CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SZB, CHENNAI

REGIONAL BENCH - Division Bench B3

**Service Tax Appeal No. ST/42065 - 42067 of 2018**

(Arising out of Order-in-Appeal No. 254 - 256/2018 (CTA-II) dated 24.05.2018 passed by the Commissioner of Central Tax (Appeals-II), Chennai).

M/s. Kansai Nerolac Paints Ltd., Appellant
No.1, Central Warehousing Corporation,
Godown No. 8, Arcot Road,
Virugambakkam, Chennai-600 092.

Vs.

The Commissioner of Central Tax (Appeals-II)
Respondent
CGST & CE, Newry Towers, 2054/1, II Avenue,
12th Main Road, Anna Nagar, Chennai – 600 040.

APPEARANCE:

Shri Naseer Abdullah, Advocate, for the appellant

Shri L. Nandakumar, AC, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR P.DINESHA, Judicial Member**

**FINAL ORDER No. 40865-40867/2019**

Date of Hearing: **03.06.2019**
Date of Decision**: 03.06.2019**

The appellant is a manufacturer of paints and varnishes, has manufacturing units located in different parts of India with manufacturing unit also at Chennai. The Registered Office of the appellant is located at Mumbai.

2. The brief facts, as canvassed by the Ld. Advocate for the assessee-appellant, interalia are that during the years of operation at Chennai, the appellant was availing Cenvat credit of the excise duty paid on its input raw materials and the service tax paid on input services which were used for payment of excise duty on the manufacture of final products; that the Head Office at Mumbai was registered as Input Service Distributor (ISD for short) for payment of service tax on the input services; that the ISD credited such payment to the appellant's Cenvat credit account and then distributed the same to its various manufacturing units; that the appellant at its ISD office availed Cenvat credit on service tax for various input services which was transferred to its Chennai unit and also to other units; etc. Alleging contravention to Rule 2 (l) of Cenvat Credit Rules, 2004 (CCR for short), three Show Cause Notices were issued by the Revenue – (1) SCN No. 127/2010 dated 3.12.2010 for the period January 2009 to December 2009, (2) SCN No 145/2010 dated 28.01.2011 covering the period January 2010 to April 2010 and (3) SCN No. 445/2011 dated 07.10.2011 for the month of November 2010. The common factor in all the SCNs is the demand of allegedly ineligible credit, along with recovery of interest under Rule 14 ibid read with Section 11 AB of Central Excise Act, 1944 (CEA in short) and imposition of penalty under Rule 15 (1) ibid. The appellant offered detailed replies to the above SCNs and after considering the same, a common adjudication order, in Order-in-Original Nos. 2, 3 & 4/2017 dated 22.09.2017 came to be passed wherein, the adjudicating authority partly allowed and partly disallowed the Cenvat credit, as proposed. The appellant thereafter preferred appeals against the disallowed portion of Cenvat credit before the Commissioner of Central Tax (Appeals-II), Chennai, and interalia pleaded that the disallowance by the adjudicating authority was incorrect for the detailed reasons given in its statement of facts and in its written submissions as well, but however, the Commissioner (Appeals) vide common impugned orders-in-Appeal Nos. 254-256/2018 dated 24.05.2018 having upheld the disallowance of Cenvat credit, aggrieved, the present appeals are filed.

3. Today, when the matter was taken up for hearing, Shri Naseer Abdullah, Ld. Advocate, appeared for the assessee-appellant and Shri L. Nandakumar, Ld. DR appeared for the Revenue, I have heard the rival contentions and perused the records. Ld. Advocate reiterating the submissions made before the lower authorities, emphasized that both the lower authorities have ignored the concept of ISD while passing respective orders and submitted that the Cenvat credit was availed by the ISD at Mumbai and all compliance were made before the Mumbai Commissionerate who has accepted the same, the Cenvat credit was taken in the consolidated Register and then transferred to different units/locations in India. He also submitted that the invoice copies merely carried the name of services in the annexure to enable the department to understand on what services the Cenvat credit was availed at Mumbai that had already been accepted by the Mumbai Commissionerate. Without prejudice to the above, Ld. Advocate would submit, with regard to each of the services against which Cenvat credit was availed, as under :-

i. Cargo handling service was utilized for moving parcels between manufacturing units, and hence it was an essential to the manufacturing and marketing process and therefore eligible for Cenvat credit.

ii. Air Travel Agents Service was used for booking air tickets fro the company's employees to travel to different locations in pursuance of the work related to the company's manufacturing and marketing requirements.

iii. Banking and other financial services are used for leasing vehicles to the company staff to commute for carrying out the works related to the company.

iv. Transport of raw materials is a necessary input service, and is essential for the efficient running of the company, and any service tax paid is eligible for Cenvat credit.

v. Authorized Service station maintains the vehicles of the company in proper shape for use in connection with the company's activities.

vi. Rail Travel Agents Service are used for booking tickets for transporting their staff to the various factories, and marketing locations in connection with the marketing and manufacturing activities.

vii. Outdoor catering Service is used for providing food required during meetings and conferences conducted at the office, to enable the meeting to be carried without any disruption.

viii. Insurance Auxiliary Service is used to enable the company to settle the claims arising against the company and to conduct Insurance Surveys to ascertain the best insurance to be availed by the company.

ix. House keeping service is used to keep the garden and premises clean and hygienic as mandated in the Indian Factories Act.

x. Cenvat credit denied on service tax paid on transportation of goods was erroneously denied when the service was only used upto the place of removal.

Ld. Advocate further vehemently contended that though not required, still, the appellant had duly demonstrated the nexus between the services and the manufacturing activity.

4. Per contra, Shri. L. Nandakumar, Ld. DR supported the findings of the lower authorities.

5.1 Heard both sides. Facts are not in dispute. I find that the disallowance has been upheld mainly for want of nexus. Surprisingly, without discussing as to the eligibility of the ISD for distribution, the adjudicating authority has simply brushed aside the claim as not correct, which has also been upheld vide impugned orders. Both the authorities have referred to Rule 2 (m) of CCR, but however, the applicability or violation of the same has not at all been pointed out. It is also undisputed in these cases that the credit was availed based on the credit distributed by ISD. Apparently, the rejection is made not because of any lacunae in the invoice/invoices, no whisper as to any violation of rule 9 of CCR and nor is it the case of the Revenue that the registered ISD was not eligible to distribute service tax to any of its units.

5.2 Rule 2 (m) defines Input Service Distributer and the same reads as under :-

> **"2(m) "input service distributor"** means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;"

5.3 The scope and mechanism of ISD has also been explained by the Board vide Circular No. 97/8/2007 dated 23.08.2007 and the relevant portion of the Circular reads as under:-

> "2.3 An 'input service distributor' is an office or establishment of a manufacturer of excisable goods or provider of taxable service. It receives tax paid invoices/bills of input services procured (on which CENVAT credits can be taken) and distributes such credits to its units providing taxable services or manufacturing excisable goods. The distribution of credit is subject to the conditions that,- (a) the credit distributed against an eligible document shall not exceed the amount of service tax paid thereon, and (b) credit of service tax attributable to services used in a unit either exclusively manufacturing exempted goods or exclusively providing exempted services shall not be distributed. An input service distributor is required (under section 69 of the Act, read with notification no.26/2005-ST) to take a separate registration.".

5.4 Rule 7 of CCR prescribes the manner of distribution of credit by an ISD and the same reads as under:-

> "**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 conditions, 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 used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."

5.5 From the above Rule, it is very clear that two conditions are to be satisfied by an ISD and it is therefore, for the Revenue to give a finding as to the violation, if any, of any or both the conditions of Rule7. In the absence of any such specific findings, there cannot be any denial of the Cenvat credit distributed for consumption at the units. In the case on hand, without causing any investigation or enquiry as to the claim of the appellant, the adjudicating authority has doubted the availment of service tax credit by the ISD itself despite a clear pleading that the jurisdictional Commissionerate has accepted. Admittedly, the assessee-appellant has only sought for the consumption of credit that was claimed to be available with the appellant's ISD which was explained to have been passed on. So, in the absence of any disputes as to the eligibility of credits availed by the ISD, the same cannot be questioned at the receiver's end, who only sought for consumption of the same.

5.6 Hon'ble High Court of Karnataka had an occasion to analyse this aspect of ISD, in the case of *CCE, Bangalore Vs. ECOF Industries Pvt. Ltd.* – 2011 (271) ELT 58 (Kar.). The Hon'ble Court has analysed the scope and applicability of Rules 2 (k), 2(l), 2 (m) and Rule 7 as under:-

> **"6.** As we are concerned only about input service, it is sufficient to extract the definition of input, input service and input service distributor, which are defined at Rule 2(k) - 'Input', Rule 2(l) - 'Input service' and Rule 2(m) - 'Input service provider' as under :-
>
> **"Rule 2(k) "input"** means -
> (i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to

the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;
(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

**Rule 2(l) "input service"** means any service :-
(i) used by a provider of taxable service for providing an output service, or
(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research storage upto the place of removal procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

**2(m) "input service distributor"** means as office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;"

**7.** Rule 3(1) has been defined as under :-
"A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit".

**8.** It is in this context, the definition of input service distributor makes it clear that a manufacturer or a producer of a final product or a provider of output service may have more than one unit and may be distributed in various parts of the country. It is in this background the definition of service distributor is defined as office of the manufacturer or producer of a final product or provider of output service which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. Therefore, the law mandates that the manufacturer who wants to avail the benefit of this service tax if he has more than one unit he should also get registered himself as a service provider and then, he would be able to collect all the input service tax paid in all its units and accumulate them at its head office and distribute the said credit to its various units. At the time of distribution, the manner of distribution is provided in Rule 7 which reads as under :-

"**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 conditions, 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."
Therefore, only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of service tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services"

Further, the Hon'ble Court has also referred to the Board's Circular (supra) and thereafter has concluded, to the following effect:-

**9.** In fact, the Board has issued a circular clarifying in this regard, which is extracted by the tribunal at para 7 which reads as under :-
"Para 7. Para 2.3 of the Master Circular referred to by the ld. Advocate reads as under :-

"2.3 An 'Input service distributor' is an office or establishment of a manufacturer of excisable goods or provider of taxable service. It receives tax paid invoices/bills of input services procured (on which Cenvat credits can be taken) and distributes such credits to its units providing taxable services or manufacturing excisable goods. The distribution of credit is subject to the conditions that - (a) the credit distributed against an eligible document shall not exceed the amount of service tax paid thereon, and (b) credit of service tax attributable to services used in a unit either exclusively manufacturing exempted goods or exclusively providing exempted services shall not be distributed. An input service distributor is required (under Section 69 of the Act, read with Notification No. 26/2005-S.T.) to take a separate registration."

**10.** Therefore, these are the only two limitations, which are imposed in Rule 7 preventing the manufacturer from utilizing the CENVAT credit, otherwise, he is entitled to the said credit. Merely because the input service tax is paid at a particular unit and the benefit is sought to be availed at another unit, the same is not prohibited under law. It is in this context, the manufacturer is expected to register himself as a input service distributor and thereafter, he is entitled to distribution of credit of such input in the manner prescribed under law. Therefore, the order passed by the

> tribunal is legal and valid and does not suffer from any legal infirmity and does not call for any interference and therefore it is dismissed.

6. What transpires from the above is clear, that there are only two limitations for distribution of credit by an ISD and in the case on hand, Revenue has not made out a case as to the non-satisfaction of the above two conditions. Consequently, there being no deficiency as to the eligibility of the ISD for distribution, no denial could be made in the hands of the recipient who has only consumed the same. My above view is also supported by the following cases, to name a few:-

1. *Greaves Cotton Ltd. Vs. CCE, Chennai*
   2015 (37) STR 395 (Tri.-chen.)

2. *United Phosphorus Ltd. Vs. CCE, Surat*
   2013 (30) STR 509 (Tri.-Ahmd.)

7. In view of the above discussions, clearly, the disallowance as well as the impugned order cannot sustain for which reason the impugned orders are set aside and the appeals are allowed with consequential benefits, if any, as per law.

(Operative part of the Order dictated in the Open Court)

(P.DINESHA)
JUDICIAL MEMBER

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