Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10975 of 2017

(Arising out of OIA-VAD-EXCUS-003-APP-456/2016-17 Dated- 22.12.2016 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I(Appeal))

IDMC LTD. ....**Appellant**
Plot No 443-b, Gidc Estate Vithal Udyog Nagar
ANAND-GUJARAT

VERSUS

C.C.E. & C.-ANAND ....**Respondent**
Office of the Commissioner, Central Excise,
Customs & Service Tax, Central Excise Building,
Nr. Juna Dadar, Behind Old Bus Depot Anand, Gujarat-388001

APPEARANCE:
Shri Kumar Parekh (Chartered Accountant) for the Appellant
Shri Vinod Lukose, (Superintendent) Authorised Representative for the Respondent

CORAM: HON'BLE MR. RAMEH NAIR, MEMBER (JUDICIAL)

Final Order No. A/ 11022 /2022

DATE OF HEARING:24.08.2022
DATE OF DECISION:24.08.2022

RAMEH NAIR

The brief facts of the case are that the appellant's company have five units i.e. I to V. Therefore, unit No. II has a centralized registration for payment of service tax. All the five units are engaged in manufacture of excisable goods and availing the cenvat credit. Unit No. II has paid service tax on certain services under reverse charge mechanism. The invoices for such services were raised in the name of individual unit. The payment of service tax was made by Unit No. II being centralized registered. On inquiry from the appellant regarding payment of service tax, the appellant have submitted the challans whereby the service tax was paid by Unit No. II. The department considered the entire service tax of Rs. 20,72,909 paid by Unit No. II was availed as cenvat credit by Unit No. V and accordingly the show cause notice for disallowance of cenvat credit of Rs. 20,72,909/-

was issued. The adjudicating authority confirmed the demand. Being aggrieved by the order-in-original, the appellant filed appeal before Commissioner (Appeals), the Commissioner (Appeals) also concurred with the finding of the adjudicating authority, upholding the order in original rejected the appeal. Therefore, the present appeal filed by the appellant.

2. Shri Kumar Parekh, Learned Chartered Accountant, appearing on behalf of the appellant, at the outset, submits that firstly the appellant have availed cenvat credit only of Rs. 1,24,129/- and not for an amount of Rs. 20,72,909/. He submits that Rs. 20,72,909/- was paid as service tax on behalf of all the five units and all the five units have respectively availed the cenvat credit pertaining to their individual unit. Therefore, under any circumstances demand of Rs. 20,72,909/- raised against the appellant is incorrect and not sustainable. He further submits that as regard the credit of Rs. 1,24,129/- availed by the appellant is against the invoices of the service provider which is in the name of the appellant only. He submits that the cenvat credit was denied on the ground that the Unit No. II being centralized registered unit has not issued ISD invoice. He submits that since the invoice was in the name of appellant itself, there is no need of issuing of ISD by unit No. II, therefore, on this ground also, the credit cannot be denied. He has taken me to all the documents submitted before both the authorities clearly showing that the service tax of Rs. 20,72,909/- was paid cumulatively in respect of all the units i.e. Unit No. I to V.

3. Shri Vinod Lukose, Learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have considered the submission made by both the sides and perused the records.

5. All the documents had been submitted by the appellant before both

the lower authorities and also before this Tribunal which clearly shows that the service tax of Rs. 20,72,909/- was paid in respect of all the five units and the amount of service tax attributed to the appellant unit is only Rs. 1,24,129/-. It is established from the records that the appellant have taken credit of Rs. 1,24,129/- only. This position was made very clearly before the original authority as well as Commissioner (Appeals). I find that surprisingly both the authorities have discarded this defence stating that it is an afterthought. In my view, it is clearly a fact on record which both the authorities should have verified which they utterly failed to do so. Moreover, right from show cause notice stage till Commissioner (Appeals) stage there is no evidence on record that the appellant have taken the cenvat credit of Rs. 20,72,909/-. For this reason also, the entire basis of show cause notice has no leg to stand. As regard, the credit of Rs. 1,24,129/- availed by the appellant, I find that the adjudicating authority and Commissioner (Appeals) denied this credit on the ground that the Unit No. II which has a centralized registration should have issued ISD invoice and in absence of ISD invoice, credit is not admissible. I find that the invoice of the service provider is in favour of the appellant unit V, the requirement of ISD invoice arises only when the invoices is in the name of Head Office. In this case, since the service was received by the appellant and invoice is in their name only, in my considered view, there is no need of any ISD invoice and the appellant have correctly availed the credit.

6. As regard the payment of service tax made by Unit No. II, since the said unit is centralized registered, Unit No. II is under obligation to pay the service tax on behalf of all the units. Merely because, the Unit No. II has paid the service tax, the eligibility of cenvat credit of the present appellant's unit will not adversely be affected because irrespective of any unit paying the service tax, all the units are under one single entity i.e. M/s IDMC Ltd.

7. As per my above discussion and findings, the appellant are entitled

for the cenvat credit of Rs. 1,24,129/- and remaining amount for which appellant have otherwise not taken the credit, the demand of the same will not sustain. Thus entire demand of cenvat, interest and penalty is set aside. Accordingly, the impugned order is set aside. Appeal is allowed.

(Operative portion of the order pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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