

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

REGIONAL BENCH- COURT NO. 1

Excise Appeal No. 10075 of 2017-DB

(Arising Out of Order No. BHR-EXCUS-001-COM-78-2016-17 Dated 30.09.2016 Passed
By Commissioner Of Central Excise, Bharuch)

Philips Carbon Black Ltd.

Nh – 08, Palej, Bharuch
Gujarat- 392220

.....Appellant

VERSUS

C.C.E. – Bharuch

GST Bhavan, Subhanpura,
Vadodara-Gujarat - 390023

.....Respondent

APPEARANCE:

Sh. J.C. Patel with Sh. Rahul Gajera Advocate appeared for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (Authorised Representative) appeared
for the Respondent

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

FINAL ORDER NO. 12484 /2024

DATE OF HEARING:25.06.2024

DATE OF DECISION:23.10.2024

RAMESH NAIR

The following issues involved in the present Appeal:

- a. Whether Cenvat Credit distributed during April to June 2012 by the Appellant's Head Office (Input Service Distributor) at Kolkata to the Appellant unit at Palej (Bharuch) can be denied on the ground that the ISD did not distribute the Credit amongst all units proportionate to the respective turnovers of the units, resulting in distribution of excess Credit to the Palej unit,
- b. Whether, in any event, the entire issue is revenue neutral, since the other units were paying Central Excise duty through PLA, which was much higher than the alleged excess credit distributed to the Appellant unit at Palej,
- c. Whether, in any event, the demand was barred by time and larger period of limitation was not applicable since the issue was revenue neutral and hence there can be no intention to evade duty.

2. Shri J.C Patel, Learned Counsel with Shri Rahul Gajera, Advocate appearing on behalf of the Appellant submits that the cenvat credit was denied to the appellant only on the ground that the same could have been distributed proportionately by the appellant's head office to

their all the units located at different places. Therefore, credit more than the proportionate credit attributed to the present appellant was denied. It is his submission that the provision for proportionate distribution of the credit was brought in statute with effect from 01.04.2016 whereas the period involved in the present case is April to June, 2012, therefore, there is no bar prior to 01.04.2016 to distribute the cenvat credit in the proportionate manner or to only one unit.

2.1 He further submits that there is clear revenue neutral situation for the reason that other units to whom the proportionate credit was supposed to be distributed as contended by the revenue, they were paying duty from PLA much more than the proportionate cenvat credit, therefore, even if the appellant's unit has availed the entire credit, there is no revenue loss to the Government exchequer. He also submits that demand was raised by invoking the extended period whereas since there is no suppression of fact on the part of the appellant, demand for the extended period is not sustainable. In support of his above submission, he placed reliance on the following judgments:-

- CCE v Oerlikon Balzers Coating P. Ltd- 2019 (366) ELT 624 (Bom)
- Unifrax India Ltd v CCE- 2023 (10) TMI 955-CESTAT-AHD
- Piramal Glass P. Ltd v CCE – 2021 (55) GSTL 22
- Hindustan Zinc Ltd v CCE – 2019 (370) ELT 1582
- Shalimar Paints Ltd v CCE – 2022 (8) TMI 469
- India Cement Ltd v CCE – (2023) 7 Centax 94

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the case of the revenue is that the availment of cenvat credit over and above the proportionate credit attributed to the appellant's unit is not admissible to the appellant as the same could have been distributed to other units. We find that as regard distribution of credit in respect of common input service, the provisions is made under Rule 7 of Cenvat Credit Rules, 2004 which has undergone the change with effect from 01.04.2016. We find that the proportionate distribution of the input service credit was made mandatory by amendment with effect from 01.04.2016. However, prior to the said amendment there was no compulsion on the assessee to distribute the credit either to one unit or proportionately to different

units. Therefore, even if the entire credit is distributed to the appellant instead of distribution proportionately to all the units, credit to the appellant unit cannot be denied. We also find that the other units to whom the proportionate credit should have been distributed have paid much more duty from PLA /cash than the said attributed credit therefore, this being clearly a revenue neutral situation, the demand is not tenable. This issue has been considered in various judgments.

4.2 In the case of CCE v Oerlikon Balzers Coating P. Ltd (Supra) the Hon'ble Bombay High Court passed the following order :- para 8 onwards

4.3 In the case of Unifrax India Ltd v CCE (Supra), the CESTAT Ahmedabad has taken the similar view and passed the following order:-

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 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."

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 Solutions 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 Circular 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 subrule (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 non-registration 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."

4.4 On the identical issue the tribunal Ahmedabad in the case of Piramal Glass P. Ltd v CCE (Supra) passed the following order :- para 4 onwards

4.5 In the given facts of the case whether there is a revenue neutral situation, the CESTAT Delhi Bench in case of Hindustan Zinc Ltd v CCE(Supra) passed the following order:- para 5 onwards

4.6 In view of the above judgments on the point of distribution of input service credit as well as on revenue neutrality it is settled that even if the cenvat credit is distributed to one unit only during the relevant period, the credit cannot be denied.

5. Accordingly, the impugned order is set aside. Appeal is allowed.

(Order pronounced in the open court on 23.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha