CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

EXCISE Appeal No. 10125 of 2016-DB

[Arising out of Order-in-Original/Appeal No BVR-EXCUS-000-COM-024-15-16 dated 19.10.2015 passed by Commissioner of Central Excise and Service Tax-BHAVNAGAR]

Unifrax India Ltd **...Appellant**

99 Km. Stone,
Ahmedabad-Surendranagar, Highway, Lakhtar,
Surindranagar
Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar **...Respondent**

Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar,
Gujarat-364001

APPEARANCE:
Shri Jigar Shah, Advocate for the Appellant
Shri. Anand Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A / 12330 /2023

DATE OF HEARING:12.10.2023
DATE OF DECISION:19.10.2023

RAMESH NAIR

The following issues involved in the present case:

(A) Whether the appellant is liable to reverse the CENVAT Credit distributed by its head office prior to its registration as Input Service Distributor?

(B) Whether the HO (registered as ISD) of the appellant while distributing 100% of the credit to a single unit has contravened

the mandate under Rule 7 (d) of CENVAT Credit Rules, 2004 (as existed during the relevant period)?

2. Shri Jigar Shah, learned Counsel appearing on behalf of the appellant submits that as regard the issue (A) that whether the CENVAT Credit which was distributed by their head office prior to its registration as Input Service Distributor, the issue is no longer *res integra* as in the following judgments, it has been consistently held that prior to registration of ISD credit can be passed on to the manufacturing unit:

- CCE Vs. Hinduja Global Solutions Ltd- 2022 (4) TMI 71- Karnataka High Court
- CCE Vs. Dashion Ltd.- 2016 (2) TMI 183- Gujarat High Court
- Spice Degital Ltd Vs. CCE- 2023 (5) 196 CESTAT Chandigarh
- 3M Electro & Communication India Pvt Ltd Vs. CCE- 2023 (6) TMI 1104- CESTAT Chennai
- United Phosphorus Ltd Vs. CCE-2022 (11) TMI 747-CESTAT Ahmedabad
- Sanghi Industries Ltd Vs. CCE-2019 (12) TMI CESTAT Ahmedabad
- Philips Electronics (I) Ltd Vs. CCE- 2019 (6) TMI 361- CESTAT Ahmedabad
- Hindalco Industries Ltd Vs CCE-2016 (100 TMI 31- CESTAT Ahmedabad)

2.1 As regard the issue (B), he submits that prior to 2016, there was no restriction under CENVAT Credit Rules, 2004 in the distribution of credit of one unit to the other unit under the provision of Rule 7 of Cenvat Credit Rules, 2004. Therefore, on this count also the credit cannot be denied. In support, he placed reliance on the following judgments:

- CCE Vs ECOF Industries Pvt Ltd- 2011 (2) TMI 1130-Karnata High Court

- ECOF Industries (p) Ltd Vs. CCE- 2009 (10) TMI 171-CESTAT Banglore
- CCE Vs. Orelikon Balzers Coating P Ltd- 2018 (12) TMI 1300-Bombay High Court
- Hindustan Zinc Ltd Vs. DGST- 2019 (4) TMI 1843 –CESTAT
- Pirmal Glass Pvt Ltd Vs. CCE- 2021 (9) TMI 1198-CESTAT-Ahmedabad
- Shalimar Paints Ltd Vs. CCE- 2022 (8) TMI 469-CESTAT
- Shree Flavours LLP Vs. CCE- 2022 (8) TMI 825- CESTAT

2.2 He also submits that in the overall facts of the case, it is only the issue relates to only procedure for ISD. Therefore, there is no *mala fide* intention of the appellant, accordingly, there is no suppression of fact. He submits that the appellant have filed their the monthly return and had provided all the details required therein. He submits that the ST3 return does not have any column for providing all the details. Accordingly for non-disclosure of any detail in present case will not amount to suppression. In support, he placed reliance on the following judgments:

- GID Goenka Pvt Ltd Vs. CCE-2023 (8) TMI 995- CESTAT

3. Shri Anand Kumar, Learned Superintendent (Authorized Representative) appearing on behalf of the respondent reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal of record, we find that the issue involved is that whether the appellant can avail the CENVAT Credit on ISD invoice which was issued by their head office without having ISD registration is correct or otherwise.

4.1 We find that there is no dispute about the payment of Service Tax on the service received by the appellant. Therefore, merely because the ISD

invoice was issued without having registration of the appellant's head office, the fact of the payment of Service Tax will not get extinguished. Hence the credit cannot be disallowed. This issue has been considered by the Hon'ble Jurisdictional Gujarat High Court in the case of M/s. Dashion Ltd (supra), wherein the Hon'ble Court has observed as under:

> *"7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed. However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons dis-entitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not dis-entitle the assessee from the entire Cenvat credit availed for payment of duty. Question No.1 therefore shall have to be answered in favour of the respondent and against the assessee."*

4.2 The aforesaid decision of the Hon'ble High Court was followed by the Hon'ble Karnataka High Court in the case of CCE and ST Vs. Hinduja Global Solusions Ltd-2022 (4) TMI 71, the relevant paras of the judgement are extracted below:

> *8. The dispute involved herein is no more res integra in view of the judgment of the Hon'ble High Court Gujarat in the case Dashion Ltd., supra which has been accepted by the Department in terms of the Circula dated 16.02.2018. The relevant paragraphs of the judgment of Dashion Ltd., supra is quoted hereunder for ready reference:*

"7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed.

However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No.1 therefore shall have to be answered in favour of the respondent and against the assessee."

9. Considering this judgment, the Department in the Circular dated 16.02.2018, has observed thus:

"2.(a) Decision of the Hon'ble High Court of Gujarat dated 08.01.2016 in the matter of Commissioner of Central Excise v. Dashion Ltd in Tax Appeal No. 415 of 2013 & 662 of 2014 [2016-TIOL-111- HC-AHM-ST 2016 (41) S.T.R. 884 (Guj] =

(b) Decision of the Hon'ble High Court of Rajasthan dated 08.02.2016 in the matter of Commissioner Central Excise Commissionerate, Jaipur v. National Engineering Industries Ltd CEA No. 3/2016 [2016-TIOL-922-HCRAJ- CX=2016 (42) S.T.R. 945 (Raj.)].

2.1 Department has accepted the judgments where the Hon'ble High Courts dismissed the Department's appeal inter alia holding that substantial benefit cannot be denied because of procedural irregularity.

2.2 In the case of Dashion Ltd., the assessee was engaged in manufacture of water treatment plant and other connected items and was availing benefit of CENVAT credit on the duty paid on inputs, capital goods and input services as permissible under CENVAT Credit Rules, 2004. The assessee had five manufacturing units and had its registered office at Vatva, Ahmedabad. The assessee was also providing several taxable services such as erection and commissioning, repairing and maintenance of water treatment plant, etc.

2.3 The revenue authorities, during scrutiny of the records of the assessee, noticed that it was availing the credit of service tax paid for various services by one unit for the purpose of clearance of other unit. After gathering details from the assessee, the adjudicating authority issued show cause notice calling upon the assessee as to why the CENVAT credit of service tax on input service should not be recovered with interest and penalties. In the show cause notice itself, the adjudicating authority had referred to sub-rule (3) of Rule 15 of the Rules of 2004 as basis for such proposal. Two primary objections of the Department were that the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005 and that the tax credit from one unit was utilized for discharging tax liability of another unit instead of pro rata distribution amongst different units. The adjudicating authority confirmed the duty demands with interest and penalties.

2.4 Therefore, the points of law examined were that the assessee had utilized credit from one unit for the purpose of duty liability of its other unit without pro rata distribution by the input service distributor and further the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules 2005.

2.5 Hon'ble High Court dismissed the department's appeal holding that such view was not sustainable as there was no previous restriction of this nature under Rule 7 of the CENVAT Credit Rules, 2004. Further nonregistration of ISD is only a procedural irregularity for which substantial benefit of CENVAT credit cannot be denied when all the necessary records have been maintained by the respondent."

10. The Hon'ble High Court of Madras referring to the judgment of Dashion Ltd., supra, in M/s. Pricol Ltd., supra has held thus:

> *"4. The above decision has been accepted by the Central Board of Excise and Customs, vide Circular dated 16.02.2018. Therefore, the above questions have to be decided against the Revenue and accordingly, decided so."*

From the above decision, it can be seen that not only the Hon’ble Courts have decided, but the Board also vide Circular No. 1063/2/2018-CX dated 16.02.2018, accepted the orders of the High Court and clarified that the credit in the given circumstances cannot be denied. This Tribunal relying on the Hon’ble Gujarat High Court decision in the case of Doshin Ltd in a case of Demosha Chemicals Pvt Ltd-2014 (34) STR 758 (Tri-Ahmd.), held that not

taking ISD registration is at best a procedural irregularity and credit is not deniable on this ground. It is observed that there are many other judgments cited by the appellant which support the case of the appellant on this issue. Therefore, merely because the ISD registration was not obtained the CENVAT Credit cannot be denied. As regard the second issue that the head office of the appellant distributed 100% credit to a single unit i.e appellant, we find that in Rule 7(d) of CENVAT Credit Rules, 2004, existing during the relevant period there was no restrictions for distribution of CENVAT Credit to one particular unit of an assessee despite having more than one unit. Accordingly, on this ground also credit cannot be denied. In this regard, we reproduce Rules existing prior to 2012 and post 2012 as under:

Rule 7 as Existing Prior to 2012 :-

"RULE 7. Manner of distribution of credit by input service distributor - 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 used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

Rule 7 Post 2012- amendment

RULE 7. Manner of distribution of credit by input service distributor - 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 used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly in a unit shall be distributed to the unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rate on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period."

4.3 The above provisions were interpreted by the Hon'ble Bombay High Court in the case of M/s. Overlikon Balzers Coating India Pvt Ltd-2018 (12) TMI 1300 (Bombay High Court), wherein the following interpretation was made:

"9. From reading of the above Rules both pre and post amendment, it would be noticed that both provisions give an option to the assessee concerned whether to distribute input services tax available to it amongst its other manufacturing units which are providing output services. This is evident from the use of word "may distribute the CENVAT credit" is found in Rule 7 both prior and also post 2012. Thus, from the reading of the Rules, the option was available to the assessee whether to distribute the CENVAT credit or not. In fact, our attention is invited to Rule 7 of the CENVAT credit Rules, 2004 as substituted w.e.f. 1.4.2016 which has made it mandatory for distribution of input services to the various units providing output services. This is evidence by the use of words "shall distribute the Cenvat Credit" in the substituted Rule 7 as Cenvat Credit Rules 2004 w.e.f. 1.4.2016. Therefore, on plain reading of Rule 7 as existing both pre and post amendment 2012 covering period involved in these proceedings, the respondent assessee was entitled to utilize the CENVAT credit available at its Pune unit."

From the reading of the above rule and interpretation made by the Hon'ble Bombay High Court, it is clear that before the amendment was carried out in the year 2016, the assessee was given the option to distribute the CENVAT

Credit to one unit or also to other unit, and provision for proportionate credit was brought only post amendment of 2016. Therefore, it is at the option of the head office whether it wanted to distribute the credit to the appellant only or to distribute it to other units. Therefore, in view of existing provisions of CENVAT Credit Rules, 2004 during relevant period, we are of the view that the 100% credit availed by the appellant is in order in terms of Rule 2007, existing at the relevant time. Therefore on this count also the adjudicating authority has wrongly denied the credit. On this issue also various other judgments relied upon by the appellant are applicable in the present case. Since we have decided the present appeal on merit, we do not incline to address issue of demand being time bar, and the same is left open.

5. As per our above discussion and findings, the impugned order is set aside. The appeal is allowed.

(Pronounced in the open Court on 19.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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