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

Appeal No. E/247/2012

(Arising out of Order-in-Original No. 1/2012 dated 2.1.2012 passed by the Commissioner of Central Excise, Chennai – I)

M/s. Eveready Industries India Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Respondent

Appearance

Shri Santhana Gopalan, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri V.Padmanabhan, Member (Technical)

Date of Hearing / Decision: **07.08.2018**

Final Order No. **42215 / 2018**

Per Ms. Sulekha Beevi, C.S.

The appellants are manufacturers of dry cell batteries and are availing the facility of CENVAT credit of duty paid on inputs, capital goods and input services. They have corporate office located at Kolkata. Apart from their unit at Thiruvottiyur, they have three manufacturing units at Kolkata, two units at Noida, one unit at Lucknow, Hyderabad, Bangalore, Manali. Further, they have two units at Uttaranchal where flash lights / dry cell batteries are manufactured. All these units except the two units at Uttaranchal avail CENVAT credit on inputs, capital goods and input services. On verification of ER-I returns, it was observed that they have availed credit on the basis of the invoices issued by their corporate office at Kolkata and their sales branch Mumbai in the capacity as Input Service Distributor. It was noticed by the department that the ISD invoices did not distribute the credit proportionately to all the units and that the distribution was not in accordance with Rule 7 of CENVAT Credit Rules, 2004. Show cause notice was issued proposing to disallow the CENVAT credit and for recovery of the same along with interest and for imposing penalties. After due process of law, the adjudicating authority confirmed the demand along with interest and imposed penalties. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri Santhana Gopalan submitted that the main issue is whether the appellant is eligible to avail CENVAT credit distributed by it to the units though the amounts so distributed was not proportionate to their turnover. That the said issue is decided in the case of Commissioner of Central Excise Vs. Dashion Ltd. – 2016 (41) STR 884 (Guj.) and that the department vide its Circular No. 10632/2018-CX dated 16.2.2018 has accepted the said decision. It is also pointed out by him that in Commissioner of Central Excise Vs. Ecof Industries Ltd. – 2011 (23) STR 33

(Kar.), the very same view has been taken by the High Court of Karnataka.

3. The ld. AR Shri A. Cletus supported the findings in the impugned order.

4. Heard both sides.

5. The demand has been confirmed on the ground that the appellant has not distributed the credit proportionately to all the units. The said issue is decided by the Hon'ble High Court of Gujarat in the case of Dashion Ltd. (supra). As rightly pointed out by the ld. counsel for appellant, the said decision has been accepted by the department vide its circular dated 16.2.2018. This Tribunal in the case of Wabco India Ltd. Vs. Commissioner of Central Excise, vide Final Order No. 41449 to 41454 of 2018 dated 9.5.2018 has followed the said decision and set aside the demand. Following the same, we are of the view that the decision in the case of Dashion Ltd. (supra) would apply and the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**V. Padmanabhan**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex