

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

Appeal No. E/40079/2015

(Arising out of Order-in-Original No. 21/2014 dated 28.8.2014
passed by the Commissioner of Central Excise, Chennai - IV,
Commissionerate)

M/s. Volex Interconnect (India) Pvt. Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Respondent

Appearance

Shri Raghavan Ramabhadran, Advocate for the Appellant
Shri K. Veerabhadra Reddy, ADC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **28.02.2019**

Final Order No. **40410 / 2019**

Per Bench

The appellants are engaged in manufacture power cord and telecommunication cables. They are availing CENVAT credit on inputs, capital goods and input service. The appellants were also having an Export Oriented Unit (EOU) in the said premises at Neelankarai, which was registered with the Customs Department and thereafter got transferred under the

administrative control of Central Excise Department till their exit from the EOU scheme on 31.3.2011 after due process of law. Apart from the above units, the appellant is also registered as a dealer at Ponneri Taluk. The 100% EOU and DTA unit related documents and accounts are managed by only one office with common infrastructure and staff. This office is located at Neelankarai. A combined balance sheet is maintained for all the three units viz. EOU, DTA Unit and dealer. On scrutiny of documents, it was observed that the appellant had availed irregular credit without proper documents and also had availed credit in respect of invoices issued to the Head Office. Further, they had not distributed the credit on pro-rata basis as required under Rule 7 of CCR, 2004. Show cause notices were issued proposing to demand input service credit along with interest and also for imposing penalties. After due process of law, the adjudicating authority confirmed the demand of Rs.5,48,10,441/- along with interest and imposed equal penalty. Hence this appeal.

2. On behalf of the appellant, Id. counsel Shri Raghavan Ramabhadran submitted that an amount of Rs.1,70,99,950/- has been denied alleging that the documents are not proper. Further, the credit to the tune of Rs.2,33,102/- also has been denied which is attributable to EOU and trading. The period involved in these demands is July 2008 to March 2009 and

January 2010. He argued that although the appellant had availed the credit on proper documents, the same were not available and could not be furnished before the authorities below. In any case, the appellants have reversed the said credit along with interest prior to issuance of show cause notice. Therefore, these amounts are not contested by the appellants on merits. He prayed that the penalty imposed in regard to this amount may be set aside since the amount has been reversed before issuance of the show cause notice. To support his argument he relied upon the decision of the Tribunal in the case of Kotsons Pvt. Ltd. Vs. Commissioner of Central Excise – 2016 (333) ELT 456 (Tri. Chennai) as well as Greenland Traders Vs. Commissioner of Central Excise – 2019 (2) TMI 1250 CESTAT Chennai.

2.1 For the balance amount of Rs.3,74,77,389/- for the period January 2010 to August 2011, the credit has been disallowed on three grounds. Firstly, that the appellant who is a manufacturing unit has availed credit on invoices issued in the name and addresses of Head Office / ISD registered unit. He submitted that the both units are in the same premises and the manufacturing unit which is the appellant herein had availed the credit on the invoices which were issued in the name and address of the Head Office / ISD registered unit. This was only a procedural error and the department does not dispute the

availment of input services or the payment of service tax with regard to the said input service. The credit has been disallowed merely alleging that the invoices are addressed to the Head office. It is submitted by him that assuming without admitting that the invoices is not in the name of the appellant but is in the name of the Head Office of the appellant which also is situated in the same address still the credit is not deniable for the reason it is settled issue that the factory of the assessee could avail credit based on the invoices issued in the name of Head Office / registered office. He drew support from the decision in the cases of Star Drugs and Research Labs Ltd. Vs. Commissioner of Central Excise – 2016 (45) STR 88 (Tri. Chennai) and Deloitte Haskins & Sells Vs. Commissioner of Central Excise – 2015 (38) STR 1220 (Tri. Mum.).

2.2 The Id. counsel also adverted to Rule 9(2) of CCR, 2004 and argued that the proviso to the said Rule states that in case of genuineness of the invoices are doubted the same has to be verified from the accounts of the assessee. The genuineness of the invoices in this case is not doubted at all and the credit has been disallowed merely for the reason that the invoices have been issued in the name and address of the Head Office.

2.3 He also drew support from the decision of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise Vs. Dashion Ltd. – 2016 (41) STR 884 (Guj.) wherein it was

specifically held that even if invoices are received prior to obtaining ISD registration, credit cannot be denied. The said decision has been accepted by the Board as per para 2 of Circular No. 1063/2/2018-CX dated 16.2.2018. He also placed reliance on the decision of WABCO India Ltd. Vs. Commissioner of Central Excise – 2018 (5) TMI 777 – CESTAT Chennai. That in the present case, there is no allegation that the Head Office was not registered as an ISD. Further allegation is that certain services were not endorsed in the ISD registration. According to department, the appellant though had availed certain input services had not renewed or got endorsement in their ISD registration certificate with regard to certain services. He argued that credit cannot be denied even on invoices received prior to registration and therefore the disallowance of credit alleging that the said services were received without certain endorsements in the registration is uncalled for. That on this count also, the disallowance is without any legal basis.

2.4 The third allegation is that the ISD registered unit has not made pro-rata distribution of the credit and that the entire credit has been distributed to the manufacturing unit. He adverted to the period involved and submits that the requirement of pro-rata distribution was brought forth by amendment of Rule 7 only with effect from 1.4.2012. That during the disputed period, there was no compulsion on the ISD

to distribute credit on proportionate basis and therefore the disallowance of credit on this account is not in accordance with law.

2.5 He also submitted that the invocation of extended period is not correct and the penalties imposed maybe set aside in full.

3. The Id. AR Shri K. Veerabhadra Reddy supported the findings in the impugned order. He submitted that the appellant has availed credit without necessary documents and therefore the confirmation of demand in this regard is legal and proper. With regard to the credit availed on the invoices issued in the name of the Head Office, he submitted that the manufacturing unit can avail credit only on a document which is issued by the ISD unit and not on the invoices issued in the name of the Head Office.

4. Heard both sides.

5. With regard to amount of Rs.1,73,33,050/-, the Id. counsel for appellant has submitted that the issue is not contested on merits. He submitted that the appellant could not furnish the documents to the adjudicating authority and has reversed the credit even prior to issuance of the show cause notice. He has relied upon the decisions in Kotsons Pvt. Ltd. (supra) to argue that the penalty is unwarranted. Taking note of the fact that the appellant has reversed the credit more than three years before issuance of the show cause notice, we are of the considered

opinion that the penalty imposed is unjustified and requires to be set aside which we hereby do.

5.1 For the period from January 2010 to August 2011, credit has been disallowed for three reasons. Firstly, that the manufacturing unit has availed credit on the invoices issued on ISD (name and address of the Head Office). The second reason is that certain services were not included in the ISD registration during the disputed period and required endorsement for including such services were not obtained by the appellant. In WABCO India Ltd. (supra), the Tribunal has relied upon the decision of the Hon'ble High Court of Gujarat in the case of Dashion Ltd. (supra) which held that even if Head Office did not obtain ISD registration, the credit distributed cannot be denied. The said decision has been accepted by the Board. Similar view has been taken by the Tribunal in the case of Star Drugs and Research Labs Ltd. (supra) as well as Deloitte Haskins & Sells (supra). The third allegation is that the entire credit has been distributed to the manufacturing unit and that the ISD registered Head Office has not distributed on pro-rata basis as required under Rule 7. The period is prior to 1.4.2012 and the requirement of pro-rata distribution was introduced with the amendment brought forth with effect from 1.4.2012. The Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise Vs. ECOF Industries – 2013 (29) STR 107 (Kar.)

has held that prior to 1.4.2012, the assessee cannot be compelled to comply with the requirement of pro-rata distribution. On this score, we find that the credit availed is legal and proper. Relying upon the decisions and after appreciating the facts, we are of the considered opinion that the disallowance of credit for the period from January 2010 to August 2011 for an amount of Rs.3,74,77,389/- cannot sustain and requires to be set aside, which we hereby do.

6. From the above discussions, the impugned order is modified to the extent of setting aside the penalty in respect of an amount of Rs.1,73,33,052/- confirmed in the impugned order and also set aside the demand of Rs.3,74,77,389/- entirely. The appeal is partly allowed in the above terms with consequential relief, if any, as per law.

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

(Madhu Mohan Damodhar)
Member (Technical)

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

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