

आयकर अपीलीय अधिकरण
मुंबई पीठ "बी", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ओम प्रकाश कांत, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
आअसं.943 एवं 944/मुं/ 2023 (नि.व.2015-16 एवं 2017-18)
ITA NO. 943 & 944/MUM/2023(A.Y. 2015-16 & 2017-18)

The ACIT-4(1)(1), Mumbai
Room No.640, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

Bytescale Technologies Private Limited.
Unit No.13, 3rd Floor Hi Life Mall,
Phirozshah Mehta Road,
Santacruz West, Mumbai – 400 054.
PAN: AAACJ-2042-G

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Kamble Minal Mohan

प्रतिवादी द्वारा/Respondent by : Shri Rajesh R. Shah

सुनवाई की तिथि/ Date of hearing : 08/06/2023

घोषणा की तिथि/ Date of pronouncement : 15/06/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These appeals by the Revenue for Assessment Year 2015-16 and 2017-18 are directed against the orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] for the respective Assessment Years. Both the impugned orders are of even date i.e. 07/02/2023.

2. Since, the facts germane to the issue in both the appeals are identical and the grounds raised by the Department in the appeals are similar, these appeals are taken up together for adjudication and are decided by this common order.

ITA NO.943/MUM/2023-A.Y.2015-16:

3. The Revenue has raised following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in holding that the assessee is eligible for deduction u/s. 10AA of the I.T. Act, 1961.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the claim of deduction u/s.10AA of the I.T. Act, 1961 made by the assessee in respect of the profits arising out of the trading activity.

3. The appellant craves leave to amend or after any ground or add new ground which may be necessary.”

3.1 The facts germane to the issue in appeal are: The assessee company is engaged in import and re-export of goods. The assessee is carrying out its trading activities from Special Economic Zone (SEZ) for Free Trade and Warehousing Zone (FTWZ) at Sai Village, Taluka Panvel, Dist. Raigarh. The assessee claimed deduction u/s. 10AA of the Income Tax Act, 1961 [in short ‘the Act’] in respect of profit and gains derived from export/services carried out from specified SEZ Unit. The Assessing Officer disallowed assessee’s claim of deduction u/s. 10AA of the Act on the ground that the assessee is not involved in the business of manufacturing or producing any article or thing nor the assessee is providing any services. Thus, the Assessing Officer held that the activities carried out by the assessee are not commensurate to the provisions of section 10AA of the Act and disallowed assessee’s claim of deduction

amounting to Rs.1,92,72,332/-. Aggrieved by the assessment order dated 17/11/2017 for the Assessment Year 2015-16, the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order reversed the findings of Assessing Officer and allowed the benefit of deduction u/s. 10AA of the Act to the assessee holding that the activity of trading i.e. import and re-export of the imported goods falls within the meaning of the term “services” as defined u/s.2(z) of the Special Economic Zone Act, 2005 [in short ‘the SEZ Act’]. Further, the CIT(A) placed reliance on the following decisions in support of his findings:

- (i) DCIT vs. Goenka Diamond & Jewellers Ltd., 19 taxmann.com 91 (Jaipur)
- (ii) M/s. Geetanjali Exports Corporation Ltd. vs. ACIT, ITA Nos.6781 & 6783/Mum/2011 decided on 08/05/2013.
- (iii) Zaveri & Co.(P) Ltd. vs. CIT-IV, Ahmedabad, ITA Nos. 1395 & 1396 AHD of 2013.
- (iv) CIT, Circle -2(1), Guntur vs. Bommidala Enterprises (P) Ltd., ITA Nos. 272 to 274(VIZAG) of 2012, 477 & 484(VIZAG) of 2014 & 271 & 275(VIZAG) of 2016.
- (v) ITO 15(1)(4) vs. Duty Free Distribution Services (P)Ltd. , ITA No.2753(MUM) of 2015.
- (vi) Solitaire Diamond Exports vs. ITO 19(3)(4), Mumbai , ITA No.3128(MUM) of 2019.

Hence, the present appeal by the Revenue.

4. Shri Kamble Minal Mohan representing the Department vehemently supported the assessment order and submitted that the assessee is importing goods and is thereafter re-exporting the same goods without any value

addition. No manufacturing or production is being carried out by the assessee. No services are performed by the assessee so as to be eligible to claim the benefit of section 10AA of the Act. The Id. Departmental Representative prayed for reversing the findings of CIT(A) and upholding the assessment order.

5. Per contra, Shri Rajesh R. Shah appearing on behalf of the assessee emphatically supported the impugned order. The Id. Authorized Representative of the assessee submits that the assessee is rendering services. The activity of trading i.e. import of goods and thereafter re-exporting of the same falls within the definition of services as defined under the SEZ Act. He further draws our attention to Rule 76 of the Special Economic Zone Rules, 2006, where an exhaustive list of activities is mentioned, that fall within the meaning of services. "Trading" is one of the activities mentioned in that list. The Id. Authorized Representative of the assessee reiterating the submissions made before the CIT(A) pointed that the Development Commissioner SEEPZ, SEZ, Ministry of Commerce & Industry vide letter dated 20/06/2011 (at page 62 to 65 of the paper book) has authorized the assessee to set up facility of trading and services at SEZ for FTWZ at Sai Village, Tahasil Parnel, Dist. Raigarh for Apple Mac – all types of Apple products, accessories of Laptop systems, Apple Moc Phone, Cabinets, etc. The Id. Authorized Representative of the assessee further referred to clause (xx) of the said letter, wherein reference to Rule -76 of SEZ Rule 2006 has been made, wherein it has been clarified that expression trading for the purpose of Second Schedule of the SEZ Act 2005 shall mean import for the purpose of re-export.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the documents on which the Id. Authorized Representative of the assessee has placed reliance in support of his submissions. In so far as the activities carried out by the assessee at SEZ they are not in dispute. The Assessing Officer has disallowed the assessee's claim of deduction u/s. 10AA of the Act on the ground that the activities of import of goods for re-export carried out by the assessee does not fall within the meaning of "services", the expression used in section 10AA of the Act for being eligible to claim deduction.

7. The expression "services" is not defined under the provisions of the Act. Section 10AA was inserted by the SEZ Act, 2005 w.e.f.10/02/2006. Therefore, it would be appropriate to refer to the definition of services given in SEZ Act. The expression 'service' has been defined u/s. 2(z) of SEZ Act. The same is reproduced herein below:

Section 2(z)

(z) "services" means such tradable services which,—

(i) are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994;

(ii) may be prescribed by the Central Government for the purposes of this Act; and

(iii) earn foreign exchange;

Further Rule -76 of SEZ Rules 2006 has listed out the activities that fall within the meaning of services for the purpose of sub-clause "(z)" of section 2 of SEZ Act. Rule 76 of SEZ Rules 2006 reads as under:

“76. The “services” for the purposes of sub-clause (z) of section 2 shall be the following, namely: - Trading, warehousing, research and development services, computer software services, including information enabled services such as back-office operations, call centers, content development or animation, data processing, engineering and design, graphic information system services, human resources services, insurance claim processing, legal data bases, medical transcription, payroll, remote maintenance, revenue accounting, support centers and web-site services, off-shore banking services, professional services (excluding legal services and accounting) rental/leasing services without operators, other business services, courier services, audio-visual services, construction and related services, distribution services (excluding retail services), educational services, environmental services, financial services, hospital services, other human health services, tourism and travel related services, recreational, cultural and sporting services, entertainment services, transport services, services auxiliary to all modes of transport, pipelines transport.”

Thus, from the conjoint reading of the definition of ‘service’ and Rule 76 it is unambiguously clear that activity of **trading** falls within the meaning of services as defined under section 2(z) of SEZ Act. The letter dated 20/06/2011 from the office Development Commissioner, SEEPZ SEZ has further clarified that “In terms of explanation to Rule-76 of the SEZ Rules, 2006, the expression trading for the purpose of the Second schedule of the SEZ Act, 2005 shall mean import for the purpose of re-export” .

8. The above clarification given by the Ministry of Commerce & Industries leaves no element of doubt that the activity of import of goods for the purpose of export falls within the meaning of services. Hence, the activities carried out by the assessee falls within the ambit of “services”, the expression used in section 10AA of the Act and the profits and gains derived from such services rendered from SEZ would be eligible for deduction u/s. 10AA of the Act.

9. The Tribunal in the case of DCIT vs. Goenka Dimond & Jewellers Ltd.(supra) in a similar issue, wherein the assessee's claim u/s. 10AA of the Act was rejected by the Assessing Officer for the reason that the assessee was merely purchasing and thereafter selling the goods without the process of manufacturing. The contention of the assessee therein was that the assessee was in the business of trading and the expression "trading" would mean rendering of services. The Tribunal after considering the provisions of section 10AA of the Act and provisions of SEZ Act and various decisions concluded as under:

"2.20..... Thus the word services as mentioned in Section 10AA cannot be construed in-consistently with the definition of services given in the SEZ Act. Under the SEZ act, the trading is included in the services provided the trading is export of imported goods. We therefore, feel that the assessee is entitled to deduction u/s 10AA of the Act and therefore, the Ld. CIT(A) was justified in allowing the exemption."

Similar view has been expressed by the Tribunal in the case of Geetanjali Exports Corporation Limited. (supra) and various other decisions considered by CIT(A).

10. Ergo, in facts of the case and the provisions of SEZ Act discussed above we find no infirmity in the impugned order. The same is upheld and the appeal of Revenue is dismissed being devoid of any merit.

ITA NO.944/MUM/2023-A.Y.2017-18:

11. The grounds raised by the Revenue in appeal are verbatim to the ground raised for Assessment Year 2015-16. Both sides are unanimous in stating that the facts are identical except for the quantum of deduction claimed u/s. 10AA of the Act. The representatives of the rival sides stated that the submissions

made while addressing the issue in appeal for Assessment Year 2015-16 would equally apply to the present appeal. The findings given by us while adjudicating the issue in 2015-16 would mutatis mutandis apply to the present appeal.

12. In the result, impugned order is upheld and appeal of the Revenue is dismissed for parity of reasons.

13. To sum up, appeal by the Revenue for Assessment Years 2015-16 and 2017-18 are dismissed.

Order pronounced in the open court on Thursday the 15th day of June, 2023.

Sd/-

(OM PRAKASH KANT)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 15/06/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar), ITAT, Mumbai