IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/450 - 452/2012

(Arising out of Order-in-Original No. 25 – 27/2012 dated 31.07.2012 passed by the Commissioner of Central Excise, Commissionerate-II, Chennai).

M/s. Wabco India Ltd. : Appellant

Vs.

CCE, Chennai-II : Respondent

Appearance

Shri D. Santhana Gopalan, Advocate
for the appellant

Shri R. Subramaniyam, AC (AR)
for the Respondent.

CORAM:

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **09.05.2018**

FINAL ORDER No**.** **41449-41451/2018**

Per Bench

The appellant is a manufacturer of automotive brake appliances and have factories at Ambattur, SEZ Unit viz., Mahindra World City, factory at Jamshedpur and STPI software design centre. Appellants received services namely 'Management Consultancy Services, Share Registry services, Advertising services, Chartered Accountant Services etc. These services were common to all the four units of the appellant company. The invoices were raised by the service providers on the appellant's factory ie., Ambattur. The appellant paid the service tax and availed Cenvat credit on the same. The department was of the view that the appellant has not taken input service distributor registration and that appellant ought to have distributed the credit proportionate to the turn-over of the other units. Thus, SCN was issued alleging irregular availment of credit proposing to recover the same along with interest and for imposing penalties for the period April, 20008 to March, 2010. After due process of law, the Commissioner confirmed the demands along with interest and imposed penalties. Aggrieved appellants are now before the Tribunal.

2. On behalf of the appellants, the Ld. Counsel, Shri D. Santhana Gopalan referred Rule 7 of the Cenvat Credit Rules and submitted that the said rule does not mandate ISD distribution proportionate to the turn-over during the impugned period. The two conditions in the said Rule were satisfied by the appellants, which stands admitted in the impugned orders. The non-registration of the appellant as ISD is only procedural and curable defect that the substantial benefit of Cenvat credit cannot be denied on this ground. The issue is no longer res integra. He placed reliance on the decision of the Hon'ble High Court of Gujarat in CCE Vs. Dashion Ltd. – 2015 (41) STR 884 (Guj.) and in the case of CCE Vs. National Engineering Industries Ltd. – 2016 (42)

STR 945 (Raj.), that both these decisions have been accepted by the department as clarified vide Sl.No. 2 (part 1) of the Circular No. 1063/2/2018-CX dated 16.02.2018. He also placed reliance on the decision in the case of CCE Vs. Ecof Industries Ltd. – 2011 (23) STR 337 (Kar.). With regard to the clearances of the manufactured goods by SEZ units for exports, without payment of excise duty, the Ld. Counsel submitted that the same cannot be treated as clearances of exempted goods. Similarly, the provision of services from STPI, without payment of service e tax cannot be treated as provision of exempted services. For this, he took assistance of the decision of the Hon'ble High Court of Punjab and Haryana in the case of Alpha Drugs India Ltd. Vs. CCE – 2002 (140) ELT 43 (P & H). It was also argued by him that the entire exercise is revenue neutral. The department does not dispute that the appellant is eligible for credit. The only allegation is that the procedural requirement of taking ISD registration and proportionate distribution was not done. That there is no revenue loss to the Government and on this ground also the demand is not sustainable.

3. The Ld. AR Shri R. Subramaniyam, AC, supported the findings in the impugned order.

4. Heard both sides.

5. The demand is confirmed on the ground that the appellant has not obtained ISD registration and has not distributed the Cenvat credit proportionately to the other units. The said issue is

decided in the case of Dashion Ltd. (supra), where in the Hon'ble High Court of Gujarat observed as under:-

> "**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 : -
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> "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."
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> **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.
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> **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 in 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 assessee."

The decision in Dashion Ltd. has been accepted by the Department vide its Circular dated 16.02.2018 referred by the Ld. Counsel for the appellants. In such an event, the demand cannot sustain.

6. Following the decision in the case of Dashion Ltd., we are of the view that the impugned order requires to be set aside, which we hereby do. In the result, the appeal is allowed with consequential reliefs, if any.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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