

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10318 of 2021

(Arising out of OIA-VAD-EXCUS-001-APP-232-2020-21 dated 30/03/2021 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

INEOS STYROLUTION INDIA LTD.

.....Appellant

5th FLOOR OHM HOUSE II OHM BUSINESS PARK
OPP BALAJI HOSPITAL ELLORA PARK
EAST SUBHANPURA VADODARA, GUJARAT 390023

VERSUS

C.C.E. & S.T. VADODARA-I

.....Respondent

IST FLOOR, CENTRAL EXCISE BUILDING,
RACE COURSE CIRCLE, VADODARA, GUJARAT-390007

APPEARANCE:

Shri. Willingdon Christian, Advocate for the Appellant

Shri. G. Kirupanandan, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. 10217 /2022

DATE OF HEARING: 24.01.2021

DATE OF DECISION: 07.03.2022

RAJU

This appeal has been filed by M/s Ineos Styrolution (India) Ltd. against demand of reversal of cenvat credit, interest and imposition of penalty under section 78 of Finance Act read with Rule 15(2) of Cenvat Credit Rules, 2004.

1.1 The appellant are registered as input service distributor and have distributed cenvat credit to its manufacturing plants located at three different places by way of issuing ISD invoices. The appellant unit was audited by Central Excise Revenue Audit and auditors pointed out that the Nandesari Manufacturing Unit of the appellant had availed ineligible cenvat credit of service tax paid under Voluntary Compliance Encouragement Scheme 2013 (VCES). VCES was implemented to encourage people to disclose their service tax liability on which they had failed to pay service tax and benefit in the shape of waiver of interest and penalty, and immunity

from prosecution was offered in return to the assessee declaring under VCES. The CERA Auditor observed that the appellant had not paid service tax on import of service (Corporate Cost Sharing Expenses) in the year 2012. Consequently, the show cause notice dated 11.10.2013 was issued to the appellant and the appellant opted for VCES and paid service tax of Rs. 1,80,29,207/- under VCES. After payment of service tax, the appellant availed cenvat credit of the said service tax paid under VCES 2013, in the ST-3 Returns for the period October 2014 to March 2015 filed on 24.04.2015. The said credit was distributed to various manufacturing plants by issuing ISD invoices. After pre show cause notice consultations, a show cause notice was issued to the appellant demanding reversal of cenvat credit taken by them invoking Rule 9(1)(bb) and (e) of Cenvat Credit Rules, 2004. The demand along with interest was confirmed by the original adjudicating authority. Penalty under Section 78 of the Finance Act 1994 read with Rule 15(2) of the Cenvat Credit Rules, 2004 was also imposed.

2. Learned Counsel for the appellant pointed out that Rule 9(1)(bb) is not applicable when credit of service tax is availed on the basis of supplementary invoices. He argued that the said rule does not apply to case of service tax paid under reverse charge mechanism as in the present case. Learned counsel further argued that the appellants are entitled to cenvat credit on the strength of challan prescribed under Rule 9(1)(e) which does not prescribe any condition mentioned in Rule 9(1)(bb). He relied on the following decisions:

- **2019 (2) TMI 1299** -Nissan Motors India Pvt. Ltd.
- **2018 (12) TMI 1098** -Columbia Machine Engineering India P.Ltd.
- **2018 (2) TMI 804** -Polygenta Technologies Ltd.

He further argued that the show cause notice dated 23.06.2020 is barred by limitation as the credit was availed in the ST-3 return filed for the period October 2014 to March 2015. He pointed out that the fact of payment under VCES and availment of cenvat credit was reflected in the ST-3 Return filed on 24.04.2015. He further argued that this fact was also noticed by CERA. It was further argued that the issue is purely interpretational in nature regarding applicability of Rule 9(1)(bb) of Cenvat Credit Rules 2004 and therefore, no malafides could be attached. It was further argued that since the entire credit of the service tax was in any case admissible to the appellant themselves, no charge of suppression or mis-declaration could be invoked. He relied on the following decisions:

- **2018 (11) TMI 1389** -John Energy Limited
- **2016 (44) STR 465 (T), 2017 (7) GSTL J35 (SC)** Jet Airways (I) Ltd.

3. Learned Authorized Representative relies on the impugned order. He argued that the scheme of VCES was to persuade the service tax defaulters to pay tax. He pointed out that immunity from penalty, interest and prosecution was granted because the failure to pay service tax would have otherwise led to invocation of penal provisions. He further relied on the CBEC Circular dated 20.01.2014 read with answer to FAQ no. 22 which clarify the issue relating to admissibility of cenvat credit.

3.1 He further relied on the decision of the CESTAT Allahabad in the case of IMI Norgren Herion Pvt. Ltd. reported at **2019 TIOL 3320-CESTAT-ALL**. He further argued that the availemnt of cenvat credit against the payment made under VCES Scheme was never disclosed in the ST-3 returns, therefore, extended period was correctly invoked.

4. We have considered the rival submissions. We find that the appellant has discharged his service tax liability under Reverse Charge Mechanism availing the benefit of VCES Scheme. Rule 9 of Cenvat Credit Rules

prescribes the documents on which credit can be availed under the Cenvat Credit Rules. Rule 9 reads as under:

Rule 9. Documents and accounts:- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a)

(b)

(bb) a supplementary invoice, bill or challan issued by a provider of output service, in terms of the provisions of Service Tax Rules, 1994 except where the additional amount of tax became recoverable from the provider of service on account of non-levy or non-payment or short-levy or short-payment by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax; or]

(c)

(d)

(e) a challan evidencing payment of service tax, by the service recipient as the person liable to pay service tax; or]

(f)

(g)

5. It is seen that the appellant have argued that Rule 9(1)(bb) does not apply to the service tax paid under Reverse Charge Mechanism by the service recipient. Rule 9(1)(bb) applies only to supplementary invoice, bill or challan issued by "provider of output Service". In the instant case, it is an undisputed fact that service tax has been paid by the appellant under Reverse Charge Mechanism in the capacity of 'recipient of service' and not as 'provider of service'. In these circumstances, the case of the appellant would be covered under Rule 9(1)(e) of the Cenvat Credit Rules, 2004. This view is also supported by the decision of Tribunal in the case of Nissan Motors India Pvt. Ltd. (supra) and Polygenta Technologies Ltd. (supra). In the case of Polygenta Technologies Limited (supra) following has been observed:

"5. From the above, it is apparent that Rule 9(i)(bb) is applicable to supplementary invoice, bill or challan issued by provider of output service and Rule 9(1)(e) is applicable, inter alia, to a person liable to pay service tax under Rule 2(1)(d) of Service Tax Rules, 1994. It is apparent that the appellant is not service

provider and therefore Rule 9(i)(bb) would not be applicable to them. The appellant is paying service tax on reverse charge basis in terms of Rule 2(1)(d) of Service Tax Rules, 1994 and therefore credit can be availed in terms of Rule 9(i)(e) of Cenvat Credit Rules. Since Rule 9(i)(bb) is not applicable to the appellant, the credit cannot be denied.”

6. The entire case of the Revenue is based on invocation of Rule 9(1)(bb) of the Cenvat Credit Rules and since the said Rule is not applicable in respect of the service tax paid by the recipient of service under Reverse Charge Mechanism, the demand of reversal of cenvat credit cannot be upheld. In this background, we do not find any merit in the impugned order and the same is set aside. Appeal is allowed.

(Pronounced in the open court on 07.03.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha