IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. ST/71050/2018-ST[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1964-17-18 dated 27/03/2018 passed by Commissioner of Central Good & Service Tax (Appeals), Noida)

M/s Jaypee Cement Corporation Ltd. **Appellant**

Vs.

Commissioner Central Tax, Commissionerate, Noida **Respondent**

Appearance:
Shri Atul Gupta, Advocate &
Shri Hrishikesh Jha, Advocate, for Appellant
Shri Shiv Pratap Singh, Deputy Commissioner (AR), for Respondent

CORAM:
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 05/02/2019
FINAL ORDER NO. **70225/2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by ld. Counsel Shri Atul Gupta & Shri Hrishikesh Jha on behalf of the appellant and ld. Shiv Pratap Singh, Deputy Commissioner on behalf of the Revenue. I note that in the present case proceedings were initiated against the appellant in their capacity as Input Service Distributor for Distribution of Cenvat Credit of such duty paid, which in the opinion of Revenue was not admissible for availment of Cenvat Credit. It is undisputed fact that the present appellant is not utilizing the said credit but only distributes the credit to other Units, who are taking credit as distributed by the appellant and utilizing the same. The period involved in the present dispute is from April, 2012 to March, 2014 and total Cenvat Credit distributed is Rs.16,48,155/-. The Authorities Below have denied the said Cenvat Credit and proposal of such a denial was through a Show Cause Notice dated 15/07/2015 issued to the appellant by invoking the provisions of Rule 14 of the Cenvat Credit Rules, 2004. I note that the ld. Counsel for the appellant has submitted that under the provisions of said Rule 14, recovery of inadmissible Cenvat Credit cannot be resorted to from Input Service Distributor since the Input Service Distributor is neither availing nor utilizing the Cenvat Credit. He has relied on the decision of this Tribunal in the case of Indian Oil Corporation Ltd. *Versus* Commissioner of Central Excise, Delhi-II reported at 2014 (35) S.T.R. 411 (Tri. – Delhi). I find that it is undisputed fact that the appellant is Input Credit Distributor and I find that through the said decision in the case of Indian Oil Corporation Ltd. (supra), it was held that Credit cannot be recovered from Input Service Distributor but the same is required to be recovered from a manufacturer or from provider of Output Service, as the case may be. By following the said decision of this Tribunal in the case of Indian Oil Corporation Ltd. (surpa), I set aside the impugned order and allow the appeal.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ansari