

Refund benefit available to an SEZ unit cannot be denied merely due to certain discrepancies in documents- Kolkata CESTAT

2 August 2022



Summary

The appellant claimed the refunds of service tax paid in respect of services received in a Special Economic Zone (SEZ) unit. However, the refunds were rejected on the grounds that the documents submitted by the appellant were not admissible. The Kolkata Customs, Excise and Service Tax Appellate Tribunal (CESTAT) observed that the appellant is maintaining a proper account of receipt and use of specified services. Further, the CESTAT held that the discrepancy pointed out is a technical discrepancy and the same cannot be the grounds to deny substantive benefit of refund available to the SEZ unit. The CESTAT further held that there are no adverse findings in the present case, therefore, the appellant is eligible for a refund of service tax.

Facts of the case

- The appellant¹ was an SEZ unit, engaged in manufacture of aluminium products.
- The appellant availed the “Banking and Other Financial Services”² and bore the service tax paid thereon by the service providers. Subsequently, the appellant filed refund claim of such service tax paid.
- The show cause notices (SCNs) issued to the appellant, were adjudicated and the refund claims were rejected, on the ground that the document submitted by the appellant are not admissible in terms of the notifications³.
- The aggrieved appellant challenged the orders before the Commissioner (Appeals) who rejected the appeal and passed ex parte orders. Thus, the appellant has preferred the present appeal.

Kolkata CESTAT observations and ruling⁴:

- **Benefit of notifications available:** The CESTAT observed that the benefit of notifications can be availed in either way. The service provider may either make no tax payment or the service recipient being an SEZ, can claim refund.
- **Proper records maintained:** The appellant has furnished declaration⁵ duly verified by the Specified Officer to claim exemption. Further, it submitted declaration also, to the effect that CENVAT⁶ credit of service tax paid has not taken on the specified services used for the authorised operations in SEZ. Thus, it is viewed that the appellant is maintaining proper account of receipt and use of the specified services on which exemption is claimed.
- **Denial of refund not sustainable:** The CESTAT opined that mere technical discrepancy in the invoices cannot be

¹ M/s Vedanta Limited (SEZ Unit)

² from M/s ICICI Bank, Axis Bank, State Bank of India and Bank of Baroda

³ Notification No.12/2013-ST dated 1 July 2013, Notification No. 17/2011-ST dated 1 March 2011 and Notification No.40/2012-ST dated 20 June 2012

⁴ Service Tax Appeal No. 78733 of 2018, decision dated 8 June 2022

⁵ In form A-1

⁶ Central Value Added Tax

the ground to deny substantive benefit of refund available to the SEZ unit. It is the policy of the government to exempt or refund the input tax incurred by the SEZ unit. Hence, the denial⁷ of refund claim is not sustainable.

Our comments

It is a settled law that the substantive benefit cannot be denied on technical reasons. It had earlier been held by the Hon'ble Supreme Court of India in case of Mangalore Chemical & Fertilizers Limited⁸ also.

Earlier, the Hon'ble Kolkata CESTAT⁹ in case of the appellant had held that mere technical discrepancy in the invoices cannot be the grounds for denying substantive benefit of refund available to an SEZ unit when it is the policy of the government to exempt or refund the input tax incurred by the SEZ unit.

The CESTAT Kolkata in this case has also held the same view. Thus, the present ruling is likely to set precedence in similar matters.

⁷ Keeping the policy of the Government in mind and specifically in the light of section 7 and section 51 of the SEZ Act, 2005

⁸ Civil Appeal No. 3235 of 1991 dated August 2, 1991

⁹ Service Tax Appeal No.78799 of 2018, decision dated 4 February 2020

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle,
L 41, Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

Unit No - 603 B, 6th Floor,
Brigade International
Financial Center,
GIFT City Gandhinagar,
Ahmedabad - 382355
T +91 79 6900 2600

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T +91 804 243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 433 8000

CHENNAI

9th floor, A wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division, Teynampet,
Chennai - 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan Avenue,
Doon Express Business Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 264 6500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

Unit No - 1, 10th Floor,
My Home Twitza, APIIC,
Hyderabad Knowledge City,
Hyderabad - 500081
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road, Andheri East,
Mumbai - 400069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 310-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at GTBharat@in.gt.com



Follow us @GrantThorntonIN

© 2022 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.