

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3**

SERVICE TAX APPEAL NO. 51605 OF 2017

[Arising out of Order in Appeal No. BHO-EXCUS-001-APP-775, 776, 777, 778, 779 & 780-16-17 dated 22.03.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

**COMMISSIONER, CENTRAL EXCISE AND
SERVICE TAX,**

29, Bharatpuri,
Ujjain-456001
MP

Appellant

Vs.

M/S CIPLA LIMITED,

Indore Special Economic Zone,
Plot No. 9 & 10,
Phase-II, Pharma Zone,
Sector-3, Pithampur,
Dist-Dhar-454775

Respondent

WITH

SERVICE TAX APPEAL NO. 50726 OF 2024

[Arising out of Order in Appeal No. BHO-EXCUS-001-APP-775-780-16-17 dated 22.03.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

**COMMISSIONER, CENTRAL EXCISE AND
SERVICE TAX,**

29, Bharatpuri,
Ujjain-456001
MP

Appellant

Vs.

M/S CIPLA LIMITED,

Indore Special Economic Zone,
Plot No. 9 & 10,
Phase-II, Pharma Zone,
Sector-3, Pithampur,
Dist-Dhar-454775

Respondent

WITH

SERVICE TAX APPEAL NO. 50727 OF 2024

[Arising out of Order in Appeal No. BJO-EXCUS-001-APP-775-780-16-17 dated 22.03.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

COMMISSIONER, CENTRAL EXCISE AND SERVICE TAX,

29, Bharatpuri,
Ujjain-456001
MP

Appellant

Vs.

M/S CIPLA LIMITED,

Indore Special Economic Zone,
Plot No. 9 & 10,
Phase-II, Pharma Zone,
Sector-3, Pithampur,
Dist-Dhar-454775

Respondent**WITH****SERVICE TAX APPEAL NO. 50728 OF 2024**

[Arising out of Order in Appeal No. BHO-EXCUS-001-APP-775-780-16-17 dated 22.03.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

COMMISSIONER, CENTRAL EXCISE AND SERVICE TAX,

29, Bharatpuri,
Ujjain-456001
MP

Appellant

Vs.

M/S CIPLA LIMITED,

Indore Special Economic Zone,
Plot No. 9 & 10,
Phase-II, Pharma Zone,
Sector-3, Pithampur,
Dist-Dhar-454775

Respondent**WITH****SERVICE TAX APPEAL NO. 50729 OF 2024**

[Arising out of Order in Appeal No. BHO-EXCUS-001-APP-775-780-16-17 dated 22.03.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

COMMISSIONER, CENTRAL EXCISE AND SERVICE TAX,

29, Bharatpuri,
Ujjain-456001
MP

Appellant

Vs.

M/S CIPLA LIMITED,

Indore Special Economic Zone,
Plot No. 9 & 10,

Respondent

Phase-II, Pharma Zone,
Sector-3, Pithampur,
Dist-Dhar-454775

WITH

SERVICE TAX APPEAL NO. 50730 OF 2024

[Arising out of Order in Appeal No. BHO-EXCUS-001-APP-775-780-16-17 dated 22.03.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

**COMMISSIONER, CENTRAL EXCISE AND
SERVICE TAX,**

Appellant

29, Bharatpuri,
Ujjain-456001
MP

Vs.

M/S CIPLA LIMITED,

Respondent

Indore Special Economic Zone,
Plot No. 9 & 10,
Phase-II, Pharma Zone,
Sector-3, Pithampur,
Dist-Dhar-454775

AND

SERVICE TAX APPEAL NO. 50731 OF 2024

[Arising out of Order in Appeal No. BHO-EXCUS-001-APP-775-780-16-17 dated 22.03.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal]

**COMMISSIONER, CENTRAL EXCISE AND
SERVICE TAX,**

Appellant

29, Bharatpuri,
Ujjain-456001
MP

Vs.

M/S CIPLA LIMITED,

Respondent

Indore Special Economic Zone,
Plot No. 9 & 10,
Phase-II, Pharma Zone,
Sector-3, Pithampur,
Dist-Dhar-454775

Appearance:

Shri S K Meena, Authorised Representative for the appellant/Department
Ms. Sukriti Das, Advocate for the respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER Nos. 56028-56034 /2024**Date of Hearing : 09/07/2024****Date of Decision: 19/07/2024****BINU TAMTA:**

1. Batch of appeals have been filed by the revenue, challenging the order in Appeal dated 22.03.2017 whereby the refund claims filed by M/s CIPLA, Special Economic Zone¹ unit on input services was allowed.
2. The respondent is manufacturer and exporter of pharmaceutical products having manufacturing facilities at Indore SEZ. During the relevant period, the respondent was availing various services in relation to its authorised operation, such as construction service, telecommunication service, architecture service, consultancy engineer service, manpower recruitment service, security service, etc. Since the services received by the units located at SEZ were exempt from service tax by way of refund claim under Notification No. 40/2012-ST dated 20.06.2012 and under Notification No. 12/2013-ST dated 1.07.2013, the respondent filed six refund claims for the service tax paid on the input services. Show cause notices were issued proposing to deny the refund basically on the ground that the conditions specified in the notification, in particular condition number 2(c), 3(e) and 3(f) were not complied with. The adjudicating authority rejected the refund claims vide order dated 03.02.2015, which was challenged by the respondent in the respective appeals before the Commissioner (Appeals) who was pleased to allow the refund claims. The revenue being aggrieved have preferred these appeals before this Tribunal.

1 SEZ

3. We have heard Shri S K Meena, authorised representative appearing for the department and Ms. Sukriti Das, advocate for the respondent.

4. From the submissions made by both the parties, we find that the issue involved is of admissibility of refund claims filed by a SEZ unit for the service tax paid on input services in terms of the notifications issued under the Finance Act, 1994.

5. The learned AR submitted that the Commissioner of Appeals erred in allowing the refund claims when it was a case of express violation of mandatory conditions of the exemption notifications² issued under the Finance Act. Further, the exemption notification being beneficial has to be construed strictly and the burden to claim the exemption under any notification by complying with the conditions therein is upon the assessee, which in the present case, they have failed to do so. The learned AR referred to the decisions of the Supreme Court in **Hotel Leela-Venture Ltd. vs. Commissioner of Cus.(Gen.) Mumbai³**, **Eagle Flask Industries Ltd VS. Commissioner of C.Ex.Pune⁴**, **Commissioner of Customs, (Import), Mumbai vs. Dilip Kumar and Company⁵**.

6. On the other hand, the submission of the learned Counsel for the respondent is that the issue is no more res-integra and has been settled in favour of the assessee that the SEZ unit has an unequivocal exemption from payment of service tax on input services. Relying on the statutory provisions of section 26(e) of the Special Economic Zone

2 Notification No. 40/2012-ST dated 20.06.2012
3 2009 (234) ELT 389 (SC)
4 2004 (171) ELT 296 (SC)
5 2018 (361) ELT 577 (SC)

Act, 2005⁶ and rule 31 of Special Economic Zone Rules⁷, the learned counsel referred to series of decisions which interpreted these provisions and arrived at the conclusion that refund of service tax cannot be denied due to non-compliance of the conditions of the notifications issued under the service tax. The reference made by the learned counsel are as follows:

- (i) **Commissioner of Service Tax Delhi-II, New Delhi vs. Cushman and Wakefield Property Management Service India Pvt Ltd.**⁸
- (ii) **DLF Assets Pvt Ltd. vs. CST, Delhi, SRF Ltd., vs. CC, New Delhi**⁹
- (iii) **DLF Assets Private Limited vs. Principal Commissioner of Goods & Service Tax, Delhi North-2023 (7) TMI 881-Cestat New Delhi**
- (iv) **Lupin Ltd. vs. Commissioner of CGST & CE, Ujjain (MP)**¹⁰
- (v) **SRF Ltd. vs. CC, New Delhi**¹¹
- (vi) **GMR Aerospace Engineering Limited and Another vs. Union of India and Others**¹²
- (vii) **Vedanta Aluminium Limited vs. Commissioner of Central Excise and Service Tax, Bhubaneswar Commissioner,**¹³
- (viii) **Reliance Industries Limited vs. CCE, Mumbai,**¹⁴
- (ix) **Reliance Ports & Terminals Ltd. vs. CCE, Rajkot**¹⁵
- (x) **ATC Tires (P) Ltd. vs. CCE & ST, Tirunelveli,**¹⁶
- (xi) **Norasia Container Lines vs. CCE, New Delhi**¹⁷

6 SEZ Act

7 SEZ Rules

8 2023 (5) TMI 653-CESTAT New Delhi

9 2021 (45) GSTL 176 (Tri.-Del.)

10 2023 (3) TMI 1122-CESTAT New Delhi

11 2022 (64) GSTL 489 (Tri.-Del.)

12 2019 (8) TMI 748-TELANGANA AND ANDHRA PRADESH HIGH COURT

13 2024 (3) TMI 1325-CESTAT KOLKATA

14 2016 (41) STR 465 (Tri.-Mumbai)

15 2015 (40) STR 200 (Tri.-Ahmd.)

16 2019 (2) TMI 1178-CESTAT CHENNAI

17 2011 (23) STR 295 (Tri.-Del.)

- (xii) **Intas Pharma Ltd. vs. CST, Ahmedabad,¹⁸**
- (xiii) **SRF Limited vs. CC, CE and ST, LTU New Delhi¹⁹**
- (xiv) **Metlife Global Operations Support Centre (P.) Ltd. vs. CST, New Delhi,²⁰**
- (xv) **Makers Mart vs. CCE & ST, Jaipur²¹**
- (xvi) **Makers Mart vs. CCE & ST, Jaipur²²**
- (xvii) **Tieto Software Technologies vs. CCE, Pune, III²³**

7. We have examined the decisions cited by the learned AR, however, they are inapplicable in the facts of the present case in as much as they are based on the general law of exemption and are not related to the SEZ units which have to be dealt on a different footing. Hence, no reliance can be placed on those decisions.

8. Considering the decisions cited by the learned counsel for the respondent, we agree that the issue now raised in these appeal stands already concluded in the series of decisions and the law has been well settled with regard to the compliance of the conditions of the notifications issued under the other statutes, i.e., the Customs Act, Excise Act and the Service Tax Act. Without repeating the observations of the various Benches, we would like to take note of the principles settled in these decisions:

i) Section 51 of the SEZ Act gives overriding effect to the provisions of the Act by using the expression notwithstanding anything

¹⁸ **2013 (32) STR 543 (Tri.-Ahmd.)**
¹⁹ **2019 (7) TMI 1789-CESTAT NEW DELHI**
²⁰ **2021 (46) GSTL 418 (Tri.-Del.)**
²¹ **2016 (44) STR 126I (Tri.-Del.)**
²² **2016 (43) STR 309 (Tri.-Del.)**
²³ **2016 (42) STR 689 (Tri.-Mumbai)**

inconsistent therewith contained in any other law for the time being in force.

ii) Section 26 of the SEZ Act, specifically exempts from payment of duties under the Customs Act, Central Excise Act and Finance Act and thereby overrides the charging sections in all the three acts.

iii) Since charging sections under these enactments have been overridden by the SEZ Act, there is no legal authority to levy and collect the central excise duty, customs, duty, or the service tax in respect of the authorised operations of SEZ developers and units.

iv). Consequently, in view of Article 265 of the Constitution of India, no tax or duty can be either levied or collected in the absence of any legal authority.

v). Therefore, logically there is no need for an exemption notification under any of these three Acts or to comply with any of the conditions laid down in the exemption notifications issued under the three acts while dealing with levy of tax/duty on the SEZ units.

Resultantly, the exemption notification issued under any of the enactments referred to and the conditions prescribed therein are therefore redundant and have no application by virtue of the provisions of section 51 of the SEZ Act, overriding the charging sections in the other laws.

vi.) The terms and conditions subject to which the exemptions are to be granted under section 26(1) have to be prescribed by the rules made by the Central Government under the SEZ Rules issued in exercise of the power conferred by section 55 of the Act

9. The law is well settled that benefit of exemption granted under the notifications issued under the Finance Act are of general nature being available to any one and not necessarily confined to a unit in SEZ, which is peculiar in the case of section 26 of SEZ Act being a special power of exemption under a special enactment for a unit in a special economic zone. Therefore, notification issued under section 93 of the Finance Act 1994 cannot be pressed into service for finding out whether a unit in SEZ qualifies for exemption or not.

10. From the facts we find that it is an admitted position that the respondents are holders of letter of approval issued by the Development Commissioner for the manufacture of pharmaceutical products within the Special Economic Zone, Pithampur, Indore. They have availed various services for setting up their unit in the SEZ, which have been used in relation to the operations of the unit. The amount claimed by way of refund claims has been paid under the reverse charge mechanism for which they have furnished the certificate from the Chartered Accountant, Bank Statement, Party-wise statements and details of payment made to the service providers that the service tax have been paid by them. In these facts, the Commissioner rightly observed that the details of the payment made to the various service providers makes it evident that the services availed by the respondent form part of the cost towards carrying out the authorised operations.

11. Thus services rendered by the appellant are fully exempted from service tax in terms of the provisions of the SEZ Act, the condition of exemption by way of refund imposed by virtue of the notifications issued under the provisions of the Finance Act are inconsistent with the

provisions of the SEZ Act and hence the provisions thereof cannot be imposed on the respondent to deny the refund.

12. The view taken in the impugned order is in accordance with the decisions of the High Court as well as by various Benches of the Tribunal and hence no interference is called for. We do not find any merits in the appeals filed by the revenue and, accordingly, all the appeals are dismissed.

(Order pronounced on **19/07/2024**)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)