CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20746 of 2017

(Arising out of Order-in-Original No. BLR-EXCUS-005-COM-37/16-17 dated 16.02.2017 passed by the Commissioner of Central Excise and Service Tax, Bangalore – V Commissionerate, Bengaluru.)

M/s. Indo MIM Pvt., Ltd.
No. 45 (P) KIADB Industrial Area,
Hoskote, Bangalore,
Karnataka – 562 114. **........Appellant**

VERSUS

Commissioner of Central Excise,
Bangalore - V Commissionerate,
BMTC Complex, 2nd Floor (South Wing)
Shivaji Nagar Bus Stand, Bangalore,
Karnataka - 560051 **...........Respondent**

AND

Central Excise Appeal No. 20786 of 2017

(Arising out of Order-in-Original No. BLR-EXCUS-005-COM-37/16-17 dated 16.02.2017 passed by the Commissioner of Central Excise and Service Tax, Bangalore – V Commissionerate, Bengaluru.)

Commissioner of Central Excise,
Bangalore - V Commissionerate,
BMTC Complex, 2nd Floor (South Wing)
Shivaji Nagar Bus Stand, Bangalore,
Karnataka – 560 051. **........Appellant**

VERSUS

M/s. Indo MIM Pvt Ltd.
No. 45(P), KIADB Industrial Area,
Hoskote, Bangalore,
Karnataka – 562 114. **...........Respondent**

Appearance:

Mr. Ramesh Ananthan, Advocate for the Assessee
Mr. Rajashekar. B. N. N, Authorised Representative (AR) for the Revenue

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 22174-22175 /2025

Date of Hearing: 18.09.2025
Date of Decision: 18.09.2025

PER: P. A. AUGUSTIAN

Appeal No. E/20746/2017 is filed by M/s. Indo MIM Pvt., Ltd., regarding disallowing of the irregularly availed CENVAT credit utilized and demand of said amount with interest and penalty for the period from July 2012 to August 2015. In Appeal No. E/20786/2017 filed by the Department the issue is on imposing lesser penalty by the Adjudication Authority for the period from May 2015 to August 2015.

2. The brief facts are the Appellant M/s. Indo MIM Tech Pvt. Ltd. is manufacturing excisable goods, and they are also holding Central Excise registration. During Audit for the period from April 2014 to July 2015, it is observed that Appellant had availed CENVAT credit on common input services relating to all their 3(three) units situated at Hoskote, Doddaballapur and Tirupathi. Alleging that the Appellant is having more than one manufacturing units and having availed CENVAT credit on common input services is required to obtain the ISD registration from the appropriate authority of the Department, hence the Appellant had violated the provision of Input service distributor contemplated under Rule 2(m) of the CENVAT Credit Rules, 2004 by utilizing such credit at their manufacturing unit at Hoskote. Accordingly, proceedings were initiated and Show Cause Notice was issued on 28.07.2016. Thereafter, Adjudication authority as per the impugned order confirmed the demand and also imposed penalties under various provisions of law. Aggrieved by said orders, these appeals are filed.

3. When the appeals came up for hearing, Learned Counsel submits that Appellant is having 3(three) manufacturing units and also one job worker unit at Hoskote. They have obtained Service Tax registration for all the 3(three) units, separately. The job worker is exclusively working for above 3(three) manufacturing unit, and no revenue is recognized by

the Appellant at the above job work unit. Further, to promote the export products of all the 3(three) units, Appellant has set up branch offices at USA, Germany and China. These branch officers are engaged in sales promotion of products of all the three manufacturing units at the countries mentioned above. The Appellant's Hoskote unit being the Head, incurring export expenditure towards the branch office in foreign currency and paying service tax on the same under Reverse Charge Mechanism (RCM) in terms of Section 68(2) of the Finance Act, 1994. Appellant were receiving services of professional and consultancy from service provider located in non-taxable territory and paying service tax in foreign currency. They have paid service tax on such professional and consultancy charges incurred in foreign currency under Reverse Charge Mechanism (RCM) in terms of Section 68(2) of the Finance Act, 1994. All these expenses incurred in foreign currency are in relation to promotion of sales of products of all the 3(three) manufacturing units set up by the Appellant in India and therefore construed as common input services.

4. Learned Counsel draws our attention to Rule 7 regarding manner of distribution of credit by input service distributor and as per said provision, input service distributor may distribute the CENVAT credit in respect of service tax paid on the input services to its manufacturing units or units providing output services subject to certain conditions. In this regard, Learned Counsel submits that the only allegation in the show cause notice is that they have failed to distribute the service. As per Rule 7, it is the discretion of the Appellant to distribute and the amendment was brought under the said provision, where it is mandatory to distribute the credits with effect from 01.04.2016, only. Thus, the availment of CENVAT credit by the Hoskote unit at the relevant time is not illegal and demand is unsustainable. Learned Counsel further draws our attention to various decisions:

(i) Comissioner of Central Excise Vs. Dashion Ltd. – 2016 (41) S.T.R. 884 (Guj.)

(ii) Sudhir Gansets Ltd. Silvassa, Gujarat Vs. Commissioner of C.E & S.T, Silvassa – 2024 21 Centax 201 (Tri.Ahmd)

(iii) Piramal Glass Pvt. Ltd. Vs. Commr. of C. Ex. & Service Tax, Surat - I – [2021 (55) G.S.T.L. 22 (Tri. -Ahmd.)]

(iv) India Cements Ltd. Vs. Commissioner of Central Tax, Tirupati – GST – [2023 (7) Centax 94 (Tri. – Hyd.)]

(v) Maini Precision Products Ltd. Vs. Commissioner of Central Tax, Bengaluru East – [2021 (55) G.S.T.L 540 (Tri. – Bang.)]

5. The Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that the impugned order is legal and proper. As far as the imposition of penalty on the Appellant under Rule 15(2) of the CENVAT Credit Rules, 2004 read with proviso to Section 11AC(1)(c) of Central Excise Act, 1944 as challenged in the Department Appeal, Learned AR further submits that the above order was examined by the Committee of Chief Commissioners, for the purpose of Review as prescribed under Section 35E(1) of Central Excise Act, 1944 and found that the subject order is not legal and proper as far as the imposition of penalty on M/s. INDO-US, under Rule 15(2) of the Cenvat Credit Rules, 2004 read with proviso to Section 11AC(1)(c) of Central Excise Act, 1944 for the following reasons:

(i) The Commissioner while imposing penalty has held that there was a malafide intention on the part of the assessee to avail irregular Cenvat credit and as such the assessee have rendered themselves liable for penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. Further, the adjudicating authority has also held that since the details relating to availment of Cenvat credit on common input services were recorded in the specified records, for the period in question, the penalty is reduced to fifty per cent of the duty /irregular Cenvat credit availed. Accordingly, the Commissioner

has imposed penalty of Rs. 7,02,02,217/-, under Rule 15(2) of Cenvat Credit Rules, 2004 read with proviso to Section 11AC(1)(c) of the Central Excise Act, 1944 which is fifty percent of the Cenvat credit of Rs. 14,04,04,434/-confirmed /demanded.

6. In this regard, Learned AR draws our attention to Section 11AC(1)(c) which is re-produced below:-

SECTION 11 AC. Penalty for short-levy or non-levy of duty in certain cases. (1) The amount of penalty for non-levy or short-levy or non-payment or short-payment or erroneous refund shall be as follows:-

(c) where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of fraud or collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under sub-section (10) of Section 11A shall also be liable to pay a penalty equal to the duty so determined:

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty percent of the duty so determined.

7. Learned AR further submits that from the above provisions it can be seen that two conditions are required to be fulfilled in order to impose penalty of fifty per cent of the duty so determined. The first condition is that the transactions are required to be recorded in the specified records. The second condition is the period of recording of such transaction i.e., for the period beginning with the 8th April 2011 up to the date on which the Finance Bill, 2015 receives the assent of the

President (both days inclusive). The Finance Bill 2015 received the assent of the President on 14.05.2015.

8. Heard both sides and perused the records.

9. We find that the issue regarding alleged illegality in utilization of the CENVAT credit is settled as per the judgment of the Hon'ble High Court of Gujarat at Ahmedabad in the matter of **Commissioner of Central Excise Vs. Dashion Ltd. in Tax Appeal No. 415 of 2013 & 662 of 2014 [2016-TIOL-111-HC-AHM-ST]/ [2016 (41) S.T.R. 884 (Guj)]** and by following the same, Tribunal in the matter of **Sudhir Gansets Ltd. (supra)** held that:-

> *" 10.......... From the above decision, it can be seen that not only the Hon'ble Courts have decided, but the Board also vide Circular No. 1063/2/2018-CX dated 16.02.2018, accepted the orders of the High Court and clarified that the credit in the given circumstances cannot be denied. This Tribunal relying on the Hon'ble Gujarat High Court decision in the case of Doshin Ltd in a case of Demosha Chemicals Pvt. Ltd. -2014 (34) STR 758 (Tri-Ahmd.), held that not taking ISD registration is at best a procedural irregularity and credit is not deniable on this ground. It is observed that there are other judgments cited by the appellant which support the case of the appellant on this issue. Therefore, merely because the ISD registration was not obtained the CENVAT Credit cannot be denied. As regard the second issue that the head office of the appellant distributed 100% credit to a single unit i. e appellant, we find that in Rule 7(d) of CENVAT Credit Rules, 2004, existing during the relevant period there was no restrictions for distribution of CENVAT Credit to one particular unit of an assessee despite having more than one unit. Accordingly, on this ground also credit cannot be denied."*

10. Further the issue was also considered in the matter of **Commissioner of Central Tax, Pune–I Vs. Oerlikon Balzers**

Coating Indian Pvt Ltd -[(2019 (366) E.L.T 624 (BOM)], wherein it is held that:-

> *"8. It would be appropriate that we reproduce Rule 7 as existing prior to 2012 and post 2012 which is as under:*
>
> > *"Rule 7 as existing prior to 2012:*
> >
> > *Rule 7. Manner of distribution of credit by input service distributor. The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely:-*
> >
> > *(a) The credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon: or*
> >
> > *(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.*
> >
> > *Rule 7 Post 2012-Amendment:*
> >
> > *Rule 7. Manner of distribution of credit by input service distributor. The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely:-*
> >
> > *(a) The credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or*
> >
> > *(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed:*

> *(c) credit of service tax attributable to service used wholly in a unit shall be distributed to the unit; and*
>
> *(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rata on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period."*

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 with effect from April 1, 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 the Cenvat Credit Rules, 2004 with effect from April 1, 2016. Therefore, on plain reading of rule 7 as existing both pre and post amendment 2012 covering period involved in these proceedings, the respondent-assessee was entitled to utilize the Cenvat credit available at its Pune unit".

11. Thus, as per the judgment of the Hon'ble High Court in **Dashion Ltd. (supra)**, it is the discretion of the Appellant to distribute the credit among the manufacturing unit, and it has become mandatory only with effect from 01.04.2016. Further merely because the ISD registration was not obtained, CENVAT Credit cannot be denied. Thus, there is no

illegality in utilizing the CENVAT credit by the Appellant in manufacturing unit at Hoskote and demands along with penalties imposed by the Adjudication authority are unsustainable and the impugned order is liable to be set aside.

12. In view of the above discussion the impugned order is set aside and Appeal No. E/20746/2017 filed by the Appellant is allowed with consequential relief, if any, as per law. Consequently, Appeal No. E/20786/2017 filed by the Revenue is dismissed.

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

(P. A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

sasi