

ECONOMIC LAWS PRACTICE

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**Andhra Pradesh High Court Issues
Notice to determine whether Services
provided in a SEZ Unit are liable to
Service Tax**

**MAS-GMR AEROSPACE ENGINEERING CO. LTD. VS. UOI (W.P. (C)
No. 21740/2011)- HIGH COURT OF ANDHRA PRADESH.**

The Andhra Pradesh High Court has issued notice against the Ruling of the Advance Authority in the case of MAS-GMR Aerospace Engineering Co. Ltd. ("MAS-GMR"), wherein, it was held that ***Service tax will be chargeable on the services rendered within the SEZ unless specifically exempted under the SEZ Act or under the Finance Act, 1994 or any Rules or Notifications there under.***

MAS-GMR challenged the Ruling of the Advance Authority dated 13.05.2011 before the High Court of Andhra Pradesh in a Writ Petition. The High Court has issued notice for admission of the matter earlier today and has directed the Ministry of Finance as well as the Ministry of Commerce to file their response.

Background of the Case

The issue relates to determination of the question whether the services rendered by a service provider within the SEZ will be liable to service tax under the Finance Act, 1994. MAS-GMR, a joint venture company of GMR Hyderabad International Airport Limited and the Malaysian Aerospace Engineering, SDN, BHD, has obtained approval from the Ministry of Commerce to set up a unit in the SEZ at Hyderabad for providing Maintenance, Repair and Overhauling of Aircraft. Accordingly, MAS-GMR preferred an application before the Authority for Advance Rulings (Central, Excise, Customs and Service Tax), New Delhi for advance ruling for determination of the question whether the services of MRO which are being provided and consumed within the SEZ will be liable to Service Tax. It was argued on behalf of MAS-GMR that the SEZ is deemed to be a territory outside the customs territory of India and therefore, the deeming fiction created under the SEZ Act should be given its full effect. It was contended that applying the said deeming fiction created under the SEZ Act in the light of the objects and reasons of the SEZ Act, the provisions of the Finance Act will not be applicable to the services which are rendered and consumed within the SEZ.

The Authority of Advance Ruling ("AAR"), vide its Order dated 13.05.2011, inter alia, held that the deeming fiction created by the SEZ Act, which treats the SEZ as a territory outside the Customs territory of India, is only applicable to the Customs Laws. Therefore, by such deeming fiction, it cannot be assumed that the provisions of the Finance Act will not be applicable. While rejecting the interpretation of MAS-GMR, the AAR also held that on a reading of the provisions of the SEZ Act, it cannot be inferred that a SEZ is a territory outside India and that any law declared by the Parliament shall not have effect on a SEZ and the overriding effect of the SEZ Act will not be applicable to the Finance Act.

MAS-GMR challenged the Ruling of the AAR before the High Court of Andhra Pradesh. During the hearing on admission, MAS-GMR was represented by ELP's Senior Partner Vikram Nankani and Associate Kishore Kunal and it was, *inter alia*, argued that:-

- (a) The deeming fiction created under the Section 53(1) of the SEZ Act has to be given full effect in the light of the objectives of the SEZ Act of, *inter alia*, creating a tax free zone for the purposes of carrying out operations by the SEZ unit. The reasons given in the Ruling erroneously seeks to restrict the benefits granted to the SEZ unit.
- (b) The Ruling is contrary to the very purpose and object of the SEZ Act and the Rules viz. providing package of incentives to SEZs to attract foreign and domestic investments for promoting export lead growth in line with the international practice.

- (c) the interpretation made by the AAR all service providers situated inside SEZ shall be liable to pay service tax, irrespective of who the recipient of the service is, virtually negating the object of having service providers in SEZ despite the fact that sub-section (1) of Section 3 providing that “a SEZ must be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacturing of goods or rendering service or for both. ...”

Upon hearing the parties, the High Court has issued notice directing the Ministry of Finance as well as the Ministry of Commerce to file their response within four weeks.

MAS-GMR was represented by ELP in this matter.

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This tax alert is generated on the basis of the oral observations of the High Court today and the written order of the High Court is awaited.

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