

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 1

**Service Tax Appeal No. 11110 of 2016 – DB**

(Arising out of OIA-BHV-EXCUS-000-APP-116-117-15-16 dated 26.02.2016 passed by the Commissioner (Appeal-III), Central Excise, Rajkot)

**Swan Defence and Heavy Industries Limited**

PIPAVAV PORT, POST-UCCHAIYA,  
AMRELI, GUJARAT

**.....Appellant**

*VERSUS*

**Commissioner of C.E. & S.T.-Bhavnagar**

PLOT NO.6776/B-1...SIDDHI SADAN,  
NARAYAN UPADHYAY MARG,  
BESIDE GANDHI CLINIC,  
NEAR PARIMIAL CHOWK, BHAVNAGAR,  
GUJARAT-364001

**.....Respondent**

**APPEARANCE:**

Shri P D Rachchh, Advocate for the appellant

Shri NeilPrakash G Makwana, Superintendent (AR) for the department

**CORAM:**

**HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

**HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH**

**Final Order No. 10560/2025**

DATE OF HEARING: 04.06.2025

DATE OF DECISION: 15.07.2025

**SATENDRA VIKRAM SINGH**

1.1 M/s. Swan Defence and Heavy Industries Ltd., Pipavav Port, Rajula, Amreli, Gujarat filed a refund claim along with its relevant documents for Rs.8,62,80,755/- in terms of Notification No.12/2013- ST dated 01.07.2013 before the Assistant Commissioner, Service Tax division, Bhavnagar on 04.12.2014 for the period from October-2013 to March-2014. They claimed refund of the service tax paid to the service providers for the specified services used in authorised operation in the SEZ as approved by the unit approval committee, KASEZ, Gandhidham.

1.2 After necessary verification and reply to the queries raised by the field unit, the Assistant Commissioner decided the said refund claim vide Order-in-Original No. R/72/2014 dated 13.02.2015 wherein, he sanctioned the refund

claim of Rs.5,83,61,378/- and rejected the refund claim of Rs.2,79,19,377/- which included an amount of Rs.2,26,713/- found inadmissible and agreed to by M/s. Swan Defence while replying to the queries raised by the Department, Rs.2,68,49,704/- on account of time bar and Rs.7,63,758/- relating to furniture and fixtures.

2. Aggrieved with the said order, the appellant M/s. Swan Defence filed an appeal before the Commissioner (Appeal), Central Excise, Rajkot. The Department also filed appeal against sanctioning of refund in respect of certain invoices/ services before the above authority. The learned Commissioner (Appeal) considered both the appeals and decided them vide impugned order dated 29.02.2016 wherein, he allowed the Department's appeal in respect of invoices/ services mentioned at Sr. Nos. 5, 8, 13, 20, 21, 26, 27, 30, 31, 32, 33, 34, 35, 37, 38, 43, 45, 47, 53, 56, 57, 59, 68, 69, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87. He however, rejected the Department's appeal in respect of Sr. Nos. 36, 39, 52 and 54 holding that the Assistant Commissioner has sanctioned the refund claim under "Consulting Engineer Service" as per revised annexure of the party. These services were falling under the list of specified services as approved by the competent authority. The learned Commissioner (Appeal) rejected the contention of the appellant M/s. Swan Defence on time bar aspect as well as refund in respect of invoices pertaining to renting of furniture under the category "Renting of Immovable Property". Aggrieved by the order of the Commissioner (Appeal), M/s. Swan Defence filed the present appeal before this Tribunal.

3. In their appeal, the appellant mentioned that they filed the refund claims under Notification No.12/2013-ST dated 01.07.2013, condition (e) of which mentions that, "the 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 SEZ 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.

(a) The appellant had explained the reasons for delay in filing the refund claim and requested the learned Assistant Commissioner to condone delay under the relevant provisions of law which was rejected without disclosing the relevant provisions of law. They cited the decision of the Tribunal in the case of APK Identification vs. Commissioner of Central Excise, Noida, reported at 2012 (27) S.T.R. 20 (Tri-Del) as well as OIA No. BVR-EXCUS-000-APP-52 TO 54-14-15 dated 21.11.2014 pertaining to their unit for earlier period wherein, delay was condoned.

(b) Regarding rejection of refund claim of Rs.7,63,758/- of service tax paid towards renting of immovable property, the appellant submitted that their head office was situated in a rented building " Skill House" at Mumbai owned by M/s. Awaita Properties Pvt. Ltd. The owner had issued separate invoices for fixtures/ furniture provided by the service provider in the said rented building. The refund claim of service tax pertaining to such invoices was rejected on the ground that, furniture and fixtures cannot be classified as immovable property. The appellant justified its claim giving an example of "Mandap keeper" as clarified by CBIC vide Master Circular No.96/7/2007-ST dated 23.08.2007 issued from F. No. 354/28/2007-TRU. They also relied on the decision of the Tribunal in the case of M/s. Satya Prakash Builders (P) Ltd-2013 (31) S.T.R. 13 (Tri-Del). His another say is that classification of service cannot be changed while sanctioning the refund claim. Alternatively, he submits that this may be treated as supply of tangible goods service which is also approved by Development Officer, KASEZ and hence, its refund is admissible to them.

(c) Regarding rejection of refund of service tax paid on Management consultancy service (pertaining to 41 serial numbers of the list of invoices/ services mentioned in the OIO), appellant mentioned that refund was allowed by learned Assistant Commissioner but it was disallowed subsequently by

learned Commissioner (Appeal) on the ground that during the relevant period, Management consultancy service was not approved as specified service as the same was approved on 19.01.2015. The appellant mentioned that they had taken up this issue with the competent authority of the SEZ and the unit approval committee in its meeting held on 30.07.2015 clarified that there is no change in working of SEZ before 09.10.2013 and the decision of the Ministry of Commerce was only for the prospective SEZs. It was never to cancel the services already approved during the 4<sup>th</sup> Approval Committee of E-Complex Pvt. Ltd. SEZ held on 01.02.2012 for existing developer and unit. As 91 services were already approved in respect of their SEZ, rejecting refund claim on the ground that Management Consultancy service was approved on 19.01.2015 is not correct and therefore, they are entitled to the said refund.

4.1 During hearing, learned Advocate apart from highlighting the grounds taken in their appeal memo submitted copy of the letters dated 16.02.2012 issued by Kandla, SEZ, letter dated 02.03.2012, public notice No.01/2013 dated 09.10.2013, letter dated 11.08.2015 along with Minutes of 9<sup>th</sup> meeting of unit approval committee for E-complex Pvt. Ltd, SEZ held on 30.07.2015. Vide these letters, learned Advocate emphasised that Management consultancy service was approved by the unit approval committee on 01.02.2012 which continued to be valid in spite of public notice dated 09.10.2013. As this service was already approved for their authorised operations, rejection of refund claim by learned Commissioner (appeal) by allowing Department's appeal is not correct.

4.2 Regarding rejection of refund of Rs.7,63,758/- towards renting of furniture under the category of renting of immovable property, learned Advocate mentioned that the service provider had issued invoices classifying the service under renting of immovable property and paid the service tax accordingly. Classification of the service cannot be changed at the recipient head. They cited the decision of this Tribunal vide Final Order No. 11822/2024

and 11920/2024 dated 21.08.2024 in their own case. In view of this, he requested for allowing this refund claim also.

4.3 On issue relating to delayed filing of refund claim, he mentioned that October, 2013 claim was delayed by 33 days whereas November-2013, claim was delayed by only three days. Notification No.12/2013-ST dated 01.07.2013 authorises the Assistant/ Deputy Commissioner for extending the date of filing of refund claim but learned Assistant Commissioner has not exercised his power and rejected the refund claims on the ground of time bar. He cited the decision of the Tribunal in the case of SRF Ltd. vs. Commissioner of Customs, central Excise & Service Tax, LTU, New Delhi reported at 2022 (64) G.S.T.L. 489 (Tri-Del.) to support his case. He further stressed that Section 26(1) of the SEZ Act is inconsistent with three charging sections viz Section 3 of the Central Excise Act, 1944, Section 12 of the Customs Act, 1962 and Section 66, 66 A and 66 B of Chapter V of the Finance Act, 1994. As per Section 51 of the SEZ Act, provisions of SEZ Act override any other provisions and other laws. He in fact, stated that there is no need for any exemption notification under any of the three Acts nor is it necessary to fulfil any condition of any of the notification laid down under the three Acts. Relying on the decision of this Tribunal in the case of Commissioner of Central Excise and Service Tax, Rajkot vs. Reliance Industries 2019 (26) G.S.T.L. 34 (Tri-Ahmedabad), he requested to allow the refund claim.

5.1 Learned AR on the other hand justified rejection of refund claim on time bar, service not being approved by the Unit Approval Committee and renting of furniture and fixtures not covered under renting of immovable property service. He stated that if Notification No.12/2013-ST dated 01.07.2013 providing for filing of refund claim within one year from the end date of the month in which service tax has been paid, is interpreted the way appellant wants, the notification itself becomes infructuous. In condition (e) of the said Notification, at two places word "Shall" has been used i.e. in the beginning for

filing the refund claim by the SEZ unit and at the end, for the Assistant Commissioner to grant extension. The appellant gave same reason for seeking extension of time limit as was given previously for earlier claim. While seeking extension of time limit, the appellant had mentioned that delay occurred due to new person handling the refund claim in the company and lot of time is consumed in collecting invoices/ certificates from different offices. This being repeat ground was not allowed by the Assistant Commissioner as it would otherwise have created many administrative inconveniences.

5.2 For non-specified service i.e. Management consultancy service, he mentioned that for the relevant months, this service was not approved by Unit Approval Committee and therefore, granting refund on such service would be violating the conditions of the said Notification.

6. We have heard rival submissions and seen the records. Following three issues need decision:-

- (a) Whether Management consultancy service was approved during the relevant months/ period?
- (b) Whether refund is admissible on invoices issued by the service provider for renting of furniture and fixtures?
- (c) Whether delay in filing refund claim is condonable?

**(a.1)** We find that vide letter dated 16.02.2012, Minutes of 4<sup>th</sup> approval committee meeting of E-Complex Pvt. Ltd. were issued which at item No.4.1 mentioned that the list of services for Pipavav Defence & Offshore Engineering Company Ltd. (now M/s. Swan Defence and Heavy Industries Limited) has already been approved by previous approval committee meeting. Head note of Annexure-I enclosed with the copy of the Minute mentions, *"List of specified services required in exemption/refund to the authorised operation in M/s. Pipavav Defence & Offshore Engineering Company Ltd. unit of E-Complex Pvt. Ltd., SEZ as approved by the 4<sup>th</sup> Approval Committee meeting held on*

01.02.2012.” We find that Management consultancy service is mentioned at Serial No. 45 of this Annexure. Confusion seems to have arisen due to public notice No.01/2013 dated 09.10.2013 which mentioned that a list of 58 services to be allowed as default authorised services by all the unit approval committees, which did not include Management consultancy service. The clarification was issued vide letter dated 11.08.2015 which mentioned that, *“..... The committee, after due deliberations, decided that the list of 91 services as approved by the 4<sup>th</sup> UAC of E-complex Pvt. Ltd. SEZ held on 01.02.2012, for existing Developer and Unit (M/s. Swan Defence and Heavy Industries Limited) would deemed to have been continued and will continue further. Accordingly, all the above referred 91 services stand approved for service tax exemption w.e.f. 01.02.2012.”* The above letter leaves no doubt in our minds that Management consultancy service was approved in the case of the appellant and hence, refund of service tax paid on this service should have been allowed.

**(a.2)** We find that as per order, an amount of Rs. 43,50,828/- (Sr. Nos.8,20,26,43,57,68,69,70,71,73,74,75-87 of the table in O-I-O) pertains to Management consultancy service. During hearing, learned Advocate mentioned that refund of Rs.4402/- involved in respect of Sr. No.8 and 14 pertains to Actuarial Valuation service provided by M/s. Seeneel Consultancy Services falling under business auxiliary service and refund of Rs.21,24,048/- involved on invoices mentioned at Sr. Nos. 31-35 issued by M/s. Choice Capital Advisors Pvt. Ltd. pertaining to Merchant Banker Service falling under Banking and other Financial Services. As per appellant, they had claimed refund on these invoices by oversight under Management Consultancy Service which otherwise, is allowable under “Business Auxiliary Service” and “Banking and other financial services” respectively. We find that as both “Banking and other Financial services” as well as “Business Auxiliary Service” have been approved

by the unit approval committee, refund of service tax paid on these services is admissible to the party and should not have been rejected.

**(a.3)** With above discussion, we conclude that the appellant has wrongly been disallowed refund of Rs. 43,50,828/- under Management consultancy service and hold that the same is admissible to them.

**(b.1)** Regarding refund of Rs. 7,63,758/- relating to Serial No. 3,14,19,40,48 & 60, we find that the same pertain to invoices issued for renting of furniture and fixtures by the service provider who had paid service tax under Renting of immovable property service. We find that in their own case involving the same issue, this Tribunal vide final order No. 11920/2024 & 11822/2024 both dated 21.08.2024 has held that the beneficial nature of export benefits available to the party cannot be improperly rejected on mere technicalities. The case of the appellant is also supported by CBIC master Circular No. 96/7/2007-ST dated 23.08.2007. We also find that 'Renting of Immovable Property Service' is duly approved by the Unit Approval Committee and therefore, refund of service tax cannot be disallowed merely, on the ground that there are two separate invoices i.e. one for rent of the building and the other for rent of the furniture and fixtures. We have no hesitation in upholding the view taken by this Tribunal vide order (as cited supra) and therefore, refund of above amount is admissible to the appellant subject to correctness of service tax payment.

**(c.1)** Regarding delay in filing the refund claim, we find that the Assistant Commissioner has rejected their request for delay condonation as the appellant had taken same ground as was taken by them in respect of their earlier refund claim passed vide order dated 05.06.2014 and such a submission can be accepted once and the same cannot be a reason for repetitive delay. The appellant on the other hand has clearly elaborated the reasons for delay in filing refund claim including financial strain, delay in



collection of separate certificates from Banks for remittance of service tax amount, practice of taking extra efforts and care to avoid human error, etc. It is a fact that the head office of the appellant is situated at Mumbai and they have to collect certificate from 29 different banks which are distantly located which seems to be the main reason of delay. Learned Advocate also takes us to the decision of the Tribunal in the case of M/s. APK Identification vs. Commissioner of Central Excise, Noida, reported at 2012 (27) S.T.R. 20 (Tri-Del), and emphasizes that SEZ Act is beneficial piece of legislation and exemption of service tax on the services availed by the SEZ units should be construed liberally.

**(c.2)** We have considered the arguments of both sides and perused the records. The short point to be decided is whether the Assistant/Deputy Commissioner was correct in rejecting the request of the appellant for condonation of delay in filing the refund claim under Notification No. 12/2013-ST dated 01.07.2013. The case of the department is that the appellant had not adduced sufficient grounds for allowing the refund claim and that the same reason has again been given by the appellant while requesting for condonation of delay. We find that the reasons given by the appellant are genuine. We also find that in similar cases with respect to exemption Notification No. 12/2013-ST dated 01.07.2013 available to SEZ units, Tribunal has taken a liberal view and condoned the delay as was available under the said exemption Notification. The condition (e) of the said Notification, clearly provides for condonation of delay. It uses the word "*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.*" This clearly means that the benefit under a beneficial legislation should not be withheld just for technicalities, if otherwise, claim is found genuine. We therefore, agree with the contention of the appellant and condone the delay in filing the refund claim

and direct the original authority to sanction refund to the extent admissible on merits.

7. The appeal is allowed with consequential relief to the appellant.

*(Pronounced in the open court on 15.07.2025)*

**(SOMESH ARORA)**  
**MEMBER ( JUDICIAL )**

**(SATENDRA VIKRAM SINGH)**  
**MEMBER ( TECHNICAL )**