

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**EXCISE Appeal No. 631 of 2012-DB**

[Arising out of Order-in-Original/Appeal No AHM-CEX-003-COM-010-016-2012 dated 25.04.2012 passed by Commissioner of Central Excise-AHMEDABAD-III]

**Black Box Limited**

E-1/1, Gandhinagar Electronic Estate,  
GANDHINAGAR, GUJARAT-382028

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Ahmedabad-iii .... Respondent**

Custom House, 2nd Floor, Opp. Old Gujarat High  
Court, Navrangpura, Ahmedabad, Gujarat-380009

**WITH**

**EXCISE Appeal No. 632 of 2012-DB**

[Arising out of Order-in-Original/Appeal No AHM-CEX-003-COM-010-016-2012 dated 25.04.2012 passed by Commissioner of Central Excise-AHMEDABAD-III]

**Sasi Nair**

Sr. Executive Commercial of Black Box Limited  
E-1/1, Gandhinagar Electronic Estate,  
GANDHINAGAR, GUJARAT-382028

**.... Appellant**

*VERSUS*

**Commissioner of Central Excise & ST, Ahmedabad-iii .... Respondent**

Custom House, 2nd Floor, Opp. Old Gujarat High  
Court, Navrangpura, Ahmedabad, Gujarat-380009

**AND**

**EXCISE Appeal No. 647 of 2012-DB**

[Arising out of Order-in-Original/Appeal No AHM-CEX-003-COM-010-016-2012 dated 25.04.2012 passed by Commissioner of Central Excise-AHMEDABAD-III]

**Commissioner of Central Excise & ST, Ahmedabad-iii .... Appellant**

Custom House, 2nd Floor, Opp. Old Gujarat High  
Court, Navrangpura, Ahmedabad, Gujarat-380009

*VERSUS*

**Black Box Limited**

E-1/1, Gandhinagar Electronic Estate,  
GANDHINAGAR, GUJARAT-382028

**.... Respondent**

**APPEARANCE :**

Shri P.P. Jadeja, Consultant for the Appellants- Assesseees  
Shri Vijay G Iyengar, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 02.11.2022/24.11.2022

DATE OF DECISION: 04.01.2023

**FINAL ORDER NO. A/10005-10007 / 2023**

**RAMESH NAIR :**

These appeals are filed by Revenue as well as Assessee against the same Order-in-Original No. AHM-CEX-003-COM-010-to-016-12 dated 25.04.2012. Since a common order has been passed by the adjudicating authority therefore we are also disposing of these appeals by this common order.

2. The relevant facts that arise for consideration are that based upon an intelligence regarding evasion of Central Excise Duty, the factory premises of the assessee was searched by the officers and records which were found relevant and useful for the investigation were seized under panchanama dated 27.05.2007. After recording the statement of Shri Sasi Nair, Senior Executive of the assessee including other persons, the investigation came to the conclusion that the assessee had indulged in the removal of spares/ components as such to EOUs under CT-3 certificates without paying/reversing the Cenvat Credit. Shri Sasi Nair in statements categorically admitted /stated that all the spares/ components cleared as such to EOUs under CT-3 certificates were imported components/ spares, which were randomly tested in order to ensure the quality of the products and as a result such testing neither the name, character nor the usage of the spares/ components/ has been changed. Thus, it appeared that the assessee had removed the cenvatable components/ spares as such under CT-3 certificate without reversal of Cenvat Credit in contravention of the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004 read with Notification No. 22/03-CE dated 31.03.2003.

3. It further appeared that the assessee had received taxable services provided by foreign service providers and availed the cenvat credit on the basis of the invoices received by them. As per Rule 9 (e) of the Cenvat Credit Rules, 2004, the cenvat credit shall be taken on the basis of challan evidencing payment of service tax by the person liable to pay services tax under sub-clause (iii),(iv),(v) and (vii) of clause (d) of Sub-rule (1) of Rule 2

of the Service tax Rules, 1994. Assessee had wrongly availed the Cenvat Credit amounting to Rs. 1,25,65,890/- . It also appeared that assessee had wrongly availed the Cenvat Credit in respect of input services received by their Regional/Branch offices/service centers without obtaining centralized service tax registration during the period from November 2003 to 09.07.2006. Accordingly, Appellant was issued show cause notice dated 07.07.2008 asking them to as why-

- (i) Cenvat credit of Rs. 4,88,68,466/- involved on the removal of inputs/ components as such to EOUs against the CT-3 certificates without reversal of cenvat credit not be demanded and recovered along with interest under the provisions of Cenvat Credit Rules, 2004.
- (ii) Cenvat Credit of Rs. 1,25,65,890/- availed in respect of services received from Foreign Services providers under invalid documents not be demanded and recovered along with interest under the provisions of Cenvat Credit Rules, 2004.
- (iii) Cenvat Credit of Rs. 90,45,338/- wrongly availed without having centralized registration not be demanded and recovered along with interest.
- (iv) Penalty not be imposed under sub-rule (2) of Rule 13 of the Cenvat Credit Rules, 2002 and sub -rule (2) and (4) of Rule 15 of the Cenvat Credit Rules, 2004 read with Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1994.

4. Therefore after following, six another show cause notice were issued by the department to the Appellant on the identical grounds involving different periods. The adjudicating authority vide impugned order, confirmed the demands of Rs. 2,23,44,289/- out of total demand of Rs. 7,12,73,240/- and rest of demand are dropped. The assessee filed this appeal against that portion of the order which is against them in Appeal No. E/631/2012 while Revenue is in appeal under appeal No. E/647/2012 against that portion of the order which has dropped the demands.

5. Shri P.P. Jadeja, learned Consultant appearing on behalf of assessee-appellant submits that Revenue has not correctly appreciated that clearances to 100% EOU against CT-3 certificates are considered "Deemed Exports" and in such clearances, Cenvat Credit is not required to be reversed

and Refunds of Cenvat Credit in terms of Rule 5 of the Cenvat Credits are also allowed. This is a settled position in law by now. In the present matter Goods in question were cleared vide Notification No.22/2003-CE dt. 31-3-2003 to 100 % EOU against CT-3 certificate procedure without payment of duty which was on the condition that "the user industry brings the excisable goods directly from the factory of manufacture or warehouse". There is no dispute on the facts that goods in question were delivered directly from the factory of Appellant who is a manufacturer, holding Central Excise Registration and goods in question were "Excisable Goods". Section 2(d) of Central Excise Act defines "excisable goods" means goods specified in [the Fourth Schedule] as being subject to a duty of excise and includes salt. Revenue has noted this condition of the Notification No.22/2003-CE and assumed & presumed that such "excisable goods" must have been manufactured in the same factory from where they are supplied to 100 % EOU. This is a completely erroneous view by Revenue, which is not in consonance with Rules and Regulations made and the established law by the decisions. Rules are that in case of clearance of "inputs" as such for home consumption, actual credit taken when they were received in factory of manufacturer of the final products, only requires to be reversed with effect from 01-04-2003. Rule 3(5), 6(2) & 6(3) of Cenvat Credit Rules 2004 stipulates that when inputs on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of final products shall pay an amount equal to the credit availed in respect of such inputs and such removal shall be made under the cover of an invoice referred to in Rule 9 of CCR 2004. However, Rule 6(6)(ii) *ibid* stipulating obligations of manufacturer, clearly stipulated that provisions of sub-rules (1), (2), (3) and (4) in Rule 6 *ibid* shall not be applicable in case the excisable goods is removed without payment of duty to any 100 % Export-Oriented Undertaking. Thus, in the facts of this case, Rule 6(6)(ii) *ibid* is applicable, wherein there was no requirement to reverse any amount of Cenvat Credit in terms of Cenvat Credit Rules 2004, when the "inputs" were cleared "as such" to 100 % EOU without payment of duty against the CT-3 Certificates issued by jurisdictional officers of 100 % EOU following with due procedure. He placed reliance on the following decisions:-

- (i) Bilag Industries Pvt. Ltd. vs. CCE, Daman - 2014 (310) E.L.T. 533 (Tri. - Ahmd.)

(ii) Aroma Chemicals vs. Commissioner (Appeals-I), C.Ex. Meerut - 2018 (363) E.L.T. 1148 (Tri. - All.)

6. He also submits that the exemption Notification requires to be strictly construed and it is when assessee falls under that Notification, liberal construction should be adopted to allow the substantive benefit intended to be allowed by Notification. It is a well-settled principle of law that wherever literal meaning leads to an anomaly and absurdity, it should be avoided. Such settled principles of law are required to be considered to set aside the demands of Central Excise on clearances of inputs to 100 % EOU. He placed reliance on the following decisions:-

- (i) Com. of Cus. (Imp.) vs. Tullow India Operations Ltd. - [2005 \(189\) E.L.T. 401](#) (S.C.)
- (ii) Malwa Industries Ltd. - [2009\(235\) ELT- 214](#) (S.C.).
- (iii) Commr. Cus (IMPORT), Mumbai vs. Dilip Kumar & Co. - 2018 (361) E.L.T. 577 (S.C.)

7. He further submits that the facts are not in dispute that after clearance of inputs as such from Appellant's factory against CT-3, such goods (inputs) have reached in 100 % EOU. Even otherwise for receiving "Inputs" in the 100 % EOU, without payment of duty against CT-3 Certificates, the receiver 100 % EOU submits Bond for discharging duty liability, in case of violations or contraventions of Rules. The supplier of "inputs" does not have liabilities in such case.

8. As regard the demand of Rs. 1,25,65,890/- he submits that assessee has utilized services of Foreigners i.e. the persons not having permanent establishments in India for their various services Provided. Service Tax liability worked out Rs. 1,25,65,890/-, which was discharged by assessee by debit from Cenvat Credit A/c for Rs. 59,99,281/- and Rs. 62,77,683/- by Challans. Revenue's contention is that entire payment should be by Challans. The impugned order has ordered to disallow Cenvat Credit of Rs. 1,25,65,890/-, dropped demand of Rs. 59,99,281/-, appropriated Rs. 62,77,683/- paid by Challan and ordered recovery of remaining amount of Rs. 2,88,917/-. Service Tax liability from 11/2003 to 3/2007 for utilizing Services of Foreigners as decided by impugned order has been rightly

dropped with authority of law for levy of Service Tax in respect of period before 18-04-2006. For period after 18-04-2006, assessee has paid total Rs. 62,77,683/- by challans for services of Foreigners used, though, there was no restriction to discharge such Service Tax liability from Cenvat Credit Account till 2012. Such levy of Service Tax is applicable only from 18-04-2006, when section 66A was enacted in Finance Act 1994. However, Service Tax could have been paid either from Cenvat Credit or by challan at choice of assessee. Revenue has unduly objected this. Assessee had paid Service Tax from Cenvat Credit Account initially, which was objected by Revenue and for period after 18-04-2006, Assessee has deposited Service Tax of Rs. 62,77,683/- vide challans. Restrictions for utilizing Cenvat Credit in such situation was from 2012, whereas period in question in this case is before 2012. The explanation is inserted in the sub-rule *vide* Notification No. 28/2012-CE (NT) dated 20-06-2012 with effect from 01-07-2012, which has provided restrictions that Cenvat credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient. Thus, it establishes beyond any doubt that there was no such restriction for using the Cenvat Credit before 01-07-2012 for making payment of Service Tax under Reverse Charge Mechanism. Thus, Revenue's Appeal deserves to be rejected. Order-in-original has rightly dropped demand of Rs. 59,99,281/-, but has erred in not accepting payment debited from Cenvat Credit Account from June 2006 to March 2007 for demand of Service Tax debited. In Appeal No. E/647/2012, Revenue has objected this dropping of the demand of Rs. 59,99,281/- for undue reasons shown in the Appeal. This view of the Revenue in Appeal cannot be sustained, as the same is contrary to law and accepted by CBEC Circular F. No. 276/8/2009-CX. 8A dated 26-9-2011. Settled law is that the Field officers under CBEC can not take any plea against the Circulars issued by the CBEC. He placed reliance on the following decisions.

- (i) Ranadey Micronurients vs. CCE- 1996(87)ELT 19(SC)
- (ii) CCE vs. Usha Martin Industries – 1997(94)ELT 460(SC)
- (iii) CCE vs. Dhiren Chemical Industries – 2002 (139)ELT 3 (SC)
- (iv) CCE, Meerut vs. Maruti Foam Pvt. Ltd. 2004 (164) E.L.T. 394 (S.C.)
- (v) CCE vs. Ratan Melting & Wire Industries- 2008 (231) ELT 22(SC).

9. He also submits that Revenue has contended in its Appeal that it is not permissible to pay Service Tax from Cenvat Credit Account in such payment under RCM. However for using Services of Foreigners, Service Tax is payable only from 18-04-2006 i.e. from enactment of Section 66A of Finance Act, 1994. There was no restriction for Payment of Service Tax under reverse charge mechanism under Rule 3(4) of Cenvat Credit Rules 2004. Explanation is introduced under Rule 3(4) of Cenvat Credit Rules, 2004 vide Notification No. 28/2012-C.E. (N.T.), dated 20-06-2012, with effect from 01-07-2012, which provided restrictions that Cenvat credit cannot be used for payment of Service Tax in respect of services where person liable to pay tax is service recipient. There was no restriction for Service Tax payment by assessee upto 30-06-2012. Notification No. 28/2012-CE (NT) dated 20-06-2012 with effect from 01-07-2012 may kindly be applied appropriately in the facts of this case. He placed reliance on the following decisions:

- (i) Palacio Property Developers Pvt. Limited vs. CC Goa-2022 (58) GSTL- 420(Tri-Mumbai)
- (ii) Morarjee Textiles Limited vs. CCE - 2020 (34) GSTL-548 (Tri-Mumbai)
- (iii) CCE vs. Cheran Spinners Limited -2014 (33) S.T.R. 148 (Mad.) -
- (iv) CCE vs. Nahar Industrial Enterprises Limited - 2012 (25) S.T.R. 129 (P & H)-
- (v) Trinayani Cement Pvt. Limited vs. CCE - 2017 (47) S.T.R. 91 (Tri. - All.)
- (vi) Tata AIG Life Insurance Co. Ltd. vs. CCE. 2015 (37) STR 570
- (vii) Kansara Modler Limited vs. CCE, Jaipur -II - 2013 (32) S.T.R. 209 (Tri.-Del.)

10. He also submits that it is also a settled law that the service tax liability in the service in question is with effect from 18-04-2006 and the impugned order has also accepted this position. Therefore, the amount of Rs. 59,99,281/- debited from Cenvat Credit was not required to have been debited and if re-credit is taken of the said amount it is revenue neutral situation. Credit of Rs. 59,99,281/- was available and remained in books only, which need not be objected and Revenue has erred in objecting this. Amount of Rs. 62,77,683/- paid by Challan was also eligible as credit. Impugned order has ordered to disallow the Cenvat Credit of Rs.

1,25,65,890/-, which is incorrect view, when it dropped demand of Rs. 59,99,281/-, appropriated Rs. 62,77,683/- paid through Challan and has ordered recovery of remaining amount of Rs. 2,88,917/-. Therefore, the amount of Rs. 2,88,917/- paid thru debit by the Assessee from Cenvat Credit Account may be objectionable. However, such objection can also be clarified on some other point of law like time limitation for such demand by SCN invoking extended period.

11. As Regarding demand of Rs. 2,88,917/- he submits that payment of Service Tax under RCM from Cenvat Account is correct, but, credit thereof may be objectionable. Since it is demanded for the period from June 2006 to March 2007 by show cause notice No. V.85/15-150/OFF/OA/08-09 dated 07.07.2008, invoking extended period of limitation, which is not sustainable in facts of this case. There must be a deliberate attempt by assessee to suppress facts from Department with intention to evade payment of Excise duty or Service Tax which is absent in present case. He placed reliance on the following decisions:-

(i) *Cosmic Dye Chemical v. CCE*– 1995 (75) ELT-721 (SC)

(ii) *Tamil Nadu Housing Board* -1994 (74) ELT-9 (SC)

On the basis of above, he submits that there is no justification for demand of any amount out of demand of Rs. 1,25,65,890/- and the Revenue's Appeal No. E/647/2012-DB deserves to be dismissed on this point.

12. As regard the demand of Cenvat Credit of Rs. 90,45,338/- on the ground that such credit pertained to other premises of Appellant not registered, he submits that impugned order has denied credit of Rs. 6,32,118/-, out of demand of Rs. 90,45,338/- for the period from November 2003 to March 2004. The Ld. Commissioner has taken the view that the assessee vide its letter dated 29-03-2004 has informed that they have adopted Centralised Billing and Accounting system at Gandhinagar in respect of all Branches and Regional Offices from where taxable Services are provided and accordingly Service Tax would be paid from Gandhinagar for services provided by all branches and regional offices. The Jurisdictional Assistant Commissioner, Central Excise, Gandhinagar vide letter dated 19-04-2004 had granted permission and post facto approval was given by Commissioner. Hence, impugned order has allowed credit of Rs. 84,13,220/- and denied the remaining credit of Rs. 6,32,118/-. However, assessee was

registered with Central Excise from 1998 as a manufacturer. The letter dated 29-03-2004 shows that assessee had Service Tax Registration No. CIS/GNR/1963, and was issued PAN based Centralised Registration No. AA ACT3992MST001 with effect from 11-07-2003 for more than one premises. There is nothing in said letter dated 29-03-2004 to conclude that the assessee has Centralised Billing and Centralised Accounting system at Gandhinagar only after 29-03-2004. The Notification No. 29/2006-S.T. dated 02-11-2006 has also provided that nothing contained in this sub-rule shall have any effect on the registration granted to premises or offices having such Centralised Billing or Centralised Accounting Systems, prior to 02-11-2006. Thus when Assessee was having the PAN based Centralised Registration with effect from 11-07-2003, the denial of Cenvat Credit for November 2003 to 29-03-2004 is not justified.

13. He also submits that assuming without admitting that even though the said premises may not have been registered, but there is no case by Revenue that the Services provided from these premises were taxable and the services received at the premises had suffered Service Tax payments. Assessee had Centralized Billing and Centralized Accounting at Gandhinagar. Merely, alleging that the premises are not registered, Cenvat Credit cannot be denied on this ground, when service was received and provided on payment of Service Tax from such premises. This is also a settled law established by the judicial decisions. Thus, there is no substance in Revenue Appeal and also in confirmation of demand of Rs. 6,32,118/- by the impugned order, in the facts of this case. He placed reliance on the following decisions:-

- (i) Manipal Advertising Services Pvt. Limited vs. CCE, Mangalore - 2010 (19) STR 506 (Tri. Bang.),
- (ii) Gujarat Heavy Chemicals Ltd. vs. CCE Rajkot- 2005 (192) ELT 658
- (iii) Stadmed Pvt Limited vs. C.CE Allahabad- 1998 (102) ELT 466.
- (iv) M N Dastur Company Pvt. Ltd. Kolkata - 2010 (20) STR 230 (Tri. Kolkata),
- (v) Mportal India Wireless Solutions P. Ltd vs CST, Bangalore 2012 (27) STR-134 (Kar).

14. He further submits that in the present case, services received at those premises and Services provided by said premises were only on payment of due Service Tax. Therefore, credit availed in respect of input services used in the said premises is clearly admissible. Further, credit is demanded from November, 2003 to July 2006 by SCN No. V.85/15-150/OFF/OA/08-09 dated 07.07.2008 invoking the extended period of limitation, which is not sustainable in the facts of this case. The ingredients required to invoke extended period are not existing in this case. The case is of interpretation of whether Cenvat Credit can be taken or otherwise. In such cases of interpretation of provisions and without any intention to evade duty/tax, extended period of time limitation can not be invoked. Therefore, entire demand is not sustainable on merits or on time limitation in the facts of this case. Therefore, the entire demand is time barred and consequently, conformation of all the demands with interest and penalties as held by the adjudicating authority does not survive.

15. He also argued that the Appeal is filed by the department after Review Order dated 08-08-2012, which is not reviewed within 3 months from the date of order of adjudicating authority passed on 25-04-2012. Appeal No. E/647/2012-DB filed on the basis of Review Order No. R-08/2012 dated 08-08-2012 is not maintainable in terms of Section 35E (3) of the Central Excise Act 1944. Section 35E(3) of CEA 1944, prescribes period of three months for an appropriate decision by committee. The provision of law mandates the Committee to take the decision within the period of three months and the same is evident from the expression "shall" used in relation to the period prescribed for taking such decision under law. Formation of opinion by the Committee regarding legality or propriety of the order of the authority and order on the basis of such opinion shall be given within three months from the date of the order of the Adjudicating Authority. Further, it is settled law that where an authority constituted under a statutory provision is required to perform certain function under the statute within a prescribed period for performance of such function, then such authority is undoubtedly expected to perform its function within the prescribed period. A provision fixing a time limit within which the authority has to act, generally means that statute considers it reasonable for authority to act within such period. Committee Constituted under Section 35E(1) or 35E(2) of Central Excise Act

1944 is expected to take decision within 3 months from the date of the order of adjudicating authority. In the facts of this case, the Review Order No. R-08/2012 dated 08-08-2012 is beyond period of 3 months from 25-04-2012, when the impugned O-I-O was passed by the Adjudicating Authority. From the provision u/s 35E(3) of the Central Excise Act 1944, following two situations arise, Review Order shall be made within a period of 3 months from the date of :-

- (i) Communication of the decision – Applicable to the Assessee  
or
- (ii) Order of the adjudicating authority Order - Applicable to the department;

The above situation (ii) is applicable when appeal is filed by the Department. This shows that the department has to first pass the Review order within 3 months from the date of O-I-O dated 25-04-2012. However, Review Order No. R-08/2012 in the case is passed on 08-08-2012, which is beyond three months in any case. Hence, the Appeal No. E/647/2012 on this Review Order is not maintainable. He placed reliance on the following decisions.

- (i) CCE vs. M.M. Rubber Co. - 1991 (55) E.L.T. 289 (S.C.)
- (ii) GTC Industries Ltd. vs. CCE, New Delhi- 1997(94)ELT 9(SC)
- (iii) Amtrex Hitachi Appliances Ltd vs. CCE2009 (234) ELT-126 (Tri. - Ahmd.)
- (iv) CCE vs. Bhilai Wires Limited – 2009(236)ELT 40 (HP)

15. Shri Vijay G Iyengar, learned Superintendent Authorised Representative for the Revenue reiterates the findings of impugned orders in respect of party appeals and grounds of appeal in the Revenue appeal.

16. We have heard both sides and perused the records of the case. On going through the rival submissions and the records of the case, we find that assessee was registered with the Central Excise authorities as a "manufacturer of goods" and was also holding Service Tax Registration as service providers. Assessee was availing the facility of Cenvat Credit. Assessee had imported and also indigenously procured various parts and components, brought into their factory at Gandhinagar and assembled excisable goods like EPBX Systems which were cleared into market on

payment of duty. Assessee has also paid Service Tax under forward charge or reverse charge under section 68 of Finance Act 1994, while providing services in market or while receiving services of foreigners in India. The department objected Assessee's Cenvat credit on the following 3 issues :-

| Sr.No. | Issue in dispute                                                                                                  | Demand Rs.  |
|--------|-------------------------------------------------------------------------------------------------------------------|-------------|
| (i)    | Cenvat Credit not Reversed while clearing Inputs as such to 100 % EOU against CT-3 Certificates                   | 4,96,62,012 |
| (ii)   | Disallowance of credit in respect of Service Tax paid from Cenvat Credit for Services of Foreigners used in India | 1,25,65,890 |
| (iii)  | Denial of Cenvat credit availed on input services related to premises not having Centralised Registration         | 90,45,338   |

17. The first issue to be decided in this matter is whether the assessee was required to reverse the cenvat credit availed on components/ spares (inputs) cleared as such to EOUs units against the CT-3 certificate. We find that on the identical issue the tribunal in the matter of Aroma Chemicals Vs. Commissioner (Appeals-I), C.Ex., Meerut (supra) 2018 (363) E.L.T. 1148 (Tri. - All.) observed as under:-

*"5. Having considered the rival contentions and had perusal of records, ruling of the Larger Bench in the above stated case of Lakshmi Automatic Loom Works Ltd. and provisions of Cenvat Credit Rules, 2004, I find that Cenvat Credit Rules, 2004 which are applicable in the present case have provided under Clause (ii) of sub-rule (6) of Rule 6 of Cenvat Credit Rules that provisions of sub-rule (1) of Rule 6 of Cenvat Credit Rules shall not be applicable in case the excisable goods are removed without payment of duty to a 100% EOU. The provision that is pari materia as that of Rule 57F, is sub-rule (5) of Rule 3 of Cenvat Credit Rules, 2004. Further sub-rule (1) of Rule 6 of Cenvat Credit Rules provide that Cenvat credit shall not be allowed on such quality of inputs which are cleared without payment of duty. Sub-rule (5) of Rule 3 requires that if the inputs on which Cenvat credit has been availed are cleared as such then amount equal to the Cenvat credit availed on inputs is to be reversed. Taking above provisions of Rules into consideration I find that during the relevant period when Rule 57F was on Statute there was no provision equivalent to Clause (ii) of sub-rule (6) of Rule 6 of Cenvat Credit Rules, 2004. Therefore, the ruling by the Larger Bench is not applicable in the present case. I, therefore, hold that if the Cenvat credit is availed on inputs and if the same are cleared to 100% EOU as provided under sub-rule (6) of Rule 6 of Cenvat Credit Rules, 2004, Cenvat credit of duty paid on such inputs cannot be denied. I, therefore, allow the appeal filed by the appellant by setting aside impugned Order-in-Appeal."*

The ratio of above judgment squarely applicable in the present matter and we following the same are of the view that demand confirmed on this count in impugned order is not sustainable.

18. Further we have also gone through the provisions of Rule 3(5) of Cenvat Credit Rules 2004 applied by the revenue for denial of Cenvat Credit to the Appellant. Before proceeding further, we feel it appropriate to analyze said provision. The text of Rule 3(5) is reproduced here below :-

***“Rule 3. (5)** When inputs or capital goods, on which Cenvat credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9 :”*

In the present matter it is undisputed fact that on imported spares/ components appellant has undertaken the testing process. The Department and Ld. Commissioner both are of the view that the process carried out by the appellant within the factory do not bring about any new product. After undertaking of testing there is no new products with distinctive name, use and character is emerged and the components/spares of the EPBAX systems remains same even after mere electrical and functional testing which can not be considered as manufacture as defined under Section 2(f) of the Central Excise Act, 1994. Therefore, the contention is that the spares/ components cleared to EOUs are nothing but removal of “Input as such” and in terms of Rule 3 (5) of the Cenvat Credit Rules, 2004 assessee have to reverse the cenvat credit. Accordingly Ld. Commissioner confirmed the Cenvat demand here. However we note that these tests carried out within the factory premises of Appellant are in the nature of testing i.e. to mean that the tests are required to ensure that the goods which are being cleared i.e. spare parts/components in the market satisfied the conditions. Without carrying out these tests, the imported spares/components are not considered fit for use in the market. The above Rule provides for demand of an amount equal to the credit availed in respect of inputs if they are removed ‘as such’. In the present case, as seen from the technical testing process carried out within the factory, we are of the view that the imported spares/ components cannot be considered as cleared ‘as such’. These goods are cleared only after carrying out tests which by themselves may not amount to manufacture but are necessary to complete the manufacturing process of the imported goods and EPBAX. Such tests are considered by the appellant as necessary to ensure the quality of the products for use in the market. In such a view in the matter there is no justification for demand of an amount in terms of Rule 3(5) of the Cenvat Credit Rules. Clearly, the process carried out is in the

nature of finishing process which can be considered as ancillary to the manufacture of a finished product. In the facts and circumstances of the case, we find no justification for demand of such amount under Rule 3(5) on the clearances made to 100% EOU.

20. We find that the words "as such" are being the subject matter of interpretation by the various Courts. Punjab and Haryana High Court in the case of *Commissioner of Central Excise, Ludhiana vs. Khalsa Cotspin (P) Ltd.*, reported in [2011 \(270\) E.L.T. 349](#) (P & H) has held as under :

*"The assessee having validly availed Cenvat credit, same is required to be reversed only if goods were cleared in the same position without payment of Excise duty. In the present case, it has been held by the Tribunal that goods were not cleared in the same position but after having been used and in such situation Rule 3(5) of the Rules will not apply."*

The Hon'ble Bombay High Court in the case of *Cummins India Ltd. v. Commissioner of Central Excise, Pune-III* reported in [2007 \(219\) E.L.T. 911](#) (Tri.-Mumbai) confirmed the order of the Appellate Tribunal which has held as under :

*"The plain and simple meaning of expression "as such" would be that capital goods are removed without putting them to use. Admittedly, in the present case capital goods have been used for a period of more than 7 to 8 years. As such, interpretation given by the authorities below would lead to absurd results if an assessee is required to reverse the credit originally availed by them at the time of receipt of the capital goods, when the said capital goods are subsequently removed as old, damaged and unserviceable capital goods. This would defeat the very purpose of grant of facility of Modvat credit in respect of capital goods and would not be in accordance with the legislative intent."*

The Hon'ble Delhi High Court in the matter of *Harsh International (Khaini) Pvt. Ltd. v. Commissioner of Central Excise* reported in [2012 \(281\) E.L.T. 714](#) (Del.), after referring to the various judgments held as under :

*"In the present case the appellant purchased the capital goods in the period between 2003 and 2005 and used them in its factory till they were sold to M/s. Harsh International (Khaini) Pvt. Ltd., in June and July, 2007. Thus the capital goods were used for a period of 2 to 4 years. They cannot, therefore, be stated, to be sold "as such" capital goods. They were sold as used capital goods."*

The ratio as laid down by the High Courts on the issue identical to the present matter would be applicable in this case and we are following the ratio of the same find that the impugned order which confirmed the Cenvat demand in respect of inputs cleared to 100% is not sustainable and liable to

be set aside. Needless to say that our above view is only considering the fact that the goods were cleared to 100% EOU.

21. Now, second point of dispute under consideration is regarding the cenvat demand of Rs. 1,25,65,890/- on input services rendered by the Foreign Service providers. In this context we find that under the reverse charge mechanism, the recipient to whom the taxable services provided by the foreign service provider who does not have permanent establishment or business place in India, shall pay Service tax as if the recipient had himself provided the service in India. Service tax liability of Rs. 1,25,65,890/- during the period April 2003 to March 2007 discharged by the assessee by debit from Cenvat Credit account and Rs. 62,77,683/- by challans. However the service tax liability on any taxable services provided by a non resident or a person located outside India, to a recipient in India, would arise with effect from 18.04.2006 i.e. the date of enactment of Section 66A of the Finance Act., Central Board of Excise and Customs has also accepted this position. We agree with the argument of learned Consultant that the amount debited from Cenvat Credit was not required to have been debited and if re-credit is taken of the said amount it is revenue neutral situation. Further from 18.04.2006, Appellant has paid service tax and they are eligible for the cenvat credit thereon. Hence entire action of the revenue in this matter is illegal and unsustainable, both on facts and in law. Further in this matter Cenvat demand is on the basis that the service tax liability cannot be discharged from the cenvat account. We, however, propose to accord to the dispute a more empirical analysis.

22. Section 66A of the Finance Act, 1994 makes the recipient of any service, specified in Section 65(105) of the Finance Act, 1994 - which would cover all "taxable services" - received by a person located in India, from a service provider located outside India, liable to pay Service Tax thereon as if he had himself provided the service in India. This, in taxing parlance, is known as payment on "reverse charge basis". In the Service Tax universe, Service Tax is payable, on reverse charge basis in various circumstances, chiefly in cases of "import of service", i.e. where the Service Tax provider is located outside India and the Service Tax recipient is located in India. Rule 2(1)(d)(iv) of the Service Tax Rules defines the recipient of the service, in cases where the service, received by a recipient in India, is provided by a

service provider located outside India, as the "person liable for paying service tax". The issue to be determined is whether the appellant, as the person liable to pay the Service Tax on services provided by service providers located outside India, could pay the said Service Tax by utilization of Cenvat credit available with it.

23. A bare reading of the Cenvat Credit Rules reveals that the answer to this question has necessarily to be in the affirmative. This may be demonstrated thus :

- (i) Rule 3(4) of the Cenvat Credit Rules clarifies that Cenvat credit may be utilised for payment, *inter alia*, of Service Tax on any output service.
- (ii) "Output service" is defined, in Rule 2(p) of the Cenvat Credit Rules, which envisages that any Taxable Service, excluding the taxable service referred to in sub-clause (zzp) of Clause (105) of Section 65 of the Finance Act, 1994 provided by the provider of taxable service, to a customer, is an "output service".
- (iii) "Provider of Taxable Service" is defined, in Rule 2(r) of the Cenvat Credit Rules as including a person liable for paying Service Tax.
- (iv) Rule 2(q) of the Cenvat Credit Rules defines "person liable for paying Service Tax" as having the same meaning, assigned to the expression, in Rule 2(1)(d) of the Service Tax Rules, 1994 (hereinafter referred to as "the Service Tax Rules").
- (v) In case of services provided by a provider located outside India and received by a recipient located in India, the Indian recipient is, by virtue of Rule 2(1)(d)(iv) of the Service Tax Rules, defined as the "person liable for paying Service Tax".
- (vi) The Indian recipient of the service also, therefore, becomes the "person liable for paying Service Tax", under the Cenvat Credit Rules.
- (vii) The Indian recipient of the Taxable Service also, consequently, becomes the "provider of Taxable Service", as defined in Rule 2(r) of the Cenvat Credit Rules.
- (viii) Rule 3(4) of the Cenvat Credit Rules permits Cenvat credit to be utilised for payment of Service Tax on any "Output Service" is defined, in Rule 2(p) of the Cenvat Credit Rules as service provided, by a provider of Taxable Service. It has already been pointed out, hereinabove, that the Appellant was, by dint of the definition of the

expression, as contained in Rule 2(r) of the Cenvat Credit Rules, the “provider of Taxable Service”. Section 66A of the Finance Act, 1994, provides that, in cases where service, provided by a provider located outside India, is received by a recipient in India, the service would be deemed to have been provided by the Indian recipient.

(ix) Resultantly, the services received in India, by the appellant, from the service providers located outside India, were deemed to be output services, provided in India, for which the appellant was the deemed service provider.

(x) In this scenario, Service Tax, on such services, was payable by utilisation of Cenvat credit, by virtue of Rule 3(4) of the Cenvat Credit Rules.

24. We may also observe, in this context, that this issue has engaged the attention of various High Courts from time to time, including, *inter alia*, the High Court of Rajasthan in *U.O.I. v. Kansara Modlers Ltd.* - [2018 \(15\) G.S.T.L. 255](#) (Raj.), the High Court of Karnataka in *CST v. Aravind Fashions Ltd.* - [2012 \(25\) S.T.R. 583](#) (Kar.) [SLP (C) Diary No. 23369/2018, preferred against which, has also been dismissed by the Supreme Court on 3rd August, 2018] [[2019 \(18\) G.S.T.L. 336](#) (S.C.)], the High Court of Punjab and Haryana in *C.C.E. v. Nahar Industrial Enterprises Ltd.* - [2012 \(25\) S.T.R. 129](#) (P & H) and the High Court of Bombay in *C.C.E. v. U.S.V. Ltd.* - 2019-VIL-334-BOM-S.T.

25. All these decisions have been digested by the Hon'ble High Court of Bombay in *U.S.V. Ltd.* (supra), para 7 of which reads thus :

*“The view taken by the Tribunal in respect of Rule 3(4)(e) of the Cenvat Credit Rules, 2004 now stands concluded against the revenue by the decision of the Gujarat High Court in the case of Commissioner of C.Ex. & Customs v. Panchmahal Steel Ltd., [2015 \(37\) S.T.R. 965](#) (Guj.), Delhi High Court in the case of Commissioner of Service Tax v. Hero Honda Motors Ltd. - [2013 \(29\) S.T.R. 358](#) (Del.) and Punjab and Haryana High Court in Commr. of C.Ex., Chandigarh v. Nahar Industrial Enterprises Ltd., [2012 \(25\) S.T.R. 129](#) (P & H). The aforesaid decisions have been followed by this Court in The Commissioner of CGST & Central Excise v. Godrej & Boyce Mfg. Co. Ltd. (Central Excise Appeal No. 23 of 2019) decided on 24th June, 2019 to allow utilisation of Cenvat credit for payment of service tax on reverse charge basis GTA (Goods Transport Agency). The above decision of Gujarat, Delhi and Punjab High Courts were also followed by us in Commissioner of CGST and Central Excise, Belapur Commissionerate v. M/s. GTL Infrastructure Limited in (Central Excise Appeal No. 94 of 2019) decided on 25th June, 2019. In respect of discharge of service tax obligation on reverse charge basis on import of services under Section 66A of the Finance Act, 1994 by utilization of cenvat credit. Thus there is no reason not to follow our Court’s decision in GTL Infrastructure Limited (supra).”*

26. Further under the un-amended provisions of sub-rule (4) of Rule 3 of the Cenvat Credit Rules, 2004 (effective up to 30-6-2012), there were no specific restrictions imposed for utilization of credit for discharging the liability of service tax under reverse charge mechanism by the recipient of service. Such restriction was brought with effect from 1-7-2012, by amending the provisions of the said rule. In the present case, since the period of dispute is prior to 01.07.2012, the case of the appellant will be governed under the provisions of unamended Rule 3(4) *ibid* and in absence of specific restrictions contained therein for non-utilisation of Cenvat credit by the service recipient, the benefit of the existence rule is available to the assessee for utilization of Cenvat credit for payment of service tax under reverse charge mechanism.

27. In view of the above, keeping in view the statutory provisions and judicial pronouncements as referred to hereinabove, it is clear that the argument of revenue for confirming the demand cannot sustain in law.

28. As regard the 3<sup>rd</sup> issue regarding denial of Cenvat Credit pertaining to other premises/ branch offices of the Appellant we find that in the present matter Ld. Commissioner allowed the Cenvat credit of input services received by the Regional /branch offices only with effect from 29.03.2004 and accordingly has denied the Cenvat Credit of Rs. 6,32,118/- out of demand of Rs. 90,45,338/-. The Ld. Commissioner held as under:-

*“28.7 From the above it is clear the as per sub-rule (2) of Rule 4 of the Service tax Rule, 1994, the assessee has an option to register the premises or offices from where such centralized billing or centralized accounting system are located. In the instant case, the assessee vide their letter dated 29.03.2004 has informed the department that they have adopted centralized billing and accounting system at Gandhinagar in respect of all branches and regional offices from where taxable services are provided and accordingly service tax would be paid from Gandhinagar for the service provided by all branches and regional offices.*

*28.8 Accordingly they had requested to permit the same. In other words they exercised their option to register Gandhinagar for paying service tax on taxable service provided from all the branches and regional offices. Further as per Rule 4(3) *ibid*, the power to permit for registration single premises was vested with commission. The Jurisdictional Assistant Commissioner, Central Excise, Gandhinagar vide letter F. No. STC/CIS/GNR /1963 dated 19.04.2004 had granted the permission but the post facto approval was given by the Commissioner as communicated by Assistant Commissioner, Central Excise, Ahmedabad –III vide letter F.No. IV/16-18/STC/2005 dated 16.03.2006*

*28.9 I, therefore, find that the said assessee are eligible to take credit of input services received by the Regional/Branch offices only w.e.f. 29.03.2004 and for prior period the*

*said assessee are not eligible to take such credit as they have not obtained centralized registration. During the period from November 2003 to March 2004 the said assessee had availed credit amounting to Rs. 6,32,118/- as reported by Jurisdictional Assistant Commissioner in respect of input services received by Regional/ Branch offices.*

**28.10.** *In view of the above, out of total amount of credit amounting to Rs. 90,45,338/- availed on input services an amount of Rs. 6,32,118/- is not admissible which was wrongly availed. Accordingly, the input service tax credit amounting to Rs. 6,32,118/- along with interest is required to be demanded/ recovered from them under Rule 12 /Rule 14 of the Cenvat Credit Rule 2002 / 2004 read with section 73 and 75 of the Finance Act, 1994."*

29. As regards admissibility of CENVAT credit of service tax paid in respect of services received in the branches or invoices in the name of the branches the decision in the case of *mPortal India Wireless Solutions Pvt. Ltd. v. CST, Bangalore* [2011-TIOL-928-HC-KAR-ST = [2012 \(27\) S.T.R. 134](#) (Kar.)] Covers the issue. Therefore credit could not have been denied on the ground that the appellant did not have centralized registration during the period. As regards availment of credit by Appellant without a centralized registration, the fact that appellant had applied for centralized registration. The non obtaining the centralized registration at the best is a technical issue, since there is a substantive adherence of law in view of the fact that service tax has been apparently paid on the basis of centralized registration therefore credit could have been taken in the centrally registered office. Therefore it cannot be said that credit has been availed wrongly. It is not a case of the department that on the input services/ invoices, no service tax was paid and there is no dispute about receipt and use of the services, which are the main criteria for allowing Cenvat credit on input service. Therefore, in our view, credit, only on the technical infraction should not be denied. Further, Assessee was also registered with Central Excise Department from 1998 as manufacturer. The manufacturer can also avail the Cenvat Credit.

A Division Bench of the Tribunal in *Adbur Private Limited* [2017 \(5\) G.S.T.L. 334](#) (Tribunal) also observed as follows :

**"9.** *Regarding denial of Cenvat credit on the ground that the invoices were addressed to unregistered premises of the appellant, we note that there is no dispute regarding eligibility of input service for availability of credit to the appellant. The denial of credit is only with reference to address in the document. We find in various decisions, this Tribunal held that the credit cannot be denied on this reason. Reference can be made to the decision in Manipal Advertising Services Pvt. Ltd. (supra). We also note that in the appellant's own case on the same issue, the Original Authority for the later period held that denial of credit cannot be justified on this ground, vide order dated 21-7-2016."*

In view of our above observation which is supported by judicial pronouncement, the assessee is entitled for cenvat credit.

30. In view of the above findings recorded, we allow the Appeal filed by the assessee with consequential relief and dismiss the Appeal filed by the Revenue/ department.

*(Pronounced in the open court on 04.01.2023)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(Raju)**  
**Member (Technical)**

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