FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 28/11/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71679/2017-EX[DB] dated 14/06/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1420/2011	**PASUPATI ACRYLON LTD** Kashipur road thakurdwara, Distt- Moradabad.
		Name and Address of Respondent
2		-C.C.E. MEERUT II Opp. Saheed Park (Near Ashok ki Lat) Delhi Road, Meerut (UP)

Copy To
3Advocate(s) / Consultant(s):

Atul Gupta (Adv.), ALD
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/1420/2011-EX[DB]

(Arising out of Order-in-Original No. 35/COMMR/M-II/2011 dated 25/03/2011 passed by Commissioner of Central Excise & Customs, Meerut-II)

M/s Pasupati Acrylon Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Meerut-II **Respondent**

Appearance:

Shri Atul Gupta, Advocate for Appellant
Shri Mohd Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 14/06/2017
Date of Decision : 14/06/2017

FINAL ORDER NO-71672/2017.......

Per: Anil Choudhary

The present appeal is filed by the appellant against Order-in-Original No. 35/COMMR/M-II/2011 dated 25/03/2011 passed by Commissioner of Central Excise & Customs, Meerut-II. The issue in this appeal is whether the appellant company have rightly distributed the Cenvat credit availed by the head office with respect to input services like Banking Services, Business Auxiliary Services, CHA, Courier Services, etc.

2. The brief facts of the case, as per the show cause notice are

that the appellant company has only one manufacturing unit located at Kashipur Road, Thakurdwara District Moradabad engaged in the manufacture of Synthetic Acrylic Fiber, Acrylic Tow, Acrylic Tops, etc. The corporate office of the appellant is situated at New Delhi and they have sales Depots located at Ludhiana (Punjab), Jaipur (Rajasthan) and Parwanoo (Himanchal Pradesh). The corporate office of the appellant was receiving taxable services on which service tax was paid by the service provider and credit was availed at the appellants manufacturing unit at Moradabad.

3. The unit was visited by the team of Preventive Branch of Central Excise division, whereby it was observed that the appellant is availing Cenvat credit of service tax on the basis of photo copies of invoices/challan/bills issued in the name of its corporate office. Show cause notice dated 08/01/2010 was issued invoking the extended period for the period from February, 2005 to February, 2008 alleging that the appellant had availed Cenvat credit on the strength of invoices, which are issued by the service providers on the corporate office, which were not proper documents under Rule 9 of Cenvat Credit Rules, 2004. It was also alleged that as corporate office of the appellant was not registered as ISD (the same was stated to be registered on 19th February, 2008), so no credit of service tax in respect of input services received by the corporate office or deports could be passed on to the manufacturing unit. Accordingly, the SCN

proposed to recover Cenvat credit of service tax amounting to Rs.1,22,27,236/- as Cenvat credit wrongly availed by the appellant against the invoices, bills, challans etc. issued by the service providers in favour of their corporate office or depots during the period in dispute from February, 2005 to February, 2008 in contravention of provisions of Rule 9 read with Rule 7 of CCR, 2004. Further, penalty was also proposed under Rule 15 of CCR, 2004 read with Section 11 AC of the Act. It was also proposed to impose penalty on Shri V.K. Chhabra Assistant Vice President (Commercial) and Authorized Signatory of the company.

4. The SCN was adjudicated on contest and the proposed demand on the company for disallowance of Cenvat credit was confirmed along with equal amount of penalty under Section 11 AC of the act. However, the proposed penalty on the Assistant Vice President (commercial) Shri V.K. Chhabra was dropped. Being aggrieved by the impugned order passed by the learned Commissioner dated 25/03/2011, the appellant company is before this Tribunal.

5. The learned Counsel for the appellant Shri Atul Gupta urges that the issue herein is no longer res-integra. So far the issue of availing of Cenvat credit in absence of registration of the head office as is concerned ISD same is covered by several judgments of this Tribunal and High Courts. Referring to the ruling in the case of

Demosha Chemicals Pvt. Ltd. Vs CCE reported at 2016 (41) STR 884 (Guj.), wherein the question for consideration before the High Court was: –

"whether this Tribunal committed an error of fact and in law in reversing the order of Commissioner (Appeals) confirming the demand for wrongful availed Cenvat credit on the ground that the issue is revenue neutral".

6. "Whether this Tribunal was right in setting aside the penalty under Section 11 AC of the Act on the Cenvat credit availed by the assessee though the same was inadmissible." So far on the issue of registration of the unit as ISD, the Hon'ble High Court observed that:-

"it is true that the Government had framed Rules of 2005 for registration of ISD, who would have to make application to the Department in terms of Rule 3 & 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 ISD from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that this 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 are available for the revenue to verify the correctness, the Tribunal in our opinion, rightly did not disentitle that the assessee from the entire Cenvat credit availed for payment of duty."

Accordingly, the Hon'ble High Court answered the questions in favour of the assessee and against the revenue. The learned Counsel further urges that the Rajasthan High Court also in the case of National Engineering Industries Vs CCE reported at 2016 (42) STR 945 (Raj.), [upheld the decision of the Hon'ble Tribunal (reported at 2015-TIOL-1976-CESTAT-DEL)] wherein the question was Cenvat credit and distribution of credit and/or pro rata distribution to the 3 units of credit, was disputed, by the head office having common management, it was held that prior to insertion of clause (b) in Rule 7 of Service Tax Rules, 1994, No requirement of distributing input service credit on pro rata basis exists. In view of the precedent decision of the Hon'ble Gujarat High Court in the case of Demosha Chemicals Pvt. Ltd. (supra) holding that credit was not deniable. Accordingly, learned counsel prays for allowing the appeal with consequential benefits.

7. The learned A.R. for revenue have relied on the impugned order.

8. Having considered the rival contentions and following the ruling of Hon'ble Gujarat High Court in the case of Demosha Chemical

Pvt. Ltd. (supra) we hold that availment of Cenvat credit in absence of the head office being registered as ISD, there was no illegality in taking the Cenvat credit. Further, we hold that as there is only one manufacturing unit, there is no illegality in distributing the credit and/or in availing of credit by the manufacturing unit of the appellant under the facts and circumstances. In fact, there being only one manufacturing unit, there is no question of distribution of credit involved. We also hold that when there is only one manufacturing unit, the head office exists only for the purpose and support of the manufacturing unit and they are rather one and the same and accordingly all services received at their office are in fact equivalent to services received at the sole manufacturing unit.

9. Accordingly, we allow this appeal with consequential benefits and setting aside the impugned order.

(Dictated in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
28/12/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG ALLAHABAD-211001