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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 342 of 2012
(Arising out of OIO-02/ST/SURAT/2012 Dated- 07/02/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

United Phosphorus Ltd **........Appellant**
(Unit-V) Plot No. 750, Gidc Industrial Estate, Jhagadia,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **........Respondent**
New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE:
Shri. Mihir Mehta & Shri. Suyog Bhave, Advocates for the Appellant
Shri Dinesh Prithiani, Authorised Representative for the Respondent

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

Final Order No. A/ 11391 /2022

DATE OF HEARING:18.10.2022
DATE OF DECISION:15.11.2022

RAMESH NAIR

The issues involved in the present case are as under:-

(i) Whether CENVAT Credit availed on the basis of photocopy of invoices issued by various service providers to the United Phosphorus Limited, Mumbai, (UPL) is a "valid document under Rule 9 of the Cenvat Credit Rules, 2004 ("CCR")?

(ii) Whether the transfer of service tax credit by UPL, Mumbai, as an ISD to the Appellant without obtaining registration under the Rules is admissible to the Appellant or otherwise for the period covered under the SCN?

2 The brief facts of the case are that the appellant during the period of dispute was inter alia engaged in the manufacture of goods under Chapters

28 and 29 of schedule of the Central Excise Tariff Act, 1995. The Head Office of the appellant at Mumbai was purchasing the various inputs services and distributing to various factories of the appellant. The appellant during the period of dispute was availing the Cenvat credit of the duty paid on inputs, raw material, capital goods and Service tax paid on input services in terms of Rule 3 of Cevat Credit Rules, 2004. During the period December, 2004 to September, 2005 the Head Office of the appellant transferred the Cenvat credit by issuing a statement giving the details of the credit transferred. The appellant's Plant-V at Jhagadia, took the Cenvat credit so distributed on the strength of the statement issued by the Head Office of the appellant at Mumbai, as an ISD Rule 7 of Cenvat Credit Rules, 2004 which was enforce during the period of dispute provided for the manner for distribution of credit by an Input Service Distributor. At that time there was no requirement for taking of registration as an ISD. The registration provision was introduced vide Notification No. 27/2005-ST, service tax (Registration of Specific Category of Persons) Rules, 2005. The appellant obtained ISD registration on 18.08.2005, however, the credit was distributed by the Head Office to the appellant before obtaining the registration. During audit, it was observed that the appellant had availed inadmissible credit, accordingly, a show cause notice dated 20.08.2009 was issued to the appellant calling upon the appellant to show cause as to why inadmissible Cenvat credit of Rs. 1,41,32,634 should not be denied and recovered with interest and penalty be imposed on the appellant vide Order-In-Original dated 07.02.2012 the adjudicating authority denied the entire credit and order recovery thereof under Rule 14 of the Cenvat Credit Rule read with proviso to Section 11A (1) of Central Excise Act. In the said order it was held as under:-

a. Photocopy of invoices of various service providers issued in favour of the appellant's Head Office, which in turn has merely prepared statement cannot be treated as a valid document for the purpose of taking credit in terms of Rule 9 of the CCR.

b. The appellant's Head Office was not registered as an ISD under the Registration Rules and in view thereof the Head Office cannot distribute credit under the cover of invoice, bill or challan terms of Rule 4A(1)(i) of the Rules.

3. Shri. Mihir Mehta, Learned Counsel appearing on behalf of the appellant submits that as regard the photocopy of invoices the same is not relevant for allowing the credit to the appellant as the Head Office has distributed the credit to the appellant unit. There is no objection by the Jurisdictional Officer in respect of the photocopy of the invoices at Head Office. He further submits that now the appellant have all the Original invoices in their Possession, therefore, on the ground that the credit was taken by Head Office on photocopy does not exist. He further submits that credit cannot be denied to Unit-V of the appellant on the ground that Head Office of the appellant had not issued invoices for transfer of the same. He submits that since there are large number of the invoices and input services purchased by the Head Office of the appellant as an ISD, it prepared a statement containing all the details as required under Rules 4A of the Rules, therefore, on the basis of such statement credit cannot be denied, as the same is incompliance of the Rule 4A and the said statement is a valid document under Rule 9 of Cenvat credit Rules, 2004. He further submits that in any event, the requirement of issuance of the documents under Rule 4A is a procedural requirement and substantial benefit like Cenvat credit cannot be denied basis procedural infractions. He further submits that the procedure regarding the distribution of credit of input services and issuance of documents for transfer of credit was new at the relevant time and the credit cannot be denied due to procedural irregularity. It is his submission

that it is not the case of the revenue that the appellant had transferred the credit in excess of the inputs services purchased by its Head Office or that the appellant had not complied with the provisions prescribed under Rule 7 of the Cenvat Credit Rules.

3.1 Without prejudice, he submits that the purported finding that the appellant had not discharged the onus to prove that the credit has not been availed on the same invoices by more than one manufacturing unit of the appellant is without any basis and purely on surmises and conjectures. In any event, there no was no allegation to this effect in the show cause notice. He submits that the appellant's Head Office had complete record of taking and distributing the credit which shows that the ISD had not transferred the credit in excess of the credit availed. The record also shows that ISD has not transferred the disputed credit to any other units. The Head Office of the appellant has filed periodic service tax returns with the jurisdictional service tax office, disclosing all the details of the credit availed distributed to various units which shows that the appellant has not distributed excess credit. In support of his submission, he placed reliance on the following judgments:-

Commr., Cus. And C.EX V. Sri Ram Piston Rings,-2019 (369)ELT 631 (All.)

Jai Balaji Industries Ltd (Unit IV) V. Commr. Of C.Ex., Bolpur, -2022 (58) GSTL 361 (Tri.-Kolkata)

3.2 He further submits that Cenvat credit cannot be denied to the appellant for obtaining registration post 16.06.2005, that the registration is a procedural requirement and substantial benefit like Cenvat credit cannot be denied on procedural lapse. Reliance in this regard was placed on the following judgments:-

- Commissioner of Central Excise V Dashion Ltd-2016 (41) STR 884 (Guj.)
- Commissioner of c.E., ST & Cus. Bengaluru v. Hinduja Global Solutions Ltd.-2022 (61) GSTL 417 (Kar.)
- Adani Gas P. Ltd v. Commissioner of C.Ex., ST, Ahmedabad-2017 (349) ELT 349 (Tri.0Ahmd.) Affirmed by the Hon'ble Gujarat High Court in 2017 (356) ELT 541 (Guj)
- Mafatlal Industries Ltd v. Commr of C.Ex. & ST, Ahmedabad-2020 (43) GSTL 562 (Tri.0 Ahmd)

3.3 He also relied upon the CBIC Circular No. 1063/2/2018-CX dated 16.02.2018 wherein the judgment in Dashion Ltd (Supra) accepted which has clarified that credit cannot be denied for mere procedural irregularities such as lack of registration of the ISD. He also made submission on limitation interest and penalty.

4. Shri. Dinesh M Prithiani, Learned Assistant Commissioner (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that all the submissions and documents relying on by the appellant have not been submitted before the original authority, therefore, the matter needs to be remanded.

5. We have carefully considered the submission made by both the sides and perused the records. In the present case the Cenvat Credit was denied on two count:-1) That the appellant have availed the Cenvat Credit on the strength of photocopy of invoices of various service providers which is in favour of appellant's Head Office. Secondly, the Head Office was not registered as an ISD, therefore the Head Office could not have distributed credit under a cover of invoice in terms of Rule 4A (1)(i) of the Rules. As

regard, the issue is that whether the appellant has correctly availed the credit on the strength of photocopy. We find that the credit was denied only on the presumption that there is a possibility of availing the credit by other unit of the appellant. Firstly, there is no charge in the show cause notice to these effects. Secondly, without any evidence such serious allegation cannot be accepted. It is further observed that in respect to photocopy of invoices, the same is not relevant for allowing the credit to the appellant, as the Head Office has distributed the credit to the appellant unit. In this case if there is any objection to be raised, it should be by the Jurisdiction Officer of the Head Office which is not the case here. The appellant submitted that the appellant's Head Office have very much in possession of original invoices, therefore, on this ground the Cenvat Credit cannot be denied as the Head Office of the appellant has transferred the credit to the appellant unit. We also found that the appellant have taken credit in respect of the distributed input credit by the Head Office on the basis of a statement. Since, there is a large number of services and invoices involved, the same was in co-operated the statement, the statement contains all the details as required under Rule 4A, therefore, on the basis of such statement credit is admissible. We further find that the said statement is also document which contains all the details as required under Rule 4A at the same it is valid document under Rule 9 of Cenvat Credit Rules, 2004. We further find that issuance of documents under Rule 4A is a procedural requirement and substantial benefit like Cenvat Credit cannot be denied on the basis of procedural infraction. As regard, the issue that the appellant Head Office was not registered as an ISD, therefore, the distribution of the credit is not admissible as Cenvat Credit to the appellant, we find that there is no dispute about the payment of Cenvat Credit on the input service received and credit thereof was distributed by the Head Office. It has not been established by the department that the credit which distributed on the invoices was distributed to more than one manufacturing unit of the appellant, as the same was neither a charge in the show cause notice nor evident in the impugned order. We find force in the appellant submission that the appellant's Head Office had complete record of taking and distributing the credit which shows that the ISD has not transferred the excess credit as against the credit availed. The Head Office of the appellant have filed the periodic service tax return with the Jurisdiction Service Tax Office disclosing all the details of the credit availed distributed to the various units. On the identical facts and issues, this gets support from the judgments as follows:-

- Sri Ram Piston & Rings reported in -2019 (369) E.L.T 631 (All.)
- Jai Balaji Industries Ltd. (Unit IV) Vs. Commr. Or C.Ex., Bolpur reported in 2022 (58) G.S.T.L. 361 (Tri.-Kolkata)

6. As regard, the issue of registration it has been settled in various judgments that non-obtaining the ISD registration will not disentitled the assessee from availing the Cenvat credit. The Relevant judgments are as follows:-

- Dashion Ltd-2016 (41) S.T.R. 884 (Gij.)
- Hinduja Global Solutions Ltd-2022 (61) G.S.T.L. 417 (Kar.)
- Adani Gas P. Ltd-2017 (356) E.L.T 541 (Guj.) (Affirmed by Gujarat High Court)
- Mafatlal Industries Ltd-2020 (43) G.S.T.L. 562 (Tri.-Ahmd.)

6.1 In view of the above judgments it is held that ISD registration is a procedural requirement, therefore, even if there is a lapse of non-obtaining the registration for some period, credit passed on by the Head Office cannot be denied to the appellant.

7. In view of our above discussion and findings which is supported by the judgments cited above, we are of the considered view that the appellant are entitled for the Cenvat Credit, hence, the impugned order denying the Cenvat Credit is set aside. Appeal is allowed with consequential relief.

(Pronounced in the open court on 15.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI