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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SZB, CHENNAI

COURT : Division Bench III

EXCISE APPEAL No. 41072/2013

(Arising out of Order-in-Original No. 1/2013 dated 31.01.2013 passed by the Commissioner of Central Excise, Salem).

M/s. Pricol Ltd. (Plant III) **Appellant**
Chinnamadampalayam,
Coimbatore – 641 019.

Vs.

Commissioner of Cemtral Excise **Respondent**
No.1 Foulks Compound, Anaimedu
Salem-636 001.

APPEARANCE

For the appellant : Shri M. Karthikeyan, Advocate

For the respondent : Shri R. Rajaraman, AC (A.R)

CORAM

Hon'ble MS. SULEKHA BEEVI C.S., MEMBER JUDICIAL
Hon'ble Shri VASA SESHAGIRI RAO, MEMBER TECHNICAL

Date of Hearing: **15.02.2023**
Date of Pronouncement: **02.03.2023**

FINAL ORDER No. 40101/2023

Order : Per Hon'ble Vasa Seshagiri Rao

1.1 M/s. Pricol Limited, Plant-III, Coimbatore is a registered manufacturer of Oil Pumps and its assemblies falling under Chapter 84 and they were availing Cenvat Credit of duty paid on inputs, capital goods and tax paid on input services and utilizing

the same for payment of duty on their finished product clearances.

1.2 This appeal was filed against the Order-in-Original no. 1/2013 dated 31.01.2013 passed by the Commissioner of Central Excise, Salem, confirming the demand of recovery of irregularly availed Cenvat Credit of an amount of Rs.3,95,16,449/- under Rule 14 of Cenvat Credit Rules, 2004 (CCR, 2004 in short) read with Section 11 A (1) of Central Excise Act, 1944 (CEA,1944 in short) along with applicable interest and imposing a penalty equal to the demand of duty under Rule 15 (2) of the said Rules ibid. The Commissioner has adjudicated the following three show cause notices together in the above said order as it involved a common issue.

1	SCN No. 66/2011 dated 29.08.2011	Sept 2010 to Mar 2011	Demand of Rs. 1,99,45,000/-
2	SCN No. 13/2012 dated 02.04.2012	Sept 2010 to Mar 2011	Demand of Rs. 62,02,088/-
3	SCN No. 35/2012 dated 17.10.2012	Sept 2010 to Mar 2011	Demand of Rs. 1,33,69,361/-

1.3 M/s. Pricol Limited had their head office/Corporate office at Avinashi Road, Coimbatore and it was registered as an Input Service Distributor (ISD) under the service tax law. They were availing credit in respect of various input services availed by them and were transferring the said credit to their manufacturing units including Plant-III, the appellant herein.

1.4. The appellant had been issued with the above three show cause notices to deny the credit availed by them based on the ISD invoices issued by their Head Office on the following grounds:-

i) The ISD invoices did not contain the requisite details as required in terms of Rule 4A of Service Tax Rules, 1994;

ii) No input services covered in the said ISD invoices were received by the appellant unit;

iii) The credit transferred amount included a portion of credit transferred back by M/s. Pricol Ltd., Plant-I to Pricol ISD Registrant which was subsequently redistributed by the ISD registrant to the appellant unit and such credit is not permissible to be transferred by the ISD to the appellant in terms of Rule 7 of CCR, 2004.

2.1 Appearing for the appellants, Learned Advocate Shri M.Karthikeyan has submitted that since around 1000 invoices were received by their ISD registrant on a monthly basis and the credit accumulated during the month was transferred to the manufacturing units once at the end of the month, the amount of credit transferred alone was mentioned in the invoice with a list of input services in the Annexure attached to the said ISD invoice. All the details of input service invoice-wise as mentioned in Rule 4A could not be captured in ISD invoice itself, though they had mentioned in the ISD register which contained all the requisite details of input service invoices and a copy of the said register with the copy of the input service invoices were furnished to the adjudicating authority for verification. Despite having verified the same, the Commissioner has merely concluded that the ISD invoice did not contain the requisite details and denied the credit. Further, he contended that in their own case, this Hon'ble Tribunal vide Final Order No. 924/2012

dated 12.09.2012 and Final Order No. 41232-41233/2018 dated 16.03.2018 had decided the above issue in their favour.

2.2 On the issue of non-receipt of services in the appellant unit, learned Advocate has drawn our attention to the provision of Rule 7 of Cenvat Credit Rules as on 31.03.2012, which was as follows:-

> "The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely:-
> a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or
> b) credit of service tax attributable to service use in an unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."

A perusal of the above Rule makes it clear that only condition is that the credit distributed against an input service invoice should not exceed the amount of service tax paid thereon and no credit relating to a wholly exempted unit shall not be distributed. There was no restriction on quantum of distribution, except for wholly exempted units and any amount can be distributed to any unit and there was no one to one correlation. There is no requirement cast under the above Rule that the input services should be received by the unit availing credit based on such ISD invoices.

2.3 Learned Advocate further contended that the Commissioner at the end of para 13.01 in his O-in-O, has observed that "on scrutiny of 21 volumes of ISD credit register it is noticed that with the particulars available in those registers, it is not possible to correlate a particular taxable service to a

particular unit of the ISD without which the noticee can't claim eligibility of credit on the list of services." In this regard, he relied on a decision of the Hon'ble High Court of Karnataka in the case of *Ecof Industries Pvt. Ltd.,* reported in 2012 (277) ELT 317, wherein it was held that the appellants are entitled to the said credit. The Rule 7 of CCR has not contemplated any correlation of the services rendered vis-à-vis the input tax credit of the services availed during the relevant period.

2.4 It is further submitted by the learned Advocate that M/s. Pricol Ltd., ISD had distributed credit around Rs. 3.22 Crores to their Plant I and since Plant I had accumulated Cenvat credit balance and they could not utilize it, Plant I had returned such credit back to ISD by issue of an invoice. Based on such Plant I invoice, ISD had distributed such credit to all other units including the appellant unit. A separate adjudication proceeding was initiated against Plant I and ISD Registrant in this regard on the ground that Plant I cannot transfer such credit back to ISD and ISD cannot distribute such credit again. The said proceeding was finally decided by this Hon'ble Tribunal vide their Final Order No. 40188-40189/2019 dated 29.01.2019 in favour of the assessee.

3. Learned AR Shri R. Rajaraman has reiterated the reasoning of the adjudicating authority.

4.1 Heard both sides. All the three issues raised in this appeal are no more res integra. The Hon'ble Tribunal vide Final Order No. 924/2012 dated 12.09.2012 and also vide Final Order No.

41232-41233/2018 dated 16.03.2018 have already decided that input service credit when distributed by the ISD, cannot be held as inadmissible on the pretext that such invoices did not contain all the particulars as required in terms of Rule 4A of CCR, 2004, when it was possible for the department to verify all the input service invoices on the basis of which the credit has been accumulated by ISD. The findings of the Tribunal in the above cited two decisions are extracted as under:-

> "2. The main allegation of the Revenue in this appeal is that as per Rule 4 A (2) of the Service Act Rules, 1994, the name, address and registration number of the person providing input service and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1) were not mentioned in the invoices of input service distributor. Therefore, the respondents are not entitled to take credit on the strength of the invoices.
> 3. Heard both sides. After considering the submissions from both sides, I find that during the course of adjudication, the respondents have provided all such details as annexure to the invoice before the adjudicating authority. As the whole record of annexure is very bulky, same was not filed along with the returns filed by the respondents. But in future, the respondent has undertaken that along with invoice of input service distributor, they will file annexure showing the details of registration number of input service provider etc., as required under Rule 4 A (2) of STR, 1994.
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> 4. In view of these observations, I do not find any infirmity in the impugned order. Same is upheld and the appeal filed by the Revenue is rejected but the respondents are directed that, in future, they will file all the details along with input service distributor's invoice as required under Rule 4A (2) of Service Tax Rules, 1994. The appellant is at liberty to verify whether the credit taken by the respondents is correct or not."

In Final Order dated 16.03.2018, the Tribunal held as under:-

> "After hearing both sides duly represented by Shri M. Karthikeyan, learned Advocate for the appellants and Shri R. Subramaniyan, AC (AR) for the Revenue, we note that the appellants have been denied the Cenvat credit of service tax paid on various input services, which stand availed by them on the basis of the invoices issued by the Head Office, which is registered as an ISD. The sole reason for denial of credit was that the invoices issued by ISD did not contain any of the requisite details. It is seen that the invoices referred to the annexure attached wherein all the details were given. The Revenue's only objection is that such details should be given in the invoices itself.
>
> 2. We find no merits in the above stand of the revenue. In the absence of any evidence to the effect that the assessee is not entitled

> to such credit, adoption of such hypo-technical procedural issues for denial of credit cannot be appreciated. In the present case, such taking of credit cannot be faulted upon. We, accordingly, set aside the impugned order and allow both the appeals with consequential reliefs to the appellants."

4.2 Regarding manner of distribution of credit by input service distributor, the learned Advocate has relied on the decision of the Hon'ble High Court of Karnataka in the case of Ecof Industries Pvt. Ltd., (supra), wherein it was held as under:-

> "10. Therefore, there are only two limitations, which are imposed in Rule 7 preventing the manufacturer from utilizing the cenvat credit, otherwise, he is entitled to the said credit. Merely because the input service tax is paid at a particular unit and the benefit is sought to be availed at another unit, the same is not prohibited under law. It is in this context, the manufacturer is expected to register himself as an input service distributor and thereafter, he is entitled to distribution of credit of such input in the manner prescribed under law. Therefore, the order passed by the Tribunal is legal and valid and does not suffer from any legal infirmity and does not call for any interference and therefore it is dismissed."

4.3 It is seen that the proceedings initiated against M/s. Pricol Limited, Plant-I, Coimbatore, on the issue of retransfer of ISD credit to M/s. Pricol Ltd., ISD was finalized by this Hon'ble Tribunal vide Final Order Nos. 40188040180/2019 dated 29.01.2019. The relevant portion of the said order is as under:-

> 6. From the facts narrated above, it can be seen that the allegation against M/s. Pricol Ltd., Plant-I is that they have reversed the Credit to M/s. Pricol Ltd., ISD, which is against the law. The allegation against M/s. Pricol Ltd., ISD, is that they have wrongly availed the Credit on the strength of improper documents and thereafter, distributed it to its other units. For better appreciation, the definition of "Input Service Distributor" as defined under Rule 2(m) of CCR, 2004 is reproduced as under :
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> > "RULE 2. Definitions. — In these rules, unless the context otherwise requires, -
> > ……..
> > ……... .
> > (m) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be,

challan for the purposes of 11 distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, [or an outsourced manufacturing unit] as the case may be;"

7.1 The manner in which the Credit can be distributed among different units is prescribed under Rule 7 of CCR, 2004. During the relevant period, Rule 7 ibid stated that the Input Service Distributor may distribute the Credit to its manufacturing units or units providing output service subject to two conditions stated therein. The two conditions are :

(i) The Credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon;

(ii) Credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing exempted services shall not be distributed.

8.1 The Department has no case that these conditions have not been satisfied. The whole case is based on the allegation that the Credit which was distributed by M/s. Pricol Ltd., ISD, was retransferred to it and later distributed to the other units. Rule 7 ibid was later amended vide Notification No. 18/2012 CE (NT) dated 17.03.3012 wherein a restriction for proportionate distribution was introduced. At the cost of repetition, it has to be said that during the disputed period, there was no restriction in the quantum of Credit that could be distributed. When the amount of Rs. 3,32,14,672/- was distributed by M/s. Pricol Ltd., ISD, to M/s. Pricol Ltd., Plant-I, they had reversed the Credit as they were already having excess unutilized Credit. This reversal is carried out by issuing an invoice by M/s. Pricol Ltd., Plant-I to M/s. Pricol Ltd., ISD dated 01.02.2009.

8.2 True, there may not be any specific provision to facilitate such "return" of non-required credit which has been transferred in the first place by the Input Service Distributor, but it has to be kept in mind that there would be situations when an Input Service Distributor may transfer Credit amounts inadvertently or in excess of what was intended, to a constituent unit. In such situations, the only recourse would be by way of "return/reversal" of such Credit back to the Input Service Distributor, which in turn can be facilitated only by the recipient unit reversing the unintended Credit and issuing a document confirming the facts of the same.

9. It is also to be borne in mind that there is no prohibition in law for such reversal of Credit to the Input Service Distributor. The law does not provide any procedure that can be applied to such situations. Therefore, this is the only way unintended Credit, transferred inadvertently by the Input Service Distributor, can be "returned" to such Input Service Distributor. Certainly, there is nothing in the Service Tax

> Rules or the Finance Act, 1994 or, for that matter, in the CENVAT Credit Rules, 2004 which prohibits or bars such collections. In any case, it is not the allegation that the same quantum of Credit has been availed not just by M/s. Pricol Ltd., ISD, but also by M/s. Pricol Ltd., Plant-I.
>
> 10. From the facts on record as also on perusal of invoices, etc., produced at the time of hearing, it is evident that M/s. Pricol Ltd., Plant-I has only returned/reversed the exact quantum of Credit that was transferred to it in the first place by the M/s. Pricol Ltd., ISD. Such return/reversal has not enlarged the quantum of Credit that has been availed nor has there been any financial injury caused to the exchequer. This is then only a revenue neutral situation. For these reasons, we find that the demand or penalties cannot sustain. The impugned Order is set aside.
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> 11. The appeals are allowed with consequential reliefs, if any, as per law."

5. For the reasons and detailed discussions as above, and as all the issues in this appeal are covered by the decisions of the Hon'ble Tribunal, the appeal is allowed with consequential relief, if any.

(Order pronounced in the Open Court on **02.03.2023**)

(**SULEKHA BEEVI C.S.**)
MEMBER JUDICIAL

(VASA SESHAGIRI RAO)
MEMBER TECHNICAL

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