

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10573 of 2015

(Arising out of OIO-VAP-EXCUS-000-COM-014-14-15 dated 30/12/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SILVASA)

Dabur India Limited

.....Appellant

Unit-I Survey No 225/4/1, Saily Road, Dadra Nagar Haveli
SILVASSA, U T OF DADRA & NAGAR HAVELI

VERSUS

C.C.E & S.T.-Silvasa

.....Respondent

Commissioner Central Excise, Customs & Service Tax, Silvassa, 4th Floor, Adarsh Dham
Building, Vapi Daman Road Vapi, Opp. Old Town Police Station
VAPI, Gujarat

WITH

Excise Appeal No.10574 of 2015

(Arising out of OIO-VAP-EXCUS-000-COM-015-14-15 dated 30/12/2014 passed by Commissioner of Central Excise, Customs and Service Tax-SILVASA)

Dabur India Limited

.....Appellant

Unit-II Survey No 225/4/1, Saily Road, Dadra Nagar Haveli
SILVASSA, U T OF DADRA & NAGAR HAVELI

VERSUS

C.C.E & S.T.-Silvasa

.....Respondent

Commissioner Central Excise, Customs & Service Tax, Silvassa, 4th Floor, Adarsh Dham
Building, Vapi Daman Road Vapi, Opp. Old Town Police Station
VAPI, Gujarat

APPEARANCE:

Shri B.L. Narasimhan, Shri Jigar Shah, Shri Amber Kumawat (Advocates) for the Appellant

Shri Ghanasyam Soni, Joint Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU
 Final Order No. A/ 10001-10002 /2023**

DATE OF HEARING: 25.11.2022
DATE OF DECISION: 04.01.2023

RAMESH NAIR

Appeal No. E/10573/2015 is filed by appellant - M/s. Dabur India Limited (Unit-1) against Order-in-Original No. VAP-EXCUS-000-COM-014-14-15 dated 30.12.2014 and Appeal No. E/10574/2015 is filed by appellants-

M/s. Dabur India Limited (Unit-2) against Order-in-Original No. VAP-EXCUS-000-COM-015-14-15 dated 30.12.2014. The issue in both these appeals is common. Therefore, they are taken up together for disposal.

02. The brief facts of the case are that the appellants also have manufacturing units in other states of India i.e. Baddi in Himachal Pradesh, Rudrapur in Uttarakhand, Sahibabad in Uttar Pradesh, Alwar in Rajasthan and Pithampur in Madhya Pradesh. The Units located in Baddi and Rudrapur were clearing goods under area based exemption Notification No. 50/2003-CE dated 10.06.2003 whereas the other units of the Appellants, including the units in impugned appeals, were clearing goods on payment of Central Excise Duty at the applicable rate. The Appellants also have a corporate head office at Kaushumbi, Ghaziabad which were registered with the Central Excise & Service Tax department as Input Service Distributors (ISD in short) for distributing the Cenvat Credit of input services received at the corporate office in relation to the goods manufactured at various unit across India. Baddi Unit and Rudrapur Units of M/s. Dabur India Limited were availing area based exemption under Notification No. 50/2003-C.E., dated 10-6-2003. It appeared to Revenue that credit of Service Tax attributable to service used in a Unit exclusively engaged in the manufacture of exempted goods was distributed by Input Service distributor, to Units which were manufacturing dutiable goods. It appeared to Revenue that under Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 M/s. Dabur India Limited (Corporate head office) was not entitled to distribute such Input Service Tax credit which was attributable to Services used in a Unit exclusively engaged in manufacture of exempted goods. Therefore, investigations were carried out and on the basis of investigation a show cause notice dated 21-10-2011 was issued to M/s. Dabur India Limited (Input Service Distributor - Ghaziabad). It was alleged in the said show cause notice that Advertisement Service & Sales Promotion Services received by Input Service Distributor which was attributable to exempted goods and traded goods were distributed to the Units which were manufacturing dutiable final product. It appeared to Revenue that Cenvat credit on account of exempted goods and traded goods were inadmissible for distribution since the said credit was in respect of input services which were attributable to exempted goods. Therefore, Appellants were called upon to show cause Notices as to why Cenvat credit attributable to exempted goods and trading goods should not be disallowed. The said show cause notices was adjudicated through the

above impugned Orders-in-Original. Aggrieved by the said impugned orders, appellants are before this Tribunal.

03. Shri B.L.Narsimhan, learned counsel appearing for the Appellant submits that dispute regarding the eligibility of credit by the ISD unit & Sahibabad unit of M/s Dabur India has been settled by the Hon'ble Tribunal vide Final Order No. A/70452-53/2017 dated 13.04.2017. The Hon'ble CESTAT has set aside the entire demand raised against the ISD unit. Thus, the entire Cenvat Credit availed by the ISD on disputed input services has held to be eligible, including the credit sought to be denied in the impugned orders from the Appellants. Once the availment and distribution of credit by the ISD is held to be proper, there is no question of denying the same credit at the hands of the recipient units on the same grounds and for the same period. In the same Order dated 13.04.2017 the Hon'ble CESTAT, has also set aside the demand for denial of Credit raised against the Sahibabad unit of the Appellants on identical grounds as the show cause notice in the present case.

3.1 He also submits that in pursuance of the Judgment dated 13.04.2017 of the Hon'ble CESTAT, Allahabad, the Hon'ble CESTAT, Delhi vide order dated 24.07.2017 has set aside the demand for denial of credit raised against the Alwar Unit and demand for denial of credit raised against the Pithampur unit.

3.2 He further submits that for the same Units (Silvassa) for the subsequent period from April 2011 to December 2011, the appeals filed by Appellants against the denial of Cenvat Credit availed on distributed by ISD office on advertisement and sale promotion services were decided by the this CESTAT vide Order reported at 2018(2) TMI 618-CESTAT- Ahmedabad in favour of appellants. The Hon'ble Tribunal has settled the issue in the Appellant's favour vide the above mentioned decisions and therefore, on this ground alone the present demands confirmed against the Appellant's units are also liable to be set aside.

3.3 Without prejudice, he also submits that Appellant are entitled to avail CENVAT credit distributed to it by the ISD. The Rule 7 as applicable during the period in dispute it contained only two conditions for distribution of Credit by ISD and dispute is only restricted to applicability of condition as

contained in Rule 7(b) of Credit Rules. Moreover, the word used in this Rule are "used in a unit" which means if the services were used exclusively in that unit in manufacture of the exempted goods or providing of the exempted output services, the same shall not be distributed. It is undisputed facts the credit which was relating to service " used in" the exempted units was not availed by the Appellants. In other words, the services in question have not been used exclusively in exempted unit. It has also been used by the Appellants in respect of goods produced in duty paying unit. Such service is not restricted to be used in manufacturing process of the goods, therefore such service falls under inclusive part of the definition of the input services. Further, such advertisement services are not specific to its use, as these are general in nature and used by a manufacturer after manufacturing process is over.

3.4 He also submits that the Ld. Commissioner has held that cenvat credit of service tax paid on advertisement services used in relation to the final products which have been traded is not available as trading activity is neither manufacturing activity nor a taxable service and is beyond the application of Cenvat Credit Rules, 2004. However, the said finding is contrary to the clarification issued by the Board vide Circular No. F.No. 334/3/2011-TRU dated 28.02.2011 and Circular No. 943/4/2011-CX dated 29.04.2011 wherein trading has been considered an exempted service.

3.5 Without prejudice to above, he further submits that trading activity was neither exempted goods nor exempted services prior to 01.04.2011, as trading activity was included in the definition of exempted service only after the amendment of Rule 2 (e) of Cenvat Credit rules, 2004 w.e.f. 01.04.2011 by Notification No. 03/2011-CE(NT) dated 01.03.2011. Thus Ld. Commissioner has grossly erred in concluding that the credit availed in relation to traded goods prior to 01.04.2011 is required to be reversed. In order to substantiate above submission he placed reliance on the following decisions:-

- A MENARINI INDIA PVT. LTD. VS. CST-SERVICE TAX 2022-VIL-810-CESTAT- AHM-ST
- ADANI ENERGY LTD. VS. CST -SERVICE TAX- 2022-VIL-203-CESTAT - AHM-ST.
- INFINIUM MOTORS GUJ. PVT. LTD. VS. CST -SERVICE TAX - 2022-VIL-738-CESTAT-AHM-ST

3.6 He also submits that the restrictions of Rule 6(1) and Rule 7(b) of the Cenvat Credit Rules, 2004 are not applicable in the present case.

04. Shri Ghanasyam Soni, Learned Joint Commissioner (AR) appearing on behalf of the revenue reiterates the findings of the impugned Orders-in-Original. He also placed reliance on the following decisions:-

- 2016(42) STR 28(TRI-BANG) –FOSROC CHEMICALS INDIA PVT. LTD. VS. CST, BANGALORE -LTU
- 2018(17) GSTL 422 (DEL) – LALLY AUTOMOBILES P. LTD. VS. COMMISSIONER (ADJUDICATION), C.EX.
- 2019(24)GSTLJ 115(SC) –LALLY AUTOMOBILES PVT. LTD. VS. COMMISSIONER
- 2008 (10) STR 382 (TRI- MUM)- METRO SHOES P. LTD. VS. CCE, MUMBAI.
- 2010 (19) STR 205 (TRI. AHMD) – ORION APPLIANCES LTD. VS. CST, AHMEDABAD.

05. After hearing both the side and on perusal of available records, we find that an identical issue in the assessee-appellant's own case has been decided in favour by the Tribunal. The said orders of Tribunal are reproduced below:-

- DABUR INDIA LIMITED- 2017 (6) GSTL 106 (Tri.-All.)

"4. Heard the Id. Counsel for appellant who has taken us through the said show cause notice in Paras 14 & 15. He also taken us through the provisions of Rule 7 of the Cenvat Credit Rules, 2004 that were operational during the material period of show cause notice. He has contended that as per Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 Service Tax attributable to services used in a Unit exclusively engaged in the manufacture of exempted goods is not admissible to be distributed. He further contended that the show cause notice has nowhere established that the Service Tax which was proposed to be recovered was attributable to services exclusively used in those Units which were exclusively engaged in the manufacture of exempted goods. He has further contended that it is admitted fact that the services were commonly used for entire group of manufacturing organization and that the apportionment of admissible Cenvat credit and inadmissible credit for issue of show cause notice was by Revenue on the basis of turnover of Units which were manufacturing exempted goods and turnover of the Units which were manufacturing taxable goods. He further contended that in the entire show cause notice therein no allegation that credit of Service Tax of any service used exclusively in the Unit which is manufacturing exempted goods have been

availed or distributed. He further contended that Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 which was introduced subsequent to the period of show cause notice was relied upon by Original Authority for confirmation of demand and therefore the impugned order is not sustainable. He further contended that Rule 14 of the Cenvat Credit Rules, 2004 cannot be relied upon for recovery of alleged inadmissible Cenvat credit from M/s. Dabur India Limited (ISD). He further relied on the Final Order No. 52089-52090/2017-DB, dated 3-3-2017 passed by Coordinate Bench of this Tribunal in the case of M/s. Secure Meters Ltd. v. Commissioner of Central Excise & Service Tax, Jaipur [2017 (3) GSTL 422 (Tri.-Del.)]. He has contended that in the said case services were utilized at the level of corporate office of the manufacturing Units and in terms of said Rule 7 of the Cenvat Credit Rules, 2004, credit was distributed to the Unit manufacturing dutiable goods. It was further held in the said Final Order No. 52089-52090/2017-DB, dated 3-3-2017 that Rule 7 of the Cenvat Credit Rules, 2004 was amended vide Notification No. 5/2014-C.E. (N.T.), dated 24-2-2014 whereby the explanation was substituted with "used by one or more units in the place of use in a unit" and it was held that such amendment was not applicable for the period prior to January, 2010. He further relied on this Tribunal's Final Order in the case of Indian Oil Corporation Ltd. v. Commissioner of Central Excise, Delhi-II reported at [2014 \(35\) S.T.R. 411](#) (Tri. - Delhi) wherein it was held that demand for recovery cannot be raised against input service distributor under Rule 14 of the Cenvat Credit Rules, 2004.

5. Heard the Id. DR who has relied on the impugned Order-in-Original. The Id. DR has contended that provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 were clarificatory in nature and they were applicable to the period even before 1-7-2012.

6. Having considered the rival contentions and on perusal of the records, we find that the Original Authority has specifically relied on provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 for confirmation of demand whereas no such provision has been invoked in the said show cause notice because during the material period such provisions did not exist on statute. We further find that in Paras 14 & 15 of the said show cause notice a methodology was adopted for distribution of Cenvat credit into admissible and inadmissible credit on the basis of turnover. We do not find any provision of law for doing so. We further find that Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 that existed during material time provided that such Cenvat credit of Service Tax paid was not admissible to be distributed which was exclusively used in unit engaged in the manufacture of exempted goods. The said show cause notice nowhere established that the Cenvat credit which was proposed to be recovered was used in a unit exclusively engaged in manufacture of exempted goods. It is admitted that the Services such as Advertisement Service & Sales Promotion Services, were utilized in Corporate Office, Kaushambi, Ghaziabad. The Id. Counsel also contended that both the show cause notices are hit by limitation. He has also contended that the second show cause notice is repetition of the first show cause notice. We keep the issue of limitation open. We set aside both impugned Order-in-Original and allow both appeals. The appellants shall be entitled for consequential relief, if any, as per law."

- DABUR INDIA LIMITED- 2017 (9) TMI 344- CESTAT New Delhi

"After hearing both sides and on perusal of material available on record, it appears that an identical issue in the assessee-Appellant's own case has come up before the Allahabad Bench of this Tribunal and the Tribunal vide Final Order No.7045270453/2017 dated 13.04.2017 has observed as under:

"6. Having considered the rival contentions and on perusal of the records, we find that the Original Authority has specifically relied on provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 for confirmation of demand whereas no such provision has been invoked in the said Show Cause Notice because during the material period such provisions did not exist on statute. We further find that in Para 14 & 15 of the said Show Cause Notice a methodology was adopted for distribution of Cenvat credit into admissible and inadmissible credit on the basis of turnover. We do not find any provision of law for doing so. We further find that Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 that existed during material time provided that such Cenvat credit of Service Tax paid was not admissible to be distributed which was exclusively used in unit engaged in the manufacture of exempted goods. The said Show Cause Notice nowhere established that the Cenvat credit which was proposed to be recovered was used in a unit exclusively engaged in manufacture of exempted goods. It is admitted that the Services such as Advertisement Service & Sales Promotion Services, were utilized in Corporate Office, Kaushambi, Ghaziabad. The Id. Counsel also contended that both the Show Cause Notices are hit by limitation. He has also contended that the second Show Cause Notice is repetition of the first Show Cause Notice. We keep the issue of limitation open. We set aside both impugned Order-in-Original and allow both appeals. The appellants shall be entitled for consequential relief, if any, as per law."

Similarly, in the case of M/s Secure Meters Limited Vs CCE&ST, Jaipur, the Tribunal vide Final Order No.52089-52090/2017 dated 03.03.2017 has allowed the appeal of the assessee- Appellants by observing that:

"8. In view of the above fact, in terms of Rule 6(5) of Cenvat Credit Rules, the full Cenvat credit will be available to the assessee, if such services were used in a manufacturing unit making both, the exempted as well as dutiable goods. In the present case, the full Cenvat credit has been availed by the ISD who is required to distribute the same to various units as per Rule 7 of Cenvat Credit Rules. The Rule 7 (as it stood at the relevant time) only enforces the condition that credit of service tax attributed to services used in units exclusively engaged in the manufacture of exempted goods or providing exempted services shall not be distributed. The appellant's four manufacturing units are covered by area based exemption and no such duty is payable on the goods manufactured there. However, there is nothing on record to suggest that any of the services have been used only in the units manufacturing exempted goods. In fact, the nature of services tells us that these are used at the level of corporate of the manufacturing units of the assessee. Under the circumstances, restricting the distribution of Cenvat credit in terms of Rule 7 is not justifiable. The restrictions are there only in distribution of credit in respect of services which are exclusively used in relation to manufacturing of exempted goods.

9. It may be mentioned that Rule 7 of Cenvat Credit Rules, was amended vide Notification No.5/2014-CE(NT) dated 24.02.2014 whereby the expression was substituted with "used by one or more units" in the place of "used in a unit". Further, such an amendment will have no bearing in the

present proceedings which cover the period prior to Jan 2010. The submissions of the appellant is supported by the decision of Tribunal in the case of Elder Pharmaceuticals Limited (supra)."

By following our earlier decisions (supra), we find no reason to sustain the impugned orders and the same are hereby set aside.

5. In the result, the appeals filed by the assessee-Appellants are allowed.

- **DABUR INDIA LIMITED- 2018 (2) TMI 618- CESTAT Ahmedabad**

Heard both sides. These two Appeals are filed against the Order-in-Appeal No. VAP-EXCUS- 000-APP-04-14-15 and No.VAP-EXCUS-000-APP-05-14-15 both dated 21.4.2014 passed by the Commissioner (Appeals), Central Excise & Customs, Vapi since involved a common issue are taken up together for disposal. The Appellants are having manufacturing location at various places including Buddy and Rudrapur where the manufactured goods are exempted from payment of duty. The Appellant during the relevant period availed CENVAT credit of the service tax paid on various input services at their Head office and distributed the credit by issuing invoices as an ISD, on which they Units have availed credit. Alleging that their Silvassa Unit had availed inadmissible credit to the extent of input services attributable to their exempted units, show cause notice was issued for recovery of the amount of 32,43,619/- (in Appeal No.E/12638/2014) and 7,35,611/- (in Appeal No.E/12637/2014) with interest and proposal for penalty. On adjudication the demand was confirmed with interest and penalty. Aggrieved by the said order the Appellant filed Appeal before the Id. Commissioner (Appeals), who in turn, rejected their Appeals. Hence, the present Appeals.

2. The Id Advocate for the Appellants submits that the credit availed by the Appellants in their Silvassa Unit had been denied alleging that the procedure laid down under Rule 7(b) of CENVAT Credit Rules, 2004 has not been followed, hence, the credit availed by them is erroneous. It is his contention that in the case of other units situated under the jurisdiction of Allahabad and Delhi Tribunal had been decided in their favour. In support, he refers to the judgment of the Tribunal in their own case reported as 2017-TIOL-1978 - CESTAT - ALL and 2017-TIOL-3082-CESTAT - DEL.

3. The Id. A.R. for the Revenue reiterates the findings of the Id. Commissioner (Appeals).

4. find that this issue has been considered by the Allahabad Tribunal and it has been decided in favour of the Appellant. At Para 6 of the judgment of the Allahabad Bench, it is observed as under:

6. Having considered the rival contentions and on perusal of the records, we find that the Original Authority has specifically relied on provisions of Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 for confirmation of demand whereas no such provision has been invoked in the said Show Cause Notice because during the material period such provisions did not exist on statute. We further find that in Para 14 & 15 of the said Show Cause Notice a methodology was adopted for distribution of Cenvat credit into admissible and inadmissible credit on the basis of turnover. We do not find any

provision of law for doing so. We further find that Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 that existed during material time provided that such Cenvat credit of Service Tax paid was not admissible to be distributed which was exclusively used in unit engaged in the manufacture of exempted goods. The said Show Cause Notice nowhere established that the Cenvat credit which was proposed to be recovered was used in a unit exclusively engaged in manufacture of exempted goods. It is admitted that the Services such as Advertisement Service & Sales Promotion Services, were utilized in Corporate Office, Kaushambi, Ghaziabad. The Id. Counsel also contended that both the Show Cause Notices are hit by limitation. He has also contended that the second Show Cause Notice is repetition of the first Show Cause Notice. We keep the issue of limitation open. We set aside both impugned Order-in-Original and allow both appeals. The appellants shall be entitled for consequential relief, if any, as per law."

5. Subsequently, the Delhi Bench had also followed the said decision and decided the issue in favour of the Appellant. Adhering to the judicial discipline and following the aforesaid precedent, the impugned orders are set aside and the Appeals are allowed with consequential relief, if any, as per law."

In the above Tribunal's decision in the appellant's other units, the same facts and issue are involved. Therefore, the issue in the present appeals is no longer res-integra. Though the learned AR mentioned that all those Tribunal orders are appealed against before the respective jurisdictional high court, however in absence of any stay order by any of the High Courts, the Tribunal orders shall prevail. Hence, following the precedent decision of Tribunal in the Appellant's own case and also following the judicial discipline as per which the decisions of the co-ordinate benches of the tribunal are binding on us, we do not find any merits in the impugned orders and the same are liable to be set aside.

06. Accordingly, we set aside the impugned orders. Both the appeals are allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 04.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)