IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 42331 of 2016

(Arising out of Order in Appeal No. 442/2016 dated 28.07.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

M/s. PRR Travels **Appellant**
No. 280, PRR Illam
'N' Block, Anna Nagar East
Chennai – 600 102.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Smt. S. Sridevi, Advocate for the Appellant
Smt. G. Kripa, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41428/2025

Date of Hearing: 01.12.2025
Date of Decision: 05.12.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant against of Order in Appeal No. 442/2016 dated 28.07.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai (impugned order).

2. Brief facts of the case are that the appellant is providing taxable service under the category of 'Tour Operator Service' to units in the Special Economic Zone (**SEZ**). As a result of audit objection, a Show Cause Notice was issued alleging that they had wrongly availed the exemption under Notification No. 04/2004-ST dated 31.03.2004 for the

period July 2009 to March 2010 and had not paid Service Tax on rent-a-cab services to SEZ units correctly. The department was of the view that the said exemption was applicable only when services are provided within SEZ, whereas in the appellants case the service viz renting of cab to SEZ units cannot be termed as services consumed within SEZ units. Hence a SCN was issued to the appellant. After due process of law, the Ld. Adjudicating Authority confirmed the demand of Service Tax of Rs.46,14,467/- along with interest and appropriated an amount of Rs.37,98,400/- towards the above demand of service and imposed penalty under section 76 of the Finance Act, 1994. The appeal preferred by the appellant before the Ld. Commissioner (Appeals) was dismissed. Hence the present appeal.

3. The learned Advocate Smt. S. Sridevi appeared for the appellant and Ld. Authorized Representative Smt. G. Kripa appeared for the respondent.

3.1 The Ld. Counsel for the appellant submitted that the appellant provided rent-a-cab services to a SEZ unit for employee transportation, without collecting service tax, believing these services were exempt under Notification No. 4/2004-ST dated 31.03.2004. She submitted that the services were entirely consumed within the SEZ, for its employees and thus received by the SEZ unit. She placed reliance on the following decisions:-

a. Norasia Container Lines vs Commar-2011(23) STR 295

b. Skyline Motors India Pvt Ltd vs CC-2017(6) GSTL 65 (Tri All);

The learned counsel submitted that the exemption regime for services rendered to SEZ has evolved through a series of notifications and

legislative provisions. Notification No. 4/2004-ST claimed by them, was later replaced by Notification No. 9/2009-ST, which expanded exemptions for services related to authorized SEZ operations regardless of location. Notification No. 9/2009-ST was amended by Notification No. 15/2009-ST dated 20/05/2009, which further clarified and extended the benefit of exemption by way of refund to include services rendered even partially outside the SEZ premises. In any case they had subsequently paid the entire Service Tax hence interest and penalty may be set aside. As an alternate plea she stated that Section 26 of the Special Economic Zones Act, 2005 (**SEZ Act**), provides an ab initio exemption to SEZ units and Developers from payment of various taxes, including service tax and Section 51 ibid, establishes the overriding effect of the Act over other enactments. Therefore, the exemption from service tax available to services provided to SEZ units or Developers cannot be denied merely on the grounds of non-compliance with procedural conditions stipulated in notifications issued under the Finance Act. Such procedural breaches do not outweigh the substantive right to exemption conferred by the SEZ Act.

In support of this, reliance is placed on the following decisions:-

a. Eclerx Services Ltd., vs CCEx. Mumbai- 2023(72) GSTL 99 (Tri Mum) affirmed by Supreme Court-2023(72) GSTL 4 (SC):

b. GMR Aerospace Engg Ltd., vis UOI reported in 2019(31) GSTL 596 (AP) affirmed in (2023) 6 Centax 155 (SC);

c. DLF Assets Pvt Ltd, vs CST, Delhi-2021 (45) GSTL 176 (Tri Del) (10)

Ld. Counsel prayed that the impugned order may be set aside on this ground.

3.2 Ld. Authorized Representative Smt. G. Kripa stated that the charge against the appellant was that the service provided by them had not been consumed within the SEZ, which was a necessary condition for availing the exemption extended by notification no. 4/2004-ST dated 31st March 2004. In other words, the service should have been conclusively established by the appellant to have been exclusively used in the SEZ. Since they have failed to do so the appeal may be rejected. Further referring to para 6 of the **Skyline Motors** judgment (supra), she stated that the demand in the impugned matter pertains to July 2009 to March 2010, whereas the pre-approved "authorised list of services" in the case of Rent-a-cab Services, for which Special Economic Zone (SEZ) developers and units can claim tax exemptions and benefits without seeking specific case-by-case approval, was included in November 2013 only, as per F No D.12/19/2013-SEZ dated 19.11.2013, issued by the Department of Commerce, SEZ Division and would not be applicable in this case.

4. We have heard the contesting parties and gone through the appeal. Much water has flown under the bridge since the exigibility to tax for services rendered within the SEZ has been first raised and has received the attention of this Tribunal and Constitutional Courts. The question of whether an exemption notification issued under FA 1994 can be availed, when the services are utilized by the Developer or Unit partially outside the SEZ enclave in a Domestic Tariff Area (**DTA**), which is a penumbra area [situs of provision of service partially outside

the SEZ and in the DTA, but providing services to a Developer or Unit in the SEZ enclave], for the application of the SEZ Act, has been another area of litigation.

5. The SEZ Act is a special statute meant to promote exports and to attract foreign and domestic investment for export promotion, by providing an attractive fiscal package, with the minimum possible regulations. In furtherance of this policy Section 51 of the SEZ Act provides for an overriding effect to the provisions of the SEZ Act over anything inconsistent contained in any other law for the time being in force, which would include the Finance Act. It reads as follows:

> **Section 51. Act to have overriding effect.**
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> The provisions of this Act shall have effect notwithstanding anything inconsistent therewith. contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Section 26(1) (e) states that subject to the provisions of sub-Section 2 thereof, every developer and entrepreneur shall be entitled to exemption from service tax under Chapter (V) of the Act on taxable services provided to a developer or unit to carry on the authorised operations in a SEZ.

> **26**. (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:—
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> (a) . . . .
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> . . . .
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> (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;

> (2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

6. In the circumstances exemption of a service provided to a developer or a unit in the SEZ, to carry on the authorised operations, by a Notification under the Finance Act 1994 would be inconsistent with the SEZ Act. A Coordinate Bench of this Tribunal at Chennai speaking through one of us [Shri M Ajit Kumar, Member (Technical)], had examined the legal issue in **M/s. RPP Infra Projects Ltd. Vs Commissioner of GST & Central Excise, Salem** [Final Order Nos. 40564-40575/2024, Dated: 30.05.2024]. The relevant portion is extracted below:

> "15.3.5 We however note that the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **M/s GMR Aerospace Engineering Ltd Vs. Union of India** [Writ Petition No.13546 of 2018, Date:27-12-2018 / 2019 (31) GSTL 596 (AP)] examined the specific and larger question as to whether the availability of exemptions under Section 26 of the SEZ Act would depend not only upon the terms and conditions prescribed under Section 26 (2), but also upon the terms and conditions prescribed in the notifications issued under various enactments such as Customs Act, 1962, Customs Tariff Act, 1975, Central Excise Act, 1944, Central Excise Tariff Act, 1985, Finance Act, 1994 and Central Sales Tax Act, 1956 etc., enlisted in clauses (a) to (g) of sub-section (1) of Section 26 of the Act. The Hon'ble High Court held that the benefit of exemptions granted under the notifications issued under Section 93 of the Finance Act, 1994, are available to any one and not necessarily confined to a unit in a special economic zone. Section 93 of the Finance Act, in that sense is a general power of exemption available in respect of all taxable services. But Section 26 (1) is a special power of exemption under a special enactment dealing with a unit in a special economic zone. **Therefore, the notifications issued under Section 93 of the Finance Act, 1994 cannot be pressed into service for finding out whether a unit in a SEZ qualifies for exemption or not.** The Hon'ble Supreme Court in **Union Of India Vs M/S GMR**

> **Aerospace Engineering Limited,** [SLP (Civil) Diary No(s).22140/2019, dated: 26 July, 2019] examined the SLP arising out of the Hon'ble high Courts final judgment and order dated 27-12-2018 in WP No. 13546/2018 and saw no reason to interfere with the impugned judgment and dismissed the SLP."
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> (emphasis added)

7. We find that the SEZ Act is a self-contained Act which provides exemptions on taxes, duties, cess, drawbacks and concessions on imports and exports of the goods and on supply of services to the Developers and Units **within a SEZ** for carrying on authorised operations. Therefore, in terms of section's 51 and 26 of the SEZ Act, no notification is required to be issued under Section 93 of the Finance Act, 1994 in this regard.

8. As for the services provided to the Developer or Unit partially **outside the SEZ**, Section 26(1) (e) of the SEZ Act states that every Developer or Unit shall be entitled to exemption from Service Tax on taxable services provided to carry on the authorised operations in a SEZ. Hence the situs of rendering services is not relevant in connection with carrying on the authorised operations, so long as the taxable services are provided to a Developer or Unit in a SEZ. Therefor the said taxable services would be exempt from the whole of the service tax leviable thereon under section 66 of the said Finance Act as per the provisions of the SEZ Act and Rules framed there under.

9. It would be relevant to state that as per the Apex Court's judgment in **Peekay Re-Rolling Mills Pvt. Ltd. Vs Assistant Commissioner** [2007 (219) E.L.T. 3 (S.C.)], exemption does not negate a levy of tax altogether. Despite an exemption, the liability to

tax remains unaffected, only the subsequent requirement of payment of tax to fulfil the liability is done away with.

10. As regards the Ld. A.R.s submission that the pre-approved "authorised list of services" in the case of Rent-a-cab Services was included in November 2013 only, i.e. after the disputed period, it seen that there is no allegation in the SCN that the Rent-a-cab Services provided by the appellant to the SEZ Unit was not to carry on the authorised operation. Hence the issue is beyond the scope of the SCN.

11. Based on the discussions above the appellant is eligible for exemption from service tax for rent-a-car services provided to SEZ units as per the overriding effect under Section 51 of the SEZ Act on any other law for anything inconsistent therewith and exemption provided by Section 26 of the SEZ Act. Hence the impugned order merits to be set aside and is so ordered. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 05.12.2025)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

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