

# Tax Alert: SEZ Act prevails over service tax law – CESTAT Chennai

Issued on: 3 March 2020



## Summary

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Chennai, in a recent case has held that provisions of the Special Economic Zone Act, 2005 (SEZ Act) override the service tax law and hence the tax department cannot press into application, the service tax laws to hold that the taxpayer has not exported any services. Accordingly, the CESTAT held that the service tax cannot be levied on storage and warehousing services provided through a Free Trade Warehousing (FTW) Zone if it fulfills the conditions prescribed under the SEZ Act.

## Case facts

- The taxpayer<sup>1</sup> is engaged in the business of logistics supply, chain management, clearing and forwarding, licensed CHA etc. In accordance with the authorised operations<sup>2</sup> of Letter of Approval (LOA), the taxpayer renders storage and warehousing services through the FTW Zone to foreign-based clients.
- The assessing authority held that the services provided by the taxpayer from the FTW Zone exclusively to foreign-based clients do not qualify as export of services and thus levied demand, interest and imposed penalty.
- The taxpayer, aggrieved by the order, preferred appeal before the Chennai bench of CESTAT.

## Taxpayer's contention

- **Services qualify as 'export':** The taxpayer submitted that it is authorised to carry out the operations by setting up a unit in FTW zone and has provided **storage and warehousing services** that meets the criteria for exports<sup>3</sup> including receiving consideration in convertible foreign currency. Therefore, the taxpayer contended that the activity rendered by it should be considered as export of services.
- **SEZ Act provides for overriding provision:** The taxpayer argued that the SEZ Act would have overriding effect to the extent of any inconsistency with any other law. For this, it relied on provisions of the SEZ Act<sup>4</sup>.
- **Intention of provisions under SEZ law:** The SEZ Act<sup>5</sup> provides for exemption for any services provided from SEZ or from a unit to any place outside India. Thus, it contended that the

---

<sup>1</sup> M/s Broekman Logistics (India) Pvt Ltd. (Order No. 40356/2020)

<sup>2</sup> issued by the Development Commissioner for providing various logistic services

<sup>3</sup> Section 2(m) of the SEZ Act

<sup>4</sup> Section 51 of the SEZ Act, 2005

<sup>5</sup> Section 26 of SEZ Act, 2005

intention of these provisions is to exempt all duties and taxes on goods exported outside India as well as services rendered to service recipients outside India.

- **Demand cannot be sustained:** The demand of service tax on the consideration received for storage and warehousing services cannot sustain.

## CESTAT's observations and order

- **Overriding effect:** The CESTAT observed that the SEZ Act provides for exemption of duties and taxes to SEZ units. Further, it observed that the **SEZ Act shall have an overriding effect notwithstanding anything inconsistent in any other law.** Thus, the CESTAT held that in case of a conflict, provisions of the SEZ Act will override the service tax laws<sup>6</sup>.
- **Department cannot contend there is no export:** The CESTAT noted that the intention of creating such FTW Zone was to give exemption from levy of all duties and taxes. Further, even the consideration was received in foreign currency as well as the service recipient is a person placed outside India. Thus, the CESTAT held that the tax department cannot press application of service tax law to hold the taxpayer has not exported any

services thereby defeating the intention and purpose of the SEZ law.

- **No levy of service tax:** The CESTAT thus held that the demand of service tax on consideration received by the taxpayer from the foreign service recipient under **storage and warehousing services** cannot be subject to levy of service tax under reverse charge mechanism.

## Our comments

The decision will be helpful in determining the taxability/export of supply of goods/services by SEZs to overseas entity. It makes it amply clear that in case of inconsistencies, the SEZ law shall prevail over other central laws which *inter alia* includes the service tax law.

The decision will also help settle interpretational inconsistencies between the commerce ministry on one hand and the finance ministry on the other, thereby further minimising litigation and uncertainty.

---

<sup>6</sup> Chapter V of the Finance Act, 1994

## Contact us

To know more, please visit [www.grantthornton.in](http://www.grantthornton.in) or contact any of our offices as mentioned below:

---

<b>NEW DELHI</b> National Office Outer Circle L 41 Connaught Circus, New Delhi 110001 T +91 11 4278 7070	<b>NEW DELHI</b> 6th floor, Worldmark 2, Aerocity, New Delhi - 110037 T +91 11 4952 7400	<b>AHMEDABAD</b> 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad - 380015	<b>BENGALURU</b> 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru - 560093 T+91 80 4243 0700	<b>CHANDIGARH</b> B-406A, 4th Floor, L&T Elante office Industrial area, Phase-I, Chandigarh 160002 T +91 172 4338 000
<b>CHENNAI</b> 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	<b>DEHRADUN</b> Suite 2211, Michigan Avenue, Doon Express Business Park, Saharanpur Road, Dehradun - 248002T +91 135 264 6500	<b>GURGAON</b> 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122002 T +91 124 462 8000	<b>HYDERABAD</b> 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500016 T +91 40 6630 8200	<b>KOCHI</b> 7th Floor, Modayil Centre Point, Warriam road junction, M.G. Road, Kochi 682016 T +91 484 406 4541
<b>KOLKATA</b> 10C Hungerford Street5th Floor, Kolkata 700017 T +91 33 4050 8000	<b>MUMBAI</b> 16th Floor, Tower II Indiabulls Finance Centre SB Marg, Prabhadevi (W) Mumbai 400013 T +91 22 6626 2600	<b>MUMBAI</b> Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai 400069	<b>NOIDA</b> Plot No. 19A, 7th Floor Sector - 16A, Noida 201301 T +91 120 4855 901	<b>PUNE</b> 3rd Floor, Unit No 309 to 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 [contact@in.gt.com](mailto:contact@in.gt.com)



Follow us @GrantThorntonIN



© 2020 Grant Thornton India LLP. All rights reserved.

“Grant Thornton in India” means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013.

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.