECISION: 17.07.2026

The appellant is an SEZ unit and primarily engaged in manufacture of excisable goods falling under chapter 40 of the Central Excise Tariff Act 1985. They filed for a refund claim for an amount of Rs.1,27,93,547 before the adjudicating authority of which the adjudicating authority had sanctioned an amount of Rs.1,03,43,994/-. Aggrieved with the portion of rejection of the refund claim, amounting to Rs.22,49,552/- the appellant filed an appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) while allowing the refund claim rejected the same to an extent of Rs.14,69,387/-, and upholding the order of the adjudicating authority in this regard. It is against the impugned rejection of the refund amount of Rs.14,69,387/-, that the appellant is here before this court.

2. The period involved for the disputed amount pertains to April to June 2015 and July to September 2015. The appellant in terms of Notification No.17/2011 Service Tax dated 1.3.2011 sought exemption from payment of service tax in respect of services that were provided in relation to an SEZ. It is seen from the records of the case and as also submitted by the learned advocate that the prime challenge to the rejected amount is on the grounds that such services are not wholly consumed within SEZ, "services so identified include the services relating to payroll preparation, advising and getting signatures from the authority - stating that these services were in no way connected with the manufacturing activity pertaining to the SEZ. The fact that the appellant has paid the amount of service tax involved in the present appeal is not disputed. It is also not disputed that these services were used for authorized operations in an SEZ.

3. As the crux of the matter concerns interpretation of the notification 17/2011 – ST dated 01.03.2011, it would be apt that the same is reproduced here:

Notification No. 17/2011 – Service Tax	New Delhi, the 1st March, 2011

G.S.R. (E). – In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act) read with sub-section 3 of section 95 of Finance (No.2), Act, 2004 (23 of 2004) and sub-section 3 of section 140 of the Finance Act, 2007(22 of 2007) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 9/2009-Service Tax, dated the 3rd March, 2009, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R.146(E), dated the 3rd March, 2009, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in clause (105) of section 65 of the Finance Act, chargeable to tax under section 66 or section 66A of the Finance Act , received by a Unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

2. The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ:

Provided that where the specified services received and used for authorised operations are wholly consumed within the SEZ, the provider of such services or the receiver of such services on reverse charge basis, as the case may be, has the option not to pay the service tax *ab initio* instead of the Unit or Developer claiming exemption by way of refund in terms of this notification.

Explanation.- For the purposes of this notification, the expression ―wholly consumed‖ refer to following taxable services, received by a Developer or Unit of a SEZ, for the authorised operations, namely:-

(i) services listed in clause(i) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005 in relation to an immovable property situated within the SEZ; or
(ii) services listed in clause (ii) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005, as are wholly performed within the SEZ; or
(iii) services other than those falling under (i) and (ii) above, provided to a Developer or Unit of SEZ, who does not own or carry on any business other than the operations in the SEZ;

(b) for the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(c) the Developer or Unit of SEZ who does not own or carry out any business other than SEZ operations, shall furnish a declaration to that effect in Form A-1, verified by the Specified Officer of the SEZ, in addition to obtaining list under condition (b) above, for the purpose of claiming exemption;

(d) where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area(DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates, i.e.,

(e)

service tax paid on specified services
used for SEZ Authorised Operations X Export
turnover of SEZ Unit shared
with DTA Unit for the period for the period
Maximum refund = ---

Total turnover for the period

Explanation.- For the purposes of condition (d),-

(1) ―total turnover‖ means the sum total of the value of,-

(i) all output services and exempted services provided, including the value of services exported;
(ii) all excisable and non-excisable goods cleared, including the value of the goods exported; (iii) bought out goods sold,

during the period to which the invoices pertain and the exporter claims the facility of refund under this notification.

(2) ―turnover of SEZ Unit‘‘ shall mean the sum total of the value of final products and output services exported during the period of which the invoices pertain and the exporter claims the facility of refund under this notification;

(f) any Developer or Unit of SEZ claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed to have been actually used for the authorised operations;

(g) the Developer or unit of SEZ claiming the exemption, by way of refund has actually paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the Finance Act;

(h) no CENVAT credit of service tax paid on the specified services used for the authorised operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;

(i) exemption or refund of service tax paid on the specified services other than ‗wholly consumed‘ services used for the authorised operations in a SEZ shall not be claimed except under this notification;

(j) the developer or unit of a SEZ, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

3. The following procedure should be adopted for claiming the benefit of the exemption contained in this notification, namely:-

(a) the Developer or Unit of a SEZ, who has paid the service tax under sections 66 of the Finance Act, shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations;

(b) the Developer or Unit of a SEZ who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made there under, or the said Finance Act or the rules made there under, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-2;

(c) the Developer or Unit of a SEZ who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-3;

(d) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the Developer or Unit of SEZ, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3;

(e) claim for refund shall be filed, within one year from the end of the month in which 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;

(f) the refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, document specified in 2(c), i.e. , declaration in Form A-1;

(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;

(iii) a declaration by the Developer or Unit of SEZ, claiming such exemption, to the effect that—

(A) the specified services on which refund of service tax claimed, has been actually used for the authorized operations in the SEZ ;

(B) proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;

(C) accounts or documents furnished by the Developer or Unit as proof of payment of service tax claimed as refund, based on the invoice, or bill , or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects;

(g) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

(i) the refund claim is complete in all respects;

(ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider, shall refund the service tax paid on the specified services;

(h) a service provider, shall provide the specified services falling under ‗wholly consumed' category, under exemption granted by this notification, to a Developer or Unit of SEZ, for authorised operations, subject to the production of documents specified in sub-para (b) of para 2 and in addition wherever applicable, documents specified in sub-para (c) para 2, i.e., declaration in Form A-1;

(i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made there under, as if it is recovery of service tax erroneously refunded;

4. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 (28 of 2005) or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

Explanation.- For the purposes of this notification, ―statutory auditor‖ refers to a Chartered Accountant who audits the annual accounts of the Developer or Unit of a SEZ for the purposes of the Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961(43 of 1961).

4. The learned AR submits that the lower authority while denying the credit had pointed out that the impugned services for which the credit has been denied were not wholly consumed within the SEZ unit and therefore the appellant was not entitled to the impugned refund for which the present appeal.

5. It is noted from records that of the total amount of Rs.22,49,552/- rejected by the adjudicating authority the Commissioner (Appeals) allowed the rest but for an amount of Rs.14,69,387/-, of which an amount of Rs.13,37,485/- was rejected on the ground that the said services were not wholly consumed within the SEZ and were not connected with the manufacturing activity. Details of the said services are as under:

S No. of claim	Details regarding specified services used in the authorised operations of SEZ, as approved by the Unit Approval Committee		Amount of service tax claimed as refund (including edu. cess) (In Rs.)	Remarks
	Description of taxable service used in the authorised operation of SEZ	Name and address of service provider		
77	Professional & Consultancy Charges	Prudent Insurance Brokers Pvt. Ltd..	15,450	Insurance Broker. Services in relation to insurance requirements
127	Professional Services	HCCA Business Services Pvt. Ltd	1,288	Salary Processing services
314	Construction of Factory Building	Coromandel Engineering Company Limited	11,02,415	This relates to construction activities that took place within the SEZ during the period March to May 2009. As this amount was paid on 29th March 2011 and included in the present claim based on payment date. These services are wholly consumed within SEZ and the rejection of refund on the ground that these services are not wholly consumed

				within SEZ is incorrect
326	Professional Services	HCCA Business Services Pvt. Ltd	1,288	Salary Processing services
403	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
434	PROFESSIONAL SERVICES	Simulytics Services	20,600	Software development and implementation of Distribution Requirement Programme (DRP)
445	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
446	PROFESSIONAL SERVICES	Lakshmi Kumaran & Sridharan	12,875	Legal Consultancy Services relating to SEZ Unit
623	Professional & Consultancy Charges	Prudent Insurance Brokers Pvt. Ltd.	15,450	Insurance Broker Services in relation to insurance requirements
633	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
757	Professional & Consultancy Charges	Future Generali India Insurance Company Limited	9,831	Insurance services
817	Inspection Charges	Intertek India Pvt. Ltd	862	Testing agency providing services in relation to testing of coal
917	Professional Services	HCCA Business Services Pvt. Ltd	2,318	Salary Processing services
1030	Telephone Services	Reliance India	1,545	Telephone Services
1053	Inspection Charges	Intertek India Pvt. Ltd	836	Testing agency providing services in relation to testing of coal

1214	Professional & Consultancy Charges	ABC Staffing Solutions	3,089	Recruitment Agency provided services relation to selection of employees for the SEZ unit
1290	PROFESSIONAL SERVICES	PSCS	12,875	Consultancy services in relation to industrial relations
1324	Professional & Consultancy Charges	Lakshmi Kumaran & Sridharan	15,450	Legal Consultancy services for the SEZ Unit
1325	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
1334	Inspection Charges	Intertek India Pvt. Ltd	836	Testing agency providing services in relation to testing of coal
1367	Professional & Consultancy Charges	Jayam Consultants Pvt. Ltd.	30,900	Architect services related to the buildings in the SEZ unit.
1416	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
1497	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
1606	Professional Services	HCCA Business Services Pvt. Ltd	2,318	Salary Processing services
1663	Professional & Consultancy Charges	Prudent Insurance Brokers Pvt. Ltd.	15,450	Insurance Broker .Services in relation to insurance requirements
1664	Professional Services	HCCA Business Services Pvt. Ltd	2,318	Salary Processing services
1925	Professional Services	HCCA Business Services Pvt. Ltd	2,318	Salary Processing services

1926	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
2389	Professional & Consultancy Charges	Lakshmi Kumaran & Sridharan	16,123	Legal Consultancy services for the SEZ Unit
2390	Professional Services	HCCA Business Services Pvt. Ltd	2,318	Salary Processing services
2445	Inspection Charges	Intertek India Pvt. Ltd.	907	Testing agency providing the testing services in relation to Coal Test
2640	Professional & Consultancy Charges	ABC Staffing Solutions	1,803	Recruitment Agency provided services relation to selection of employees for the SEZ unit
2806	Professional Services	HCCA Business Services Pvt. Ltd	2,318	Salary Processing services
2816	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
2817	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
3302	Professional Services	HCCA Business Services Pvt. Ltd	2,318	Salary Processing services
3307	Professional & Consultancy Charges	KVM Advisory Services (P) Limited	4,120	Services in relation to compliance with various statutory requirements of the SEZ Unit
3435	Professional Services	Manikaran Power Ltd.	185	Broker in between third party power purchase of power through IEX
TOTAL			**13,37,485**	

It is however nowhere stated by the Ld. Commissioner (Appeals) that the said services were unconnected with the identified authorised operations.

6. while the aforesaid table indicates the specified service used in authorised operations of the SEZ, the following table lists out services provided by various entities with the amount involved and the appellants submissions regarding consumption of the said service in its authorised operations:

S. No.	Entity Name/Nature of Service	Amount (Rs.)	Appellant's Submissions
1.	Services availed from M/s. Coromandel Engineering Company Limited in relation to construction of factory building	Rs. 11,02,415	The Appellant submits that out of the total refund of Rs. 13,19,054/- sought to be rejected, Rs. 11,02,415/- pertains to the service tax paid on construction of factory building. These services are wholly consumed within SEZ and they are also directly related to the manufacturing activity_ Further, these services are duly approved by the Approval Committee as required for the authorized operations. Since the Appellant had paid the service tax on these services on 29.03.2011, the Appellant had included the same in the refund claim filed for the month of March 2011.
2.	Services availed from Prudent Insurance Brokers Pvt. Ltd., insurance brokers, in relation to various insurance requirements	46,350	The Appellant is required to rail the services of various insurance companies for obtaining insurance

			cover against various risks in respect of capital goods, raw materials, finished goods, work in progress, transit insurance, marine insurance, etc. The Appellant avails the services of the insurance brokers who provide expert advice in selection of insurer and other insurance requirements. These insurance brokers charge service tax on their professional fees which is paid by the Appellant. These services are required for the authorized operations.
3.	Services availed from Jayam Consultants Private Limited, Architects, in relation to design of plant and building located in SEZ	30,900	The Appellant has availed the services of the aforesaid Architect for the plant and building situated in the SEZ. The Architect charges service tax on their professional fees which is paid by the Appellant. These services are also certified by the Approval Committee as required for the authorized operations. These services are also received in SEZ and the Appellant is entitled to claim refund of the same. The impugned order rejecting refund of the same merits to be set aside.
4.	Services availed from M/s. HCCA Business Services Private Limited in relation to pay roll processing	18,802	The Appellant has outsourced the activities in relation to payroll processing to M/s. HCAA Business Services Private Limited. These activities are in relation to the employees who

			are engaged in the manufacturing activity and officers and staff. These services are related to the authorised operations of the Appellant and are also has direct nexus with the manufacturing activity
5.	Services availed from KVM Advisory Services Private Limited, in relation to in relation to compliance with various statutory requirements of the SEZ Unit	41,200	The Appellant is required to comply with various statutory regulations under Foreign Trade Policy, Customs, Service Tax, VAT besides various labour laws. The Appellant has engaged the services of KVNI Advisory Services Limited for ensuring that the requirements under various regulations are met and are statutory returns are duly filed. It is submitted that the Appellant is entitled to claim refund of the same and the impugned order rejecting refund merits to be set aside.
6.	Services availed from Intertek India Private Limited. in relation to testing and inspection of coal	3,441	The Appellant avails the service of Intertek India Private Limited for testing and inspection of coal and carbon black used in the manufacture of tyres. These services are directly used in the manufacture and authorised. operations. Further these services are also consumed within the SEZ.
7.	Lead Consultancy services received from M/s. Lakshmikumaran & Sridharan,	44,448	The Appellant has availed the services of M/s. Lakshmikumaran Sridharan, Attorneys for legal advice and compliance with various indirect tax laws. It is submitted that the

			Appellant is entitled to claim refund of the same and the impugned order rejecting refund of the same merits to be set aside.
8.	Services availed from M/s. ABC Staffing Solutions Private Limited Recruitment Agency, in relation to selection of employees	4,892	The Appellant has availed the services of M/s. ABC Staffing Solutions Private Limited, who are engaged in providing services relating to manpower recruitment. The manpower so recruited are directly used in the manufacturing activity and for the authorised operations. The Appellant has paid the service tax on these services. It is submitted that the Appellant is entitled to claim refund of the same sad the impugned order rejecting refund of the same merits to be set aside.
9.	Insurance Services availed from M/s. Future Generali India Insurance Company Limited	9,831	The service in this case has been paid on additional premium paid for insurance on account of additions made. in plant and machinery under Industrial All Risk Policy. These services are in relation to the. plant anC machinery which are directly used in the manufacture. Further these services are also consumed within the SEZ.
10	Services availed for software development	20,600	The Appellant has availed the services of Simulyties Services for software development This software is in relation to the logistics and used for the authorised operations.

11	Services availed in connection with third party power purchase through Electricity Exchange	185	These services are in relation of purchase of electricity from private parties through Electricity Exchange. The Appellant has availed the services of. Manikaran Power Limited who do broking services in tins regard.
12	Professional services received	12,875	The Appellant. These services are in relation to the plant and machinery which are directly used in the manufacture.
13	Telephone Services availed from M/s. Reliance Communications	1,545	The Appellant has availed mobile telephone services from M/s. Reliance Communications for their communication requirements and pays appropriate service tax on these charges as per the service provider's bills.

7. To appreciate the question regarding consumption of the service vis-à-vis the impugned exemption notification, it would be necessary to also delve into section 26 (1), (e), of the SEZ Act, the same is therefore referred to here under:-

Section 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) ---------

(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."

It is clear from a bare reading of Section 26(1)(e) that the exemption is available, for the conduct of an authorized operation in a Special Economic Zone. Clause (2) of the Notification ibid. states that the exemption shall be provided by way of refund of Service Tax paid on the specified services received by the SEZ unit or developer and used for the authorized operations. It is clear from the above Section as well as Notification that there is no specific warrant that the services are required to be only consumed in a SEZ to avail the benefit of Notification No. 17/2011 – ST dated 01.03.2011 ibid. As long as the said service is consumed in an “authorised operation”, there can be no dispute on its admissibility to credit. It is also not the case of the revenue that the services in respect of which they have raised the present dispute were not consumed in the authorised operation of the SEZ Unit.

8. The Ld. Commissioner (Appeals) has sought to mix up the service received and wholly consumed within the SEZ for purpose of authorised operations, with the option as provided in terms of clause 2 (a) proviso of the notification ibid. The said concession is only to the extent of the option, to not pay the service tax ab initio. The availment of credit regulated through the refund mechanism is undisturbed therewith. Furthermore, what would constitute “wholly consumed” is also provided for by way of

explanation, within the notification itself. Alternatively clause 2 (d) of the notification provides for a situation where the services received are not wholly consumed within the SEZ but shared between authorised operations in SEZ and the DTA unit. In the absence of any thing to show on record that in the present appeal such services were shared between the authorised operations of the SEZ and the DTA Unit, there cannot be a case to deny credit or to restrict it in accordance with the export. However, as provided in the notification itself. For a meaningful denial of the notification benefit it was for the lower authorities to show that the services to which operations were put to, were in fact not "authorised operations". There is no such finding in the order of the Ld. Commissioner (Appeals).

9. The fact that the SEZ unit of the appellant is located in a remote area in Tirunelveli, for which they are required to engage vital resources from outside, in respect of which they have made the issue-wise submissions is support of their claim, I am of the view addresses the moot question of utilisation of the various services in authorised operations undertaken by the SEZ unit. It has been held in the appellant's own case that the exemption in terms of section 26(1), (e), is available to carry on authorised operations in a SEZ. The revenue has not contended that the impugned amounts for which the refund was denied in the present appeal was not authorised operations. The notification ibid provides that refund thereof of the service tax paid on the services received by the SEZ unit would be allowed in respect of the

authorised operations. The notification does not seek to bring in an artificial demarcation of "wholly consumed" within SEZ, as has been stated in the impugned order under challenge for which reason the refund claim has been denied to the appellants.

10. It is thus clear that a service received by a unit located with SEZ, would be exempt from payment of tax for the purposes of the "authorised operations" and the exemption thereto is regulated by way of a refund mechanism of the taxes paid. Being an SEZ unit the appellant is indeed eligible for procurement of input services without payment of tax from the service providers for carrying out authorized operations in SEZ in terms of Section 26 (1) of the SEZ Act 2005. The appellant has contended that Section 51 of the SEZ Act would have an overriding effect over other laws including the Finance Act 1994. In fact, the said position in law, has since been settled by the honourable Andhra Pradesh High Court in the case of **GMR Aerospace Engineering Limited versus Union of India – 2019 (31) GSTL 596 (AP)** where it was categorically held that exemption in terms of section 26 (1) is admissible subject to other provisions of the SEZ law and not any other law. It was indicated in the said order, by the Hon'ble High Court that provisions of SEZ Act would have an overriding effect vis-a-vis the provisions of other acts if not in consistence with the provisions of the SEZ law. It was specifically stated by the Honourable High Court that's Section 26 (1) of the SEZ Act cannot be read to mean that exemptions listed therein were subject to any other law in addition to Section 26 (2) thereof. The SLP filed by the revenue

against the impugned order of the Honourable High Court was dismissed by the Honourable Apex Court (2019 SCC Online SC 2291). It is therefore clear that the impugned issue is no more res integra and the exemption granted under an SEZ Act will have an overriding effect over any other notification issued in terms of Finance Act 1994. It is settled position in law that for procedural irregularities substantial benefits cannot be denied. It was also so held by the Honourable High Court in the aforesaid case.

11. Ld. Advocate also submitted that the demand has been confirmed on the ground that the appellant did not comply with the requirements of Notification No. 17/2011 – ST ibid. In this regard it be mentioned that the Hon'ble Telangana High Court in the M/s. GMR Aerospace Engineering Ltd. case (supra) has categorically held that the Notification could not be pressed into service to find out whether a unit in a SEZ qualifies for exemption or not.

12. Moreover, the Chennai Bench of the CESTAT in the appellant's own case for a different period vide **Final Order No. 41394-41395 of 2021 dated 17.03.2021 [2021 (3) TMI 681-CESTAT Chennai**, following the decision in M/s. GMR Aerospace Engineering Ltd. (supra), granted the requisite exemption from payment of Service Tax, as operated by virtue of the said notification ibid. As to the charge of not "wholly consumed", within the SEZ thereby implying that the services in question were consumed outside the SEZ, is certainly not made in the notice

issued and to which allegation the appellant was never put on notice. Hence the adjudicators cannot derive any benefit out of such a situation.

13. The appellant have also relied upon the decision of the Hon'ble Delhi High Court in the case of **M/s. Jindal Stainless Ltd. v. Union of India (2017 (51) STR. 130 (Del.)**) wherein it has been categorically held that exemption from Service Tax is available even if the services are consumed outside the SEZ so long as the services are used for "authorized operations" and that words cannot be added to the statute, when there was no express requirement in the SEZ Act and the SEZ Rules that only services which are consumed within the SEZ would be exempted from payment of Service Tax.

14. During the course of their submissions the Ld. Advocate pointed out that the requirement of the services to be consumed within the SEZ was contained in the earlier Notifications, which were since superseded by the notification in question. It is therefore quite clear that subsequently there has been a clear change of intent and the law so modified. The appellate authority has thus clearly erred, relying on the conditions prescribed in the earlier notification since the same were clearly non est as having been superseded.

15. In the light of the detailed explanation and the statement of the submissions with respect to the services availed, there is no doubt that each of them pertain to the conduct of authorised

operations of the SEZ unit. The impugned notification does not provide that the said service should be consumed in the SEZ alone and as long the specified service on which exemption and /or refund is claimed, and shown to have been actually used for authorised operations, the notification would not cease to be applicable and the SEZ Unit cannot be deprived of its benefit, subject to fulfilment of other conditions and the procedure as prescribed for refund are met with. There is however no such finding in the order of the lower authority and therefore, I am of the view that the refund thereto cannot be withheld. The department's stance for not having consumed the said services only within the SEZ are meritless as several of the aforesaid services obviously cannot be consumed within the geographical location of the SEZ, but are in respect of the authorised operations of the SEZ unit; as entailed indeed in the notification supra read with exemption provided in terms of section 26 of the SEZ Act.

16. It is otherwise a settled law that there is no restriction regarding the consumption of the services and exemption extended to such services rendered to an SEZ unit for purpose of authorised operations of the SEZ. In the light of the aforesaid decisions, it therefore cannot be held that the appellant was not entitled to the aforesaid refund amount of Rs.13,37,485/-, for which the appellant has expressly indicated in their submissions in the appeal memo and demonstrated its consumption, the rendering of the service and the service availment in respect of the authorised operation of the SEZ unit. No findings are being

rendered for the balance amount as the appellant in their Grounds of Appeal have only adverted to a sum of Rs.13,37,485/- (afore stated) and a prayer made to that effect only.

17. In view of the aforesaid discussion, the appellant is entitled for relief in law and the appeal filed seeking a refund of Rs.13,37,485/- is allowed. The order of the lower authorities to the said extent is therefore set aside.

18. The appeal is disposed of in the aforesaid terms.

(Order pronounced in the open court on 17.07.2026.)

Sd/

(RAJEEV TANDON)
Member (Technical)

psd