

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 41850 of 2013

(Arising out of Order-in-Original No. 19/2013 (C) dated 30.05.2013 passed by the Commissioner of Central Excise, Puducherry Commissionerate, No. 1, Goubert Avenue, Beach Road, Puducherry – 605 001)

M/s. 3M Electro & Communication India Pvt. Ltd. : Appellant

A-63 & 54, PIPDIC Industrial Estate,
Mettupalayam, Puducherry – 605 009

VERSUS

Commissioner of Central Excise

: Respondent

Puducherry Commissionerate,
No. 1, Goubert Avenue, Beach Road, Puducherry – 605 001

APPEARANCE:

Shri M.S. Nagaraja, Advocate for the Appellant

Smt. Anandalakshmi Ganeshram, Superintendent for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40476 / 2023

DATE OF HEARING: 02.05.2023

DATE OF DECISION: 23.06.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief undisputed facts which are relevant for our consideration, as could be gathered from the impugned order, are that the appellant is engaged in the manufacture of Main Distribution Frames, Electronic Markers, etc., and the Head Office of the appellant is located at Bengaluru, who have obtained ISD Registration on 24.01.2011 and availed CENVAT Credit on services received between April 2009 and December 2011 and distributed to the manufacturing units at Pimpri, Pune and Puducherry.

2.1 A Show Cause Notice dated 17.05.2012 covering the period from May 2011 to December 2011 was issued apparently after due verification of related documents of the appellant. It is the case of the Revenue that: -

- (i) The appellant had availed input service credit of Rs.88,27,490/- on the basis of invoices issued by the Head Office at Bengaluru as Input Service Distributor (ISD) and that the ISD had obtained necessary registration only in May 2011.
- (ii) That the nature of registration was for a single premises and the taxable service was mentioned as 'management consultants'.
- (iii) The invoices issued by the ISD for credit in May 2011 did not contain the particulars like name, address and registration number of the person providing the services and the serial number and date of invoice, bill or, as the case may be, challan issued by the service provider were also not available.
- (iv) The CENVAT Credit distributed by the ISD was without excluding the credit attributable to the turnover of trading activities which is an exempted service, and
- (v) Royalty services and management consultancy services were neither related to nor had any nexus with the activity of manufacturing excisable goods and thus, the same did not qualify as an input service.

2.2 With the above observations, proposal was made in the Show Cause Notice for recovering under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(1) of the Central Excise Act, 1944 an amount of Rs.94,84,508/- being the wrong credit availed, along with appropriate

interest and penalty, as indicated in the Show Cause Notice.

3. It appears from the record that the appellant filed a detailed reply, but however, not impressed by the same, the Commissioner-adjudicating authority has proceeded to confirm the proposed demands vide impugned Order-in-Original No. 19/2013 (C) dated 30.05.2013.

4. It is against the above Order-in-Original that the present appeal has been filed by the appellant.

5. When the matter was taken up for hearing, Shri M.S. Nagaraja, learned Advocate, appeared for the appellant and Smt. Anandalakshmi Ganeshram, learned Superintendent, represented the Revenue.

6.1 The contentions of the learned Advocate are summarized as under: -

- Disallowance and demand of CENVAT Credit of Rs.94,84,508/- is not correct either on facts or in law.
- The Service Tax Registration Certificate dated 24.01.2011 was generated by ACES which is issued to the ISD at Bengaluru for the purpose of distribution of CENVAT Credit to both the manufacturing units of M/s. 3M Electro & Communication India Pvt. Ltd. situated at Pune and Puducherry.
- The certificate issued online is a valid certificate for the purpose of distribution of CENVAT Credit.
- Their ISD had correctly taken the CENVAT Credit of Service Tax paid on input services namely, royalty paid on Intellectual Property Rights (IPR) services and management or business consultancy services or business support services.

- CENVAT Credit has been correctly distributed to the manufacturing units as provided under Rule 7 of the CENVAT Credit Rules, 2004.
- The Service Tax paid on royalty was towards the IPR services provided by the 3M company, USA, which was relating to the use of brand name / trademark / brand images and the licences required for manufacture of final product.
- The ISD has received management or business consultancy services (BCS) or business support services (BSS) and then only issued invoices for distribution of input Service Tax to its manufacturing units at Pune and Puducherry.
- The services provided were towards logistics and inventory management, financial management, production processes, quality control, etc., in their factory, which are very much covered under Rule 2(l) *ibid*.
- The list of invoices / challans based on which CENVAT Credit was taken by the ISD was also furnished.
- The authorities having jurisdiction over the ISD have not objected to taking CENVAT Credit of the Service Tax paid on input services and hence, the authorities having jurisdiction over the manufacturing unit receiving the eligible credit distributed by the ISD cannot question the availment of credit so distributed.
- The authorities did not question the similar credit availed by the other manufacturing unit of M/s. 3M Electro & Communication India Pvt. Ltd. at Pune.
- The ISD had taken total CENVAT Credit of Rs.1,39,62,761/- and had distributed an amount of Rs.94,84,506/- to the appellant-manufacturing unit

at Puducherry and the balance amount of Rs.44,78,255/- was distributed to the other factory unit at Pimpri, Pune.

6.2 Learned Advocate drew our attention to the table at page 7, paragraph 19 of the reply to the Show Cause Notice wherein all the particulars of invoices issued by ISD and the credit availed by the appellant are mentioned, which clearly identify the taxable service as well.

6.3 He has placed reliance on the following judgements/orders: -

- (i) *Commissioner of Central Excise, Coimbatore v. Pricol Ltd.* [2021 (48) G.S.T.L. 235 (Mad.)]
- (ii) *Commissioner of C.Ex., S.T. & Cus., Bengaluru v. Hinduja Global Solutions Ltd.* [2022 (61) G.S.T.L. 417 (Kar.)]
- (iii) *Commissioner of Central Excise v. Dashion Ltd.* [2016 (41) S.T.R. 884 (Guj.)]
- (iv) *mPortal India Wireless Solutions P. Ltd. v. C.S.T., Bangalore* [2012 (27) S.T.R. 134 (Kar.)]
- (v) *Hical Technologies Pvt. Ltd. v. Commissioner of C.Ex.-I, Bangalore* [2021 (44) G.S.T.L. 101 (Tri. – Bang.)]
- (vi) *Mafatlal Industries Ltd. v. Commr. of C.Ex. & S.T., Ahmedabad* [2020 (43) G.S.T.L. 562 (Tri. – Ahmd.)]
- (vii) *Commissioner of C.Ex., Cus. & S.T., Hyderabad-I v. Fenoplast Ltd.* [2017 (5) G.S.T.L. 302 (Tri. – Hyd.)]
- (viii) *Acro Paints Ltd. v. Commissioner of Central Excise, Jaipur-I* [2017 (47) S.T.R. 284 (Tri. – Del.)]
- (ix) *Hindustan Unilever Ltd. v. Commissioner of C.Ex. & S.T., Kanpur* [2017 (3) G.S.T.L. 132 (Tri. – All.)]
- (x) *Philips Electronics (India) Ltd. v. Commr. of C.Ex., Vadodara-I* [2009 (237) E.L.T. 596 (Tri. – Ahmd.)]
- (xi) *Commr. of C.Ex. & S.T., Ahmedabad v. Meghamani Organics Ltd.* [2016 (42) S.T.R. 81 (Tri. – Ahm.)]
- (xii) *Commissioner of Central Excise, Vapi v. Samita Conductors Ltd.* [2012 (278) E.L.T. 492 (Tri. – Ahmd.)]

7. *Per contra*, the learned Superintendent relied on the findings of the lower authorities. She has also placed reliance on the following case-law: -

- (i) *Mahindra & Mahindra Ltd. v. Commissioner of Central Excise, Pune-I [2011-TIOL-1581-CESTAT-MUM]*
- (ii) *Gulf Oil Corporation Ltd. v. Commissioner of Central Excise, Vapi [2012-TIOL-174-CESTAT-AHM]*
- (iii) *Sify Technologies Ltd. v. Commissioner of G.S.T. and Central Excise, Chennai South [2019-TIOL-1014-CESTAT-MAD]*

8. We have heard the rival contentions, we have perused the documents placed on record and we have also gone through various case-law relied upon during the course of arguments.

9. After hearing both sides, we find that the only issue to be decided by us is: whether the adjudicating authority is correct in denying the CENVAT Credit and thereby ordering recovery of the same?

10.1 We find from the order of the adjudicating authority, which is impugned herein, that the denial of credit and the demand thereof was confirmed mainly on the following grounds:

- The appellant distributed the credit before obtaining the registration and in this context, the judgement of Hon'ble High Court of Karnataka in the case of *M/s. mPortal Wireless Solutions Pvt. Ltd. v. Commissioner of Service Tax, Bangalore [2012 (27) S.T.R. 134 (Kar.)]* is not applicable since the same relates to the refund.
- The nature of registration is for single premises for which a copy of the ISD registration could have been furnished instead of filing a copy of the generated certificate.

- Invoices issued by M/s. 3M Electro & Communication India Pvt. Ltd., the appellant herein, did not contain the name, address and registration number of the service provider.
- Credit was distributed without excluding the credit attributable to their trading units which were exempted services.

10.2 At the outset, we find that it is a little strange on the part of Revenue that while the appellant-ISD had distributed credit of Rs.44,78,255/- to its manufacturing unit at Pune and Rs.94,84,508/- to the appellant at Puducherry unit, the Revenue has accepted the distribution of above credit to its Pune unit. The Department has not accepted the distribution of credit by ISD in respect of the appellant's Puducherry unit. A perusal of both the Show Cause Notice and the impugned Order-in-Original do not reveal anything as to why the appellant's unit was cherry picked up just to deny credit.

11.1 Be that as it may, we will now analyse the certificate of registration dated 24.01.2011; it is clear from the same that the addresses of business premises of the ISD and that of two manufacturing units to which credit on input services was distributed or intended to be distributed is clearly reflected. The Revenue, on the other hand, is not disputing the validity of this certificate of registration.

11.2 In this regard the appellant has submitted that there was no time-limit for availing benefit of credit on the goods and services until the introduction of proviso to Rule 4(1) of the CENVAT Credit Rules, 2004 in terms of Notification No. 21/2014-C.E.(N.T.) dated 11.07.2014 with effect from 01.09.2014 to restrict the availment of such credit within one year from the date of issue of any of the documents specified under Rule 9(1). Admittedly, transactions in the present case relate to the period prior to 01.09.2014 and therefore, the restriction which is applicable prospectively, cannot be applied retrospectively.

11.3 We find it quite apt to refer to the decision of Hon'ble Madras High Court in the case of *Commissioner of Central Excise, Coimbatore v. M/s. Pricol Ltd. [2021 (48) G.S.T.L. 235 (Mad.)]*, which is relied upon by the appellant. In the said the Hon'ble High Court has categorically held, following the judgement of the Hon'ble Gujarat High Court in the case of *Commissioner of Central Excise v. M/s. Dashion Ltd. [2016 (41) S.T.R. 884 (Guj.)]*, that there is nothing in the said Rules of 2005 or Rules of 2004 which would automatically and without any additional reasons, disentitle an input service distributor from availing credit unless and until such registration was applied and granted. Interestingly, we find that the ratio of the decision was followed by Hon'ble Karnataka High Court in the case of *Commissioner of C.Ex., S.T. & Cus., Bengaluru v. M/s. Hinduja Global Solutions Ltd. [2022 (61) G.S.T.L. 417 (Kar.)]* and later by various judicial fora.

12. In view of the above, therefore we do not approve the finding of the learned authority for denying credit on the ground that the credit taken was pertaining to the period prior to registration.

13.1 Learned Advocate invited our attention to paragraph 19 of the reply to show cause notice wherein details of ISD invoices issued by the Bangalore unit for availing credit by the appellant is reflected. He would refer to Annexure A to the reply to the Show Cause Notice, which is placed at page 57 of the appeal memorandum, and also to pages 58 to 67, wherein copy of the invoices have been placed, including copy of debit notes.

13.2 We find that the invoices placed on record clearly reflect the service provider challans and corresponding invoices issued by ISD for distribution of credit. Hence, we are of the view that merely because the above invoices do not have the details of person who provided the service, the same is not a valid ground to deny the benefit of credit.

14. For the above reasons, we do not approve the denial of credit for the second reason also.

15.1 Ld. Advocate further contended that the appellant had all along maintained that it has only two manufacturing units, one at Pune and another at Puducherry and that there was no trading unit at all as alleged in the Show Cause Notice. It is his further case that the appellant had also submitted the technical know-how and licence given by M/s. 3M Electro & Communication India Pvt. Ltd. for the manufacture of goods and the management consultancy was also for the manufacture of goods in these two manufacturing units. It is therefore clear that the services had no application to trading activities at all and neither of the manufacturing units was engaged in the manufacture of exempted goods or providing exempted services. There is also no dispute that both the manufacturing units were clearing dutiable goods on payment of duty as applicable. The fact as to manufacturing unit engaged only in the manufacture of dutiable, final products and was clearing the same on payment of excise duty has been duly acknowledged at paragraph 25 of the impugned order.

15.2 We do not see any supporting documents placed on record by the Revenue with regard to the allegations that are made in the Show Cause Notice as to the trading units, but it is also unfortunate that the adjudicating authority has also made a very vague observation in this regard. But it is also equally true that what is referred to in Show Cause Notice is trading unit and not trading activities. Hence, in the absence of any specific trading activity by the appellant, the finding of the authority that the IPR services and management, consultancy services are important component of trading activities, appears to be vague and baseless. We hold so since Revenue has not placed on record any material in this regard and consequently, the allegations in the Show Cause Notice are clearly without any foundation. The consequent action of denying credit is

clearly therefore illogical and unsustainable in the eye of law.

16. In view of our above discussions, we hold that the denial of credit is clearly unwarranted and therefore, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Order pronounced in the open court on **23.06.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd