CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

Regional Bench - Court No. 2

Central Excise Appeal No. 20535 of 2015

(Arising out of Order-in-Original No. 24/2014 dated 05.12.2014 passed by the Commissioner of Central Excise, Bangalore II Commissionerate, Bangalore.)

M/s. Maini Precision Products Ltd.,
No. B-165, 3rd Cross, 1st Stage,
Peenya Industrial Estate,
Bangalore – 560 058. ……….**Appellant(s)**

Versus

Commissioner of Central Excise,
Bangalore II Commissionerate,
C.R. Building, No. 1, Queens Road,
Bangalore – 560 001. ……..**Respondent(s)**

Appearance:

Mr. Rohan Karia and Mr. Nischal K.M, Advocates for the Appellant.
Mr. P. Saravana Perumal, Addl. Commr. (AR) for the Respondent.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order No. 21702 /2024</u>

Date of Hearing: 17.12.2024

Date of Decision: 17.12.2024

Per: P.A. Augustian

The issue in the present appeal whether the appellant had wrongly availed CENVAT credit since it is availed without obtaining ISD registration and without distributing the said credit under Rule 7 of the Cenvat Credit Rule.

2. The brief facts are the Appellant is manufacturing excisable goods and operating from multi-unit location having head office cum manufacturing unit in Bangalore. Different units of the appellant were receiving various common inputs and availed cenvat credit on common inputs for payment of central excise duty towards home consumption as well as to export. During audit, it is observed that the appellant had availed ineligible cenvat credit for the period from April 2009 to March 2013 and appellant reversed the cenvat credit with interest and also paid penalty for reversal of the said amount. Thereafter, show cause notice was issued and Adjudication Authority as per the impugned order held that the appellant has wrongly availed cenvat credit on common inputs without complying with the Rule 3 of the Service Tax (Registration of Special Category of Persons) Rules, 2005 read with Rule 7 of the Cenvat Credit Rules, 2004 and confirmed the demand of duty against wrongly availed cenvat credit. Aggrieved by said order, the present appeal is filed before the Tribunal.

3. When the appeal came up for hearing, the Learned Counsel for the appellant draws our attention to the show cause notice (SCN) dated 11.04.2014 where it is alleged that:-

> *"9. From the foregoing, it appears that the assessee have contravened the provisions of Rule 7 of the Cenvat Credit Rules, 2004 read with Rule 3 of Service Tax (Registration of special category of persons) Rules, 2005 in as much as the assessee have not registered with Central Excise Department under the category of Input Service Distributer and the input service tax. credit so availed has not been distributed to their other unit. Further, it also appears that the assessee have reversed Education Cess and Secondary Higher Education Cess in their Cenvat credit Account (BED) in contravention of Rule 3(7)(b) of Cenvat Credit Rule, 2004."*

4. Learned Counsel further submits that the Adjudication Authority as per the impugned order held that there is no dispute regarding the eligibility of the input service for credit. However, considering the failure on the part of the appellant to obtain ISD registration, the Adjudication Authority confirmed the demand. Learned Counsel further submits that the issue is no more *res integra* and as per the decisions of the Tribunal in the matter of **Commissioner of Central Excise Vs. Dashion Ltd., [2016 (41) S.T.R. 884 (Guj.)** it is held that:-

> *"5. Rule 7 pertains to manner of distribution of credit by input service distributor. At the relevant time, this Rule 7 permitted input service distributor to distribute Cenvat credit in respect of service tax paid on the input service to its manufacturing units or units providing output service, subject to the two conditions, viz.:-*
>
> > *"(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;*
> > *(b) credit of service tax attributable to service [used by one or more units) exclusively engaged in manufacture of exempted goods or providing of exempted service shall not be distributed;"*
>
> *5.1 It was only later on that additional condition by way of Clause (d) to Rule 7 was added, which reads as under:-*
>
> > *"credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period."*
>
> *6. The first objection of the Department therefore that the credit from one unit was utilized for the purpose of duty liability of other unit without pro rata distribution by the input service distributor therefore would not survive in view of no previous restriction of this nature flowing from Rule 7 of the Rules of 2004.*

In fact, the Tribunal has seen entire situation as a Revenue neutral, since as pointed out by the assessee, it had availed only 20% of the credit for payment of service tax and the balance was paid in cash.

7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. 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 the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the 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 were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No. 1 therefore shall have to be answered in favour of the respondent and against the assesse."

5. Learned Counsel further submits that the issue was also considered by this Tribunal in the matter of **Hical Technologies Pvt. Ltd., Vs. Commissioner of C. Ex.-I, Bangalore [2021 (44) G.S.T.L. 101 (Tri. – Bang.)** and it is held that :-

"7. The subject matter of dispute is with regard to entitlement of appellant to distribute the credit of input services. It is not in dispute that the subject services have been procured by the appellants for use in manufacturing their final products and

further, there is no dispute with regard to payment of service tax on the subject input services of which credit has been availed/distributed by the appellant in so far as the distribution of credit prior to the period when ISD registration was obtained, we find that the issue is no longer res integra inasmuch as the Hon'ble Gujarat High Court in the case of Doshion Ltd. (supra) has dearly decided the issue in favour of assessee to hold that mere non-obtaining of the registration as 'ISD' cannot disentitle the assessee from claiming the credit and the same is purely a procedural lapse which is curable in nature".

6. Learned Counsel also draws our attention to the decision of the Hon'ble High Court of Bombay in the matter of **Commr. of C.T., Pune-I, Commissionerate Vs. Oerlikon Balzers Coating India P. Ltd., [2019 (366) E.L.T. 624 (Bom.)** and it is held that :-

"9. From reading of the above Rules both pre and post amendment, it would be noticed that both provisions give an option to the assessee concerned whether to distribute input services tax available to it amongst its other manufacturing units which are providing output services. This is evident from the use of word "may distribute the Cenvat credit is found in Rule 7 both prior and also post 2012. Thus, from the reading of the Rules, the option was available to the assessee whether to distribute the Cenvat credit or not. In fact, our attention is invited to Rule 7 of the Cenvat Credit Rules, 2004 as substituted w.e.f. 1-4-2016 which has made it mandatory for distribution of input services to the various units providing output services. This is evidence by the use of words "shall distribute the Cenvat credit" in the

substituted Rule 7 as Cenvat Credit Rules 2004 w.e.f. 1-4-2016. Therefore, on plain reading of Rule 7 as existing both pre and post amendment 2012 covering period involved in these proceedings, the respondent – assesse was entitled to utilize the Cenvat credit available at its Pune unit."

7. Learned Counsel further submits that this Tribunal has considered the issue in appellant's own case in the matter of **Maini Precision Products Ltd., Vs. Commissioner of Central Tax, Bengaluru East [2021 (55) G.S.T.L. 540 (Tri. – Bang.)** and it is held that:-

"6. After considering the submissions of both the parties and perusal of the material on record, I find that in the present-case, the Learned Commissioner has confirmed the demand of Cenvat Credit on the grounds that the appellant has failed to distribute the credit to its various units regarding common input service. The defence of the appellant that after the implementation of GST with effect from 1-7-2017, the appellants have taken single registration for all the 9 units working in the State of Karnataka in terms of Section 25 of the CGST Act, 2017. Further, I find that the unutilized credit from ER-1 Returns and ST-3 Returns were transferred to Form GST TRAN-1 in terms of Section 140 of the CGST Act, 2017 read with Rule 117 of CGST Rules, 2017 and the same was further taken to Electronic Credit Ledger. Further, I find that the net effect of not distributing the credit to various units and availed by the ISD will be NIL after coming into force of GST because the Department has not disputed its admissibility and eligibility. Further, I find that this issue of revenue neutrality has been considered by the various Courts, and it has been held that non-distribution of credit is condonable as procedural lapse, especially in situation which is revenue neutral."

8. Learned Authorized Representative (AR) reiterated the findings in the impugned order.

9. Heard both sides and perused the records.

10. Considering the above finding of this Tribunal in appellant's own case and since the issue is squarely covered, mere non-obtaining of the registration as 'Input Service Distributor (ISD)' cannot disentitle the appellant from claiming the credit.

11. Accordingly, appeal is allowed with consequential relief, if any, as per law.

(Operative portion of the order was pronounced in open court
on conclusion of hearing.)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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