CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 28082 of 2013

(Arising out of Order-in-Original No.128/2013-ST (Commr.) (De Novo) dated 14.06.2013 passed by the Commissioner of Central Excise and Service Tax, Bangalore.)

3M India Limited
UB City, Vittal Mallya Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

The Commissioner of Service Tax
Large Taxpayers Unit
JSS Towers,
100 feet Ring Road,
Banashankari 3rd Stage,
Bangalore – 560 085.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant.

Shri M.A. Jithendra, Asst. Commissioner (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21744 / 2025

DATE OF HEARING: 19.08.2025

DATE OF DECISION: 19.08.2025

PER: R. BHAGYA DEVI

Briefly the facts are that the appellant M/s. 3M India Ltd. are engaged in providing various services and had obtained 3 service tax registrations. In the impugned *de novo* order based on the direction of this Tribunal, the Commissioner denied cenvat credit on the ground that the appellant had availed the cenvat credit in violation of the provisions of Rule 12A(4)(i) and (ii) read with Rule 9 of the Cenvat Credit Rules, 2004 for non-maintenance of documents and records. Accordingly, various amount of cenvat credit was demanded along with interest and imposed penalties under Rule 15 of the Cenvat Credit Rules, 2004 read with Rule 25 of the Central Excise Rules, 2002.

2. The Learned Counsel for the appellant submitted that the *lis* in this appeal pertains to denial of cenvat credit which was availed based on transfer challans issued by its registered corporate office in terms of Rule 12A(4) of the Cenvat Credit Rules, 2004. Originally the Large Taxpayers Unit (LTU) Department vide show-cause notice dated 23.02.2011 denied cenvat credit on the ground that the credit was wrongly distributed by their corporate office without obtaining Input Service Distributor (ISD) registration which was confirmed by the adjudicating authority. The appellant challenged this order and the Hon'ble Tribunal vide Final Order No. 25055/2013 dated 04.02.2013 had remanded the matter to examine the admissibility of cenvat credit in terms of Ruel 12A of the Cenvat Credit Rules, 2004. It is further submitted that the appellant being an LTU unit at the relevant period of time was entitled for procedural/procedures as per Rule 12A(4) of the Cenvat Credit Rules, 2004. It is stated that in the *de novo* proceedings though the adjudicating authority noted that the details of debit entry were made but there were no specific entries for transfer of the same and hence, denied the benefit of Rule 12A(4), which according to the appellant is beyond the directions of this Tribunal and on a minor technical irregularity. Relied on various decisions to emphasize the point that substantial benefit cannot he denied on such grounds.

- **CCE vs. Stelko Strips Ltd.: 2010 (255) ELT 397 (P&H)**

- **CCE vs. Myron Electricals Pvt. Ltd.: 2007 (207) ELT 664 (P&H) affirmed by Hon'ble Supreme Court reported in 2007 (215) ELT A76 (SC)**
- **CCE vs. Ralson India Ltd.: 2006 (202) ELT 759 (P&H)**
- **Vimal Enterprise vs. UOI: 2006 (195) ELT 267 (Guj.)**
- **Pearl Drinks Ltd. vs. CCE: 2010 (260) ELT 353 (Del.)**
- **Cords Cable Inds. Ltd. vs. CCE: 2015 (320) ELT 155 (Tri.-Del.)**
- **Rasandik Engg. Indus. Ltd. vs. CCE: 2017 (352) ELT 21 (Tri.-Del.)**
- **Sharda Motor Inds. Ltd. vs. UOI: 2011 (267) ELT 634 (Bom.)**

3. The Learned Authorised Representative (AR) for the Revenue reiterated the findings of the Commissioner in the impugned order.

4. Heard both sides. In the first round of litigation, this Tribunal vide Final Order No. 25055/2013 dated 04.02.2013 observed as follows:

> **"7.6** The text of Rule 12A opens with a *non obstante* clause reading *"notwithstanding anything contained in these rules"*. The rule lays down a special procedure for large tax payers. Sub-rule (1) provides for removal, without payment of the amount specified under sub-rule (5) of Rule 3, of inputs (except a few specified items) or capital goods as such by a LTU, under cover of a transfer challan/invoice, from any of its registered premises to its other registered premises (other than premises of first or second stage dealer) for further use in the manufacture of final products in the recipient premises subject to certain conditions. The chief condition is that the final products should be cleared from the recipient premises on payment of appropriate duties of excise within six months from the date of receipt of the inputs in the said premises. Alternatively, the final products should be exported out of India under bond or letter of undertaking within six months from the date of receipt of the inputs in the recipient premises. Sub-rules (2) and (3) may not be relevant to the

present context. Sub-rule (4), which is central to the present dispute, provides for transfer, by a LTU, of CENVAT credit from one of its registered manufacturing/service-providing units to its other registered manufacturing/service-providing units. It also lays down the manner of transfer of CENVAT credit. It further provides that the recipient units can take CENVAT credit on the basis of transfer challans and that the utilization of such credit shall be subject to the limitations prescribed under Rule 3(7)(b). Sub-rule (5) provides that a LTU shall submit a monthly return for each of its registered premises. Sub-rule (6) is irrelevant to the present context. Sub-rule (7) provides thus : "Provisions of these rules, insofar as they are not inconsistent with the provisions of this rule shall *mutatis mutandis* apply in case of a large tax payer". To our mind, the provisions governing ISDs are inconsistent with the provisions of Rule 12A and hence not applicable to LTUs. The *non obstante* clause of Rule 12A assumes significance in this context.

> The text of sub-rule (4) of Rule 12A, shorn of irrelevant portions, reads as follows :
>
> (4) A large tax payer may transfer, CENVAT credit available with one of his registered manufacturing premises or premises providing taxable service to his other such registered premises by, -
>
> (i) making an entry for such transfer in the record maintained under Rule 9;
>
> (ii) issuing a transfer challan containing registration number, name and address of the registered premises transferring the credit as well as receiving such credit, the amount of credit transferred and the particulars of such entry as mentioned in clause (i),
>
> and such recipient premises can take CENVAT credit on the basis of such transfer challan as mentioned in clause (ii);
>
> *Provided* that such transfer or utilization of CENVAT credit shall be subject to the limitation prescribed under clause (b) of sub-rule (7) of Rule 3.
>
> Provided further that nothing contained in this sub-rule be applicable if the registered manufacturing premises is availing following notifications

of Government of India in the Ministry of Finance (Department of Revenue),-

(i) ....

(ii) ....

(iii) ....

(iv) ....

(v) ....

(vi) ....

(vii) ....

(viii) ....

7.7 From the above provisions, it appears that the CENVAT credit available with any one of the registered manufacturing/service-providing premises of a LTU can be transferred to other registered manufacturing/service-providing premises of the same LTU. For this purpose, appropriate entry has to be made in the record maintained under Rule 9 [See sub-rules (5) and (6) of this Rule]. The transfer of credit has to be effected by issue of transfer challan containing the registration number, name and address of the transferor-premises (sender-premises) as well as the registration number, name and address of the transferee-premises (recipient-premises), the amount of credit transferred and also the particulars of the entry made in the record maintained under Rule 9. The CENVAT credit on the basis of transfer challans can be taken at the transferee (recipient) premises. Nowhere in sub-rule (4) of Rule 12A is there any requirement of any ISD registration number to be mentioned in a transfer challan. What the sub-rule requires, *inter alia*, is the mention of "registration number" i.e. Central Excise registration number or Service Tax registration number. This being the legal position, the case of the Revenue that the challans issued by the corporate office without obtaining ISD registration are invalid for the purpose of availment of CENVAT credit and consequently the CENVAT credits received under cover of such challans by the three manufacturing units are not admissible to such units has no statutory backing. However, the admissibility of the credits to the three manufacturing units will be subject to the conditions and limitations prescribed under Rule 12A. The learned Commissioner had no occasion to examine whether such conditions were complied with by the appellant. This is because he ruled out the applicability of Rule 12A to the case on hand, outright.

7.8 Sub-rule (7) of Rule 12A must not be overlooked while dealing with the case of a LTU. As per this sub-rule, the provisions of CENVAT Credit Rules, 2004, insofar as they are not inconsistent with the provisions of Rule 12A, shall *mutatis mutandis* apply in the case of a LTU. Therefore, for the purpose of transfer of CENVAT credit under sub-rule (4) of Rule 12A, the transferor-unit should have initially taken the credit by making an entry in its CENVAT account maintained under Rule 9. In the same account, the transferor-unit should make another entry for transfer of the credit to its sister unit within the LTU. The latter unit (transferee/recipient unit) should also make corresponding entry in its CENVAT account maintained under Rule 9 upon receipt of the transfer challans issued by the other unit. The transfer challan should contain all the requisite particulars mentioned under clause (ii) of sub-rule (4) of Rule 12A. Whether the appellant, indeed, met these requirements is not clear from the records. This question was not examined by the learned Commissioner either. The claim of the appellant is that the transfer challans issued by the corporate office contained all the essential particulars for the purpose of availment of CENVAT credit by the recipient units. The learned counsel has referred to certain decisions while arguing that the CENVAT credits received by the three manufacturing units under cover of transfer challans cannot be denied to them on the ground of non-mention of any particulars in such challans. It is for the adjudicating authority to consider such claims.

8. For all the reasons stated hereinbefore, we set aside the impugned order and allow this appeal by way of remand with a request to the Commissioner to undertake *de novo* adjudication of the dispute in accordance with law and the principles of natural justice. **It is made clear that the adjudicating authority should proceed on the premise that Rule 12A of the CCR, 2004 is applicable to the appellant".**

5. The Commissioner in the impugned *de novo* order discusses the applicability of provisions of Rule 12A without any basis since the Tribunal in the Final Order reproduced above had clearly noted that the adjudicating authority should proceed on the premises that Rule 12A of the Cenvat Credit Rules, 2004 is

applicable to the appellant. Moreover, the Commissioner on perusal of computerized extracts of the trial balance and the journals, placed before him by the appellant, observed that *'on perusal of the said extracts, I find that details contained therein clearly evidence payment of service tax, availment of cenvat credit thereof, and the details of debit in the said modvat account'*, but denies the benefit of cenvat credit on the ground that no specific entries were made. Since, there is no dispute that the consolidated debit entries and the cenvat credit that was transferred amounting to Rs.2,24,70,573/- was in line with the debit entries, the question of denying the benefit of cenvat credit on flimsy grounds that the transfer challans contained incomplete details will not disentitle the appellant to transfer the cenvat credit as per the provisions of Rule 12A(4) of the Cenvat Credit Rules, 2004. In view of the above, we do not find any reason to sustain the impugned order, hence, the same is set aside.

Appeal is allowed.

(Operative portion of the order was pronounced
in Open Court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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