

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

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 410 of 2012

(Arising out of Order-in-Original No. 08/2012 (C) dated 30.03.2012 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry – 605 001)

M/s. Acer India Private Limited

: Appellant

R.S.No. 132/4, Ramanathapuram village
Villianur Commune,
Puducherry – 605 502

VERSUS

Commissioner of Central Excise

: Respondent

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

WITH

Excise Appeal No. 411 of 2012

(Arising out of Order-in-Original No. 09/2012 (C) dated 30.03.2012 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry – 605 001)

M/s. Acer India Private Limited

: Appellant

R.S.No. 132/4, Ramanathapuram village
Villianur Commune,
Puducherry – 605 502

VERSUS

Commissioner of Central Excise

: Respondent

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

WITH

Excise Appeal No. 41384 of 2013

(Arising out of Order-in-Original No. 11/2013 (C) dated 20.03.2013 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry – 605 001)

M/s. Acer India Private Limited

: Appellant

R.S.No. 132/4, Ramanathapuram village
Villianur Commune,
Puducherry – 605 502

VERSUS

Commissioner of Central Excise

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

: Respondent

WITH

Excise Appeal No. 41478 to 41479 of 2015

(Arising out of Order-in-Original No. 11 & 12/2015 (C) dated 31.03.2015 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry - 605 001)

M/s. Acer India Private Limited

R.S.No. 38/2, Sederapet village
Villianur Commune,
Puducherry - 605 502

: Appellant

VERSUS

Commissioner of Central Excise

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

: Respondent

WITH

Excise Appeal No. 42303 of 2015

(Arising out of Order-in-Original No. 30/2015 (C) dated 21.08.2015 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry - 605 001)

M/s. Acer India Private Limited

R.S.No. 38/2, Sederapet village
Villianur Commune,
Puducherry - 605 502

: Appellant

VERSUS

Commissioner of Central Excise

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

: Respondent

WITH

Excise Appeal No. 41132 to 41134 of 2016

(Arising out of Order-in-Original No. 21 to 23/2016 (C) dated 03.03.2016 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry - 605 001)

M/s. Acer India Private Limited

R.S.No. 38/2, Sederapet village
Villianur Commune,
Puducherry - 605 502

: Appellant

VERSUS

Commissioner of Central Excise

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

: Respondent

WITH

Excise Appeal No. 41662 of 2016

(Arising out of Order-in-Original No. 31/2016 (C) dated 06.06.2016 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry - 605 001)

M/s. Acer India Private Limited

R.S.No. 38/2, Sederapet village
Villianur Commune,
Puducherry - 605 502

: Appellant

VERSUS

Commissioner of Central Excise

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

: Respondent

AND

Excise Appeal No. 41852 of 2017

(Arising out of Order-in-Original No. 32/2017 (C) (CEX) dated 18.05.2017 passed by the Commissioner of Central Excise, Puducherry Commissionerate, 1, Goubert Avenue, Beach Road, Puducherry - 605 001)

M/s. Acer India Private Limited

R.S.No. 38/2, Sederapet village
Villianur Commune,
Puducherry - 605 502

: Appellant

VERSUS

Commissioner of Central Excise

Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry - 605 001

: Respondent

APPEARANCE:

For the Appellant : Shri. V. Lakshmikumaran, Senior Advocate
Smt. R. Charulatha, Advocate

For the Respondent : Shri R. Rajaraman, Assistant Commissioner (A.R)

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

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

DATE OF HEARING : 18.09.2023

DATE OF DECISION: 14.11.2023

FINAL ORDER Nos. 41031 to 41041/2023

Order : Per Ms. Sulekha Beevi C.S.

The issue involved in all these appeals being connected and similar they were heard together and are disposed by this common order.

1. Brief facts are that the appellants are engaged in manufacture of computer/Automatic Data Processing Machines falling under chapter Heading No. 8471 of the Central Excise Tariff Act, 1985 and are registered with the Central Excise Department. The appellant was availing Cenvat Credit of duty paid on inputs and service tax paid on input services in terms of Cenvat Credit Rules 2004 (CCR,2004).

2. On scrutiny of the ER-1 returns filed by appellant for the different periods, it was noticed by the department that the appellant had availed input service tax credit based on the ISD invoices issued by their Head office at Bangalore. The Head office at Bangalore has obtained registration as Input Service Distributor (ISD) for distribution of credit in terms of Rule 7 of CCR, 2004.

3. On verification, it appeared that the input service credit distributed through ISD invoices pertains to various services viz; advertising charges, business auxiliary services, commission charges, courier charges, consultancy fees, freight charges, insurance premium, IT software charges, maintenance charges, professional charges, recruitment charges, rental charges, telephone charges, training charges, warranty charges, etc., and these services according to department did not qualify as input services in terms of definition of 'input services' under Rule 2(I) of CCR, 2004. The department was of the view that input services on which credit was availed were not integrally connected with the manufacture of final product and did not have nexus with the process of manufacture of final product.

4. The appellant has its' manufacturing unit at Puducherry. Apart from manufacturing activity they also do trading of Laptops at various places across the country. According to department, the services like advertisement charges, BAS, Commission charges, Courier charges, and consultancy charges are availed in respect of trading also. The credit availed in respect of trading is ineligible.

5. As above, the Department noted that appellant has wrongly availed credit of the service tax paid on various input services and also wrongly availed credit in respect of trading. Show Cause Notice was issued for the different periods proposing to recover the wrongly availed credit, along with interest and for imposing penalties. After due process of law, the original authority vide separate orders confirmed the demand, interest and imposed penalties. Hence these appeals.

6. On behalf of the appellant, the Ld. Senior Counsel Sri. Lakshmi kumaran appeared and argued the matter. The Period involved in each appeal is furnished in the table below.

S.No	Appeal No.	Period	Impugned OIO No. & date
1	E/410/2012	October 2004 to March 2010	8/2012 dt. 30-03-2012
2	E/411/2012	October 2004 to March 2010	9/2012 dt. 30-03-2012
3	E/41384/2013	March 2011 to January 2012	11/2013 dt. 20-03-2013
4	E/41478/2015	February 2012 to September 2012	11 & 12/2015 dt. 31-03-2015
5	E/41479/2015	October 2013 to March 2013	
6	E/42303/2015	April 2013 to September 2013	30/2015 dt. 21-08-2015
7	E/41132/2016	December 2013	21-23/2016 dt. 3-3-2016
8	E/41133/2016	March 2014	
9	E/41134/2016	April 2014	
10	E/41662/2016	July 2014 to December 2014	31/2016 dt. 6-6-2016
11	E/41852/2017	January 2015 to April 2016	32/2017 dt. 18-5-2017

Submissions on Jurisdiction

6.1. The foremost argument put forward by the Ld. Counsel is that the demand raised cannot sustain due to lack of jurisdiction. The corporate office of the appellant is situated in Bengaluru and is engaged in the provision of taxable services such as Maintenance & Repair Services, Manpower Recruitment Service etc. They also engage in providing exempted service,

namely, trading. The Head office has obtained a centralized registration under Service Tax. The Head office is also registered as an 'Input Service Distributor' (ISD') for the purpose of distribution of credit availed on input services as per the Cenvat Credit Rules, 2004 (CCR).

6.2 The Manufacturing unit of the Appellant receives certain input services directly and takes credit of service tax paid on such input services. Apart from this, the Manufacturing unit also takes credit on the basis of ISD invoices issued by the corporate office.

6.3 In this background, Periodical Show Cause Notices were issued to the Manufacturing Unit in Puducherry, proposing to deny input services credit taken by the manufacturing unit on the basis of ISD invoices issued by the head office in Bengaluru alleging that the input services lack nexus to manufacturing activity, and that credit has been availed on service tax paid on common services consumed for trading also.

6.4 It is submitted that the Appellant denies all the allegations made by the Department. The eligibility of credit taken and distributed by the Input Service Distributor has to be decided by the formation having jurisdiction over the corporate office and not over the manufacturing unit of the Appellant situated at Puducherry. It is submitted that the eligibility of input services is not to be ascertained at the factory level both in terms of law and on account of practical difficulties.

6.5 The corporate office which is registered as ISD takes credit of common input services on receipt of Service invoices and the credit is also duly reflected in the Service Tax Returns filed by the corporate office. Therefore, the eligibility of Cenvat credit taken by the ISD ought to be examined by the officer having jurisdiction over the ISD unit as the returns are also filed by the ISD. Undisputedly, in the present case, eligibility of Cenvat credit taken by the ISD was not questioned by the jurisdictional officer of the corporate office at Bengaluru.

6.6 As per Rule 9(1) of CCR, an input service distributor can take credit on the basis of documents mentioned therein and is also required to file half-yearly returns to the jurisdictional Superintendent of Central Excise under Rule 9(10) of CCR. Therefore, the contention of the Department that only a manufacturer can take credit and the responsibility is solely on the manufacturer to prove the eligibility of the credit taken is incorrect. In any case, as per the definition of an Input Service Distributor under 2(m) of CCR, an ISD is an office of the manufacturer or producer of final products or provider of output service; In the case of *Commissioner of Service Tax Ahmedabad v. Godfrey Philips India Ltd 2009 (239) ELT 323 (Tri Ahmd)*, it was held that an ISD is not merely a dealer, but an office of the manufacturer or output service provider and eligibility of credit has to be tested at the end of ISD only.

6.7 It is submitted by the Ld. Counsel that unlike inputs, input services are intangible and there is no necessity that services should be received in the place of manufacture. Therefore, unlike inputs, input services can be received even outside the factory and can still have direct or indirect nexus to manufacturing activity. To facilitate the distribution of common input services, the legislature has introduced the concept of input service distributor. It is submitted that the scheme of ISD would be defeated if eligibility of each service has to be proved at the recipient's end.

6.8 The legal principle of comity requires that there should not be an overlapping exercise of jurisdiction by multiple officers. Reliance in this regard is placed on the decision of the *Hon'ble Supreme Court in Canon India v Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)*. Therefore, the eligibility of credit distributed has to be determined at the end of the ISD distributor or else, it would lead to multiple proceedings initiated by different officers having jurisdiction over each recipient's unit.

6.9 The Service tax invoices and details of services received at Bengaluru would only be available with the corporate office and not with the manufacturing unit. The Manufacturing unit at Puducherry cannot be

compelled to do the impossible act of justifying the eligibility of credit taken and the manner of distribution adopted by the corporate office in Bengaluru. The proper officer having jurisdiction over the corporate office/ ISD would be best suited to determine the eligibility of such credit as the necessary details would only be available with the corporate office. Therefore, requiring the recipient of distributed credit to prove the eligibility of credit taken by the distributor goes against the doctrine of impossibility (*Lex non Cogit Ad impossibilia*) which stipulates that law does not compel someone to do a thing which is impossible.

6.10 Therefore, on the basis of principle of comity and doctrine of impossibility, it is submitted that the proper officer having jurisdiction over the ISD unit at Bengaluru is the correct authority to test the eligibility of credit taken by the ISD unit. The eligibility of credit distributed by the ISD ought not to be questioned at the recipient's end (at appellant's Puducherry).

6.11 It is submitted that the following cases have held that eligibility of credit distributed by the ISD cannot be questioned at the recipient's end:

- i. *Commr Of Service Tax Ahmedabad v Godfrey Philips India Ltd-2009 (239) ELT 323 (Tri-Ahmd)*
- ii. *United Phosphorous Ltd v Commr Of CEx Surat -11-2013 (30) STR. 509 (Tri-Ahmd.)*
- iii. *M/s Oil and Natural Gas Corporation Ltd. v. CCE Vadodara 2013 (8)TMI 61-CESTAT Ahmedabad*
- iv. *Commr. Of Central Excise, Chennai v. M/s.Schneider Electric India Pvt. Ltd. - 2018 (1) TMI 1010-CESTAT Chennai.*
- v. *Ericsson India Pvt. Ltd. v. CCCE & ST. Hyderabad-II-2019 (1) TMI 722-CESTAT Hyderabad.*
- vi. *Metro Shoes Pvt. Ltd. v. Commr. Of Central Excise, Mumbai-I - 2019(9) TMI 1532.*

6.12 In the case of *Metro Shoes Pvt. Ltd Commr of Central Excise. Mumbai-1 2019 (9) TMI 1532* the Tribunal held that the decisions in *Mahindra and Mahindra Ltd v Commissioner of Service Tax, Mumbai (2017-TROL-2364-CESTAT-MUM)*, *Indian Oil Corporation v Commissioner of Central Excise Delhi-11 (2014 (35) STR 411 (Tri-Del)* and *SKF India Lid v. Commissioner of Central Excise, Pune-1 [2016 (41) STR 737 (Tri-Mumbai)]* are distinguishable and fails the test of precedence. Further, after considering the recovery mechanism under Rule 14 and the Circular F.No. 137/68/2013-ST dated 10.03.2014 issued by the Board, the Tribunal in the case of *Metro Shoes* (cited supra) held that proceedings ought to be initiated at the distributor's end. The relevant portions of the decision are adverted by the Ld. Counsel as under:-

*"..12. The circular of the Board honestly admits that there is a deficiency in the Rules. However, instead of subjecting the special provisions to ascertainment of legislative intent to allow credit subject only to the threshold tests laid down in re Castrol India Ltd proceeded to fasten liability on recipient on the presumption that attributability should also tested. By this a legislative want as perceived by the executive branch, was sought to be remedied without legislative approval. Interpretation vests in the judicial branch and while the executive cannot be denied the prerogative to propose an interpretation, it must subordinate itself to judicial decisions. The fastening of liability that flies in the face of decided interpretation is certainly beyond the pale of legality. In *Hansraj Gordhandas v. HH Dave, Asst Collector of Central Excise [AIR 1970 SC 755]*, the scope for interpretation has been restricted thus*

*'It is an application of this principle that a statutory notification may not be extended so as to meet a casus omissus. As appears in the judgment of the Privy Council in *Crawford Spooner**

'...we cannot and the Legislature & defective phrasing of the Act, we cannot add and mend, and by construction, make up deficiencies which are left there.'

But the operation of the notifications has to be judged not by the object which the rule making authority had in mind but by the words which it has employed to effectuate the legislative intent.'

*13. Furthermore even if the proposition in the circular were to be considered as kindergarten steps in yet to be tried in the crucible of judicial interpretation, it lacks the rigour of jurisprudential interpretation as laid down by Kelsen, which was taken note of by the Hon'ble Supreme Court in *Punjab Land Development and Reclamation Corporation Ltd v Presiding officer, Labour Court Chandigarh (1990 SCR (3) 111]*. And, unquestionably, it must give way to judicial interpretation which, even by taking both streams of decisions in its stride, demonstrates a gap whether intended to be so or by oversight,*

that cannot be filled by either The remedial text, if at all, must lie in the legislative sphere. ...

"...18. The assessee-appellant is statutorily acknowledged as a manufacturer covered by Central Excise Act, 1944 and any recovery can be effected only under section 11A of that Act More so, the duty liability intended to be recovered must have been short-paid or not paid, no such allegation has been made in the notice or held to be so by the lower authorities. The corporate enterprise that has established this manufacturing facility is not acknowledged by Central Excise Act, 1944 and dereliction on their part, if any, cannot be brought within the purview of this Act unless it be in relation to manufacture. Even if such recovery is ordered with reference to rule 14 of CENVAT Credit Rules 2004, wrongful availment must be established. In the scheme of input service distribution, the assessee-appellant is not required by the framework Rules, to ascertain eligibility or the cognizant of the source of credit It is a well-settled principle of natural justice that an assessee must not only be made aware of the reasons for proposed detriment but also be capable of defending its actions The scheme of CENVAT credit precludes such defence by the appellant-assessee. The appellant-assessee is a recipient of credit that is assigned by the distributor who, undisputedly, has borne the incidence of tax on procured services It is the distributor who can be charged with awareness of exempted output/output service, if any and who is empowered by the statute to take the credit And it is only such availment by the distributor that can be put to notice for ineligibility as espoused in the decisions that fulfill the criteria of precedent

19. There is evident confusion arising from the evident dichotomy in the availment of ineligible credit and the utilization of pooled, distributed credit for discharge of tax liability which may thereby, be correctly described as short-paid The impugned proceedings have failed to take note of this gap and to apply itself to filling that gap. The consequence of short-payment, if any, is not enforceable in the light of this unfilled gap

[Emphasis supplied]

6.13 In light of the above, the Ld. Counsel submitted that Impugned Orders lack jurisdiction in as much as it seeks to recover credit taken by the recipient manufacturing unit at Puducherry, based on invoices issued by the Input Service Distributor at Bengaluru.

7. Submission on Merits:-

Without prejudice to the arguments advanced on the jurisdiction of the department to issue Show Cause Notice against the appellant manufacturing unit situated at Puducherry, alleging that the credit availed and distributed by the ISD (Head office) at Bengaluru is without jurisdiction, the Ld. Counsel put forward argument contending that the credit availed on the various input services is legal, proper and eligible. The Submissions on eligibility of input services are split into three parts as mentioned herein below:

(i) Credit availed on input services disputed by the Department only on the ground of alleged lack of nexus to manufacture. [Appeal Nos. E/410/2012 & E/41384/2013]

(ii) Credit availed on input services disputed by the Department on the ground that it pertains to trading activity. [Appeal No. E/411/2012]

(iii) Credit availed on input services which have been disputed by the Department in the initial appeals but allowed in the subsequent appeals. [Appeal Nos. E/41478, 41479/2015, E/42303/2015, E/41132,41133,41134/2016,E/41662/2016,E/41852/2017]

(iv) Credit availed on input services which have been disputed by the Department in all Appeals. [Appeal Nos. 41478, 41479/2015, E/42303/2015, E/41132,41133,41134/2016, E/41662/2016, E/41852/2017]

8. Category 1: Credit availed on input services disputed on the ground of no nexus to manufacture. [Appeal Nos. E/410/2012 & E/41384/2013]

Disputed Input Services:

E/410/2012:

Broadcasting, Advertising, Banking & Insurance, Maintenance & Repair services, Consulting Engineering Services, Courier services, Rent (Factory), Freight, Warranty services etc.

E/41384/2013:

Advertisement, BAS, Commission charges, courier charges, consultancy fees, freight charges, insurance premium, IT software charges, maintenance charges, manpower charges, professional charges, recruitment charges, rental charges, telephone charges, warranty charges, etc.

Appeal No.	Case of the Department	Submissions
E/410/2012	Out of an amount of Rs.4,12,00,000/- distributed to the Appellant, Rs.2,38,39,442/- is disputed on the ground that services on which credit is availed have no nexus with manufacture and hence, is not eligible input services under Rule 2(I) of CCR. For this, the Impugned Order relies on the decision of the Hon'ble Supreme Court in <i>Maruti Suzuki v. Commissioner of C.Ex, Delhi-III (2009 (240) E.L.T. 641 (S.C.))</i> .	• Out of total credit of Rs.7,93,09,910/- taken by the corporate office, a sum of Rs.4,12,00,000/- was distributed to the Appellant <i>vide</i> ISD invoice dated 5-3-2010. • The Impugned Order denies credit as a whole on the basis of lack of 'nexus to manufacture' and without discussing the eligibility of individual services. • The Appellant submits that ratio of <i>Maruti Suzuki</i> is held inapplicable for testing eligibility of credit taken on input services. Reliance is placed on the cases of <i>Ramala Sahkari Chinni Mills Ltd. v. Commissioner of C.Ex, Meerut - 2010 (260) E.L.T 321 (S.C.)</i>. • The issue of applicability of the nexus test for determining eligibility of input services is no longer res integra in light of the decision of the Larger Bench of the Hon'ble Tribunal in <i>Reliance Industries Ltd. v. Commr. Of C.Ex. & ST (LTU), Mumbai - 2022 (60) G.S.T.L. 442 (Tri.-LB)</i>. • Furthermore, during the disputed period, the definition of input services under Rule 2(I) of CCR contained the term 'activities in relation to business'. Therefore, the disputed services are eligible input services as per Rule 2(I) of the CCR. Further, the disputed input services have been allowed/not disputed in the subsequent period orders passed.

		• In light of the above, the Impugned Order merits to be set aside.
E/41384/2013	The allegation is that the input services have no nexus with manufacturing activity and therefore can only relate to trading. As there was no nexus with manufacturing activity, it was held that the services are not input services in terms of Rule 2(I) of CCR. For this, the Impugned Order relies on the decision of the Hon'ble Supreme Court in <i>Maruti Suzuki (2009 (240) E.L.T. 641 (S.C.)</i>.	• The test of nexus with manufacturing is not applicable for determining eligibility of input services under Rule 2(I) of CCR. • The submissions made with respect to Appeal No. 410/2012 in relation to applicability of nexus test are reiterated. • In any case, the disputed services are eligible input services as per Rule 2(I) of CCR. Further, the disputed input services have been allowed/not disputed in the subsequent period orders passed .

9. Category 2: Credit availed on input services disputed by the Department on the ground that it pertains to trading activity. [Appeal No. E/411/2012]

A. Case of the Department: The allegation in the SCN is that out of Rs. 4,12,00,000/- distributed to the manufacturing unit vide ISD Invoice dated 05.03.2010, Rs. 1,73,60,558/- relates to trading activity. It is the case of the Department that the disputed credit pertains to trading which is not an eligible input service under Rule 2(I) of the CCR.

B. In this regard, the following submissions are made, each of which are in the alternative and without prejudice to each other:

B.1 The Corporate office of the Appellant has distributed a sum of Rs. 4,12,00,000/- out of a total credit of Rs. 7,93,09,910/- lying with them and the said fact is not under dispute. The Department first (E/410/2012) seeks to deny a sum of Rs. 2,38,39,442/- on the ground of lack of nexus to manufacturing activity and then disputes the balance amount of credit to be in relation to trading (Rs. 4,12,00,000 – Rs. 2,38,39,442 = Rs. 1,73,60,558). The Appellant submits that the Department has disputed the

credit of Rs. 1,73,60,558/- by deeming it entirely to be in relation to trading and the same is unsustainable.

B.2 Without prejudice, the corporate office of the Appellant had a total of Rs. 7,93,09,910/- lying as credit during the disputed period. Further, the corporate office of the Appellant had not taken credit of a sum of Rs. 8,30,55,513 during the said period. On the basis of the ratio of trading turnover to total turnover, out of the total credit of Rs. 16,23,65,424/- only Rs. 9,49,60,261/- pertains to trading activity. Therefore, balance credit of Rs. 6,74,05,163/- was available with the corporate office for distribution, out of which only Rs. 4,12,00,000/- was actually distributed to the Appellant. Therefore, the allegation that the disputed credit pertains to trading activity is without merits. [Annexure-5 at page no. 21 of Volume-1 to Typed set of Annexures to Appeal No. E/411/2012]

B.3 In any case, it was held by the jurisdiction High Court in the case of Ruchika Global Interlinks v. CESTAT, Chennai – 2017 (5) G.S.T.L 225 (Mad.) that the formula prescribed under Rule 6(3) is applicable even for the period prior to 01.04.2011. Thereby, the credit cannot be denied in entirety under Rule 3 of CCR, 2004. The demand is raised under Rule 3 of the CCR and not under Rule 6 of the CCR. On this ground alone, the Impugned Order merits to be set aside.

B.4 Without prejudice, even going by the workings relied by the Department while issuing the SCN, out of the total credit of Rs.7,93,09,911/- only Rs. 2,46,13,872/- pertains to trading activity. Therefore, a sum of Rs.5,44,68,961/- (excluding credit pertaining to other income) is available to the corporate office for distribution. Hence, the Impugned Order merits to be set aside on this account as well. (Annexure – II to SCN at pg. no. 215 of Volume-II to Typedset of Annexure to Appeal No. E/411/2012]

10. Category 3: Credit availed on input services which have been disputed by the Department in the initial years but allowed in the subsequent years. [Appeal Nos.E/41478, 41479/2015, E/42303/2015, E/41132, 41133, 41134/2016, E/41662/2016, E/41852/2017]

A. The allegation in the SCNs is that the disputed services are not eligible input services in terms of Rule 2(I) of the CCR as there is no nexus with manufacturing activity. However, after examining the eligibility of each

disputed input service in the subsequent period orders impugned, the Department itself has considered and held most of the services received by the Appellant to be valid 'input services' as per Rule 2(l) of the CCR. The same is captured against each of the disputed input services in the table below.

B. Manner of Distribution: Though the Impugned Orders in Appeal Nos. E/41478, 41479, 42303/2015 had held the manner of distribution to be incorrect, the Impugned Orders passed for the subsequent periods (E/41132, 41133, 41134/2016, E/41662/2016, E/41852/2017) have validated the method of distribution and held that the manner of distribution done by the Appellant is in accordance with the law. There is no change in the manner of distribution across the periods involved.

C. Eligibility of Input Services:

S.No	Input Services	Submissions
1	Advertisement services	Held to be an eligible 'input service' in the Impugned Orders in all the Appeals. Not disputed in Impugned Order pertaining to Appeal No. E/41852/2017. [Para No. 17.1 at Page No. 92 of Appeal No. E/41662/2016]
2	Audit & Consulting services	Disputed in Impugned Order in Appeal Nos. E/41478, 41479/2015 and held to be eligible input service in the same order. [Para No. 11.2.1 at Page No. 90 of Appeal No. E/41478, 41479/2015]
3	Banking & Financial services	Held to be an ineligible 'input service' in Impugned Orders in Appeal Nos. E/41478, 41479/2015. However, held to be eligible input service in subsequent period orders in E/41662/2016. [Para No. 17.2 at Page No. 92 of Appeal No. E/41662/2016]
4	Business Auxiliary Services	Disputed in Impugned Order in Appeal No. E/42303/2015 and held to be an eligible input service in the same order. [Para No. 11.14 at Page No. 85 of Appeal No. E/42303/2015]
5	Commercial Training & Coaching services	Held to be ineligible input service in Impugned Orders in Appeal Nos. E/41478, 41479/2015, E/42303/2015 & E/41662/2016. However, with respect to period pertaining to Appeal No. 41852/2017, the Appellant had taken credit on the said input service and the

		same was within the knowledge of the Department. However, out of the 19 services on which credit was taken, an SCN was issued only disputing 4 input services. Therefore, at the threshold itself, the Department had accepted that the service is an eligible input service and had not disputed the same. [Please refer to pg. 53 of Appeal No. E/41852/2017] Therefore, credit pertaining to Training services merits to be allowed. In any case, Coaching & Training services is one of the services mentioned expressly in the inclusive portion of the definition of input services under Rule 2(l) of CCR.
6	Courier services	Held to be ineligible input service in Impugned Orders in Appeal Nos. E/41478, 41479/2015 & E/42303/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41662/2016. [Para No. 17.4 at Page No. 94 of Appeal No. E/41662/2016]
7	Credit Rating services	Disputed in Impugned Order in Appeal No. E/41852/2017 and held to be an eligible input service in the same order. [Para No. 20 at pg. no. 79 of Appeal No. E/41852/2017]
8	Custom House Agent services	Held to be an eligible input service in Impugned Orders in all the Appeals. [Para No. 17.3 at Page No. 93 of Appeal No. E/41662/2016]
9	Factory expenses	Disputed in Impugned Order in Appeal No. E/41478, 41479/2015 and held to be an eligible input service in the same order. [Para No. 11.16 at Page No. 103 of Appeal No. E/41478, 41479/2015]
10	Freight Charges	Held to be ineligible input services in Impugned Orders in Appeal Nos. E/41478, 41479/2015 & E/42303/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41662/2016. [Para No. 17.4 at Page No. 94 of Appeal No. E/41662/2016]
11	Insurance services (including Total Cover)	Held to be ineligible input services in Impugned Orders in Appeal Nos. E/41478, 41479/2015 & E/42303/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41662/2016. [Para No. 17.6 at Page No. 96 of Appeal No. E/41662/2016]
12	ITSS	Held to be ineligible input services in Impugned

		Orders in Appeal Nos. E/41478, 41479/2015, E/42303/2015 & E/41132, 41133, 41134/2016. However, held to be eligible in subsequent period orders in Appeal No. E/41662/2016. [Para No. 17.9 at Page No. 98 of Appeal No. E/41662/2016]
13	Housekeeping/ Maintenance services	Held to be an ineligible input service in Impugned Orders in all the Appeals. [Para No. 11.17 at Page No. 94 of Appeal No. E/41132, 41133, 41134/2016]
14	Manpower supply services	Held to be ineligible input services in Impugned Orders in Appeal Nos. E/41478, 41479/2015 & E/42303/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41662/2016. [Para No. 17.7 at Page No. 97 of Appeal No. E/41662/2016]
15	Professional charges	Held to be an eligible input services in Impugned Orders in all the Appeals. Not disputed in Impugned Order pertaining to Appeal No. E/41852/2017 [Para No. 17.10 at Page No. 99 of Appeal No. E/41662/2016]
16	Record storage services	Disputed in Impugned Order in Appeal Nos. E/41478, 41479/2015 and held to be eligible input service in the same order. [Para No. 11.19 at Page No. 104 of Appeal No. E/41478, 41479/2015]
17	Rental charges	Held to be ineligible input services in Impugned Orders in Appeal Nos. E/41478, 41479/2015 & E/42303/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41662/2016. [Para No. 17.11 at Page No. 99 of Appeal No. E/41662/2016]
18	Repairs and Maintenance services	Disputed in Impugned Order in Appeal Nos. E/41132, 41133, 41134/2016 and held to be an eligible input service in the same order. [Para No. 17.14 at Page No. 94 of Appeal No. E/41132, 41133, 41134/2016]
19	Research charges	Held to be ineligible input services in Impugned Order in Appeal Nos. E/41478, 41479/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41662/2016. [Para No. 17.15 at Page No. 105 of Appeal No. E/41662/2016]
20	Sales commission	Held to be ineligible input services in Impugned Order in Appeal Nos. E/41478, 41479/2015 &

		E/42303/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41852/2017. [Para No. 18.5 at pg. no. 75 of Appeal No. E/41852/2017]
21	Sales promotion services	Held to be ineligible input services in Impugned Order in Appeal Nos. E/41478, 41479/2015 & E/42303/2015. However, held to be eligible in subsequent period orders in Appeal Nos. E/41132, 41133, 41134/2016 & E/41662/2016. [Para No. 17.12 at Page No. 100 of Appeal No. E/41662/2016]
22	Security services	Disputed in Impugned Order in Appeal Nos. E/41478, 41479/2015 and held to be an eligible input service in the same order. [Para No. 11.11.1 at Page No. 100 of Appeal No. E/41478, 41479/2015]
23	Sponsorship services	Disputed in Impugned Order in Appeal Nos. E/41852/2017 and held to be an eligible input service in the same order. [Para No. 21 at pg. no. 79 of Appeal No. E/41852/2017]
24	Warehousing charges	Held to be an eligible input service in Impugned Order in all the Appeals. Not disputed in Impugned Order pertaining Appeal No. E/41852/2017 [Para No. 17.13 at Page No. 101 of Appeal No. E/41662/2016]
25	Warranty charges/ AMC	Held to be an ineligible input service in Impugned Orders in all the Appeals. [Para No. 17.2 at Page No. 84 of Appeal No. E/41132, 41133, 41134/2016]

10.1 To sum up:-

1. The following services have been held to be eligible input service throughout and

therefore, are not in dispute:

- a. Advertisement services
- b. Audit & Consultancy services
- c. Business Auxiliary services
- d. Credit Rating services
- e. Custom House Agent services
- f. Factory expenses
- g. Professional charges

- h. Record storage charges
- i. Repair & Maintenance services
- j. Security services
- k. Warehousing charges
- l. Sponsorship services

2. The following services were disallowed in Impugned Orders pertaining to prior period but subsequently allowed in Impugned Orders pertaining to subsequent periods and therefore, credit ought not to be denied on such input services:

- a. Banking and Financial services
- b. Courier services
- c. Freight charges
- d. Insurance services
- e. ITSS
- f. Manpower supply services
- g. Rental charges
- h. Research charges
- i. Sales commission
- j. Sales promotion charges

3. With respect to Commercial Training & Coaching services (Sl. No. 5 of the Table above), the Department had not disputed the said service even though credit was taken during the period in dispute in Appeal No. E/41852/2017. By not disputing the eligibility of the said service, the Department has accepted that the service is an eligible input service at the threshold itself. Therefore, credit ought to be allowed on the said input service.

4. Therefore, only the following two input services have been consistently disallowed by the Department and are presently under dispute:

- a. Housekeeping services
- b. Warranty/ AMC services.

11. Category 4: Credit availed on input services which have been disputed by the Department in all Appeals. [Appeal Nos. E/41478,

41479/2015, E/42303/2015, E/41132, 41133, 41134/2016, E/41662/2016, E/41852/2017]

A. Housekeeping Services: [Para no. 11.17 at page no. 94 of Appeal Nos. E/41132, 41133, 41134/2016]

A.1 It is submitted that housekeeping services are eligible input services under Rule 2(l) of the CCR and credit ought to be allowed on the same. Housekeeping services of both factory and office have been held to be an eligible input service.

A.2 In the case of M/s. Indian Additives Limited v. Commissioner of GST and Central Excise, Chennai North Commissionerate – 2022 (11) TMI 338-CESTAT Chennai, the Hon'ble Tribunal held housekeeping services in relation to office to be eligible stating that office is an integral part of the Appellant's business and engages in administrative work in respect of the factory.

A.3 Further, reliance is placed on the following cases wherein housekeeping was held to be an eligible service:

(i) Orient Bell Limited v. Commissioner of Central Excise, Noida- 2017 (52) S.T.R. 56

(Tri. - All.)

(ii) Temenos India Private Limited v. Commissioner of Service Tax, Chennai – 2020

(2) TMI 354

A.4 Without prejudice, it is submitted that with respect to Appeal No. E/41162/2016, there is no allegation in the Show Cause Notice No. 35/2015 dated 05.08.2015 with respect of denying the eligibility or otherwise of Housekeeping Services. However, the Impugned Order in the said Appeal goes on to decide the eligibility of Housekeeping services against the appellant. To that extent, the Impugned Order is beyond the scope of SCN and merits to be set aside.

B. Warranty/ AMC services:

With respect to Warranty/AMC services, the Impugned Orders from E/41478, 41479/2015 admit that warranty is an eligible input services but deny credit on AMC services. However, credit is denied on the entire amount alleging

lack of identification of service tax component in the invoices pertaining to warranty charges and AMC charges separately. In this regard, the Appellant makes the following submissions:

- (i) The Authorised Service Providers ('ASPs') provide both warranty and AMC services. For this purpose, they raise an invoice on which service tax is paid by the corporate office of the Appellant and the invoice is raised without any distinction between warranty and AMC services. [para no. 17.2.3 at page no. 85 of Appeal Nos. E/41132, 41133,41134/2016]
- (ii) Therefore, ASPs are common service providers as far as Warranty and AMC are concerned and credit availed by the ISD is also a common input service which is distributed as per the manner prescribed under Rule 7.
- (iii) Having upheld the manner of distribution, the Impugned Order is incorrect in denying credit on Warranty and AMC services only for want of identification of the amounts pertaining to warranty and AMC separately.
- (iv) In any case, it is not the case of the Department that credit pertaining to trading has been distributed to the manufacturing unit.
- (v) Therefore, Warranty and AMC services provided by a common service provider (ASPs) are common input services for both the manufacturing unit and the corporate office and credit is proportionately distributed in the manner prescribed under Rule 7 of the CCR.

12. Hence it is prayed by the appellants that the demand confirmed vide the Impugned Orders may be set aside and Appeals may be allowed with consequential relief.

13.1 The Ld. Authorized Representative Shri. Rajaraman and Smt. Anandalakshmi Ganeshram appeared for the Department. The issue of jurisdiction was countered by the Ld. Authorized Representative, by adverting to Rule 14 of CCR,2004. The demand has been raised invoking Rule 14 of CCR, 2004 read with subsection (1)/proviso to subsection (1) of Section 11(A) of Central Excise Act, 1944. It is submitted that as per Rule 14

of CCR, 2004, the demand can be raised against the assessee who has wrongly taken and utilized the credit. The Bangalore Head office is not able to utilise the credit. It is the appellant –manufacturing unit situated at Puducherry which has utilized the in eligible credit for payment of duty/tax. This being so, the demand raised against the appellant is with proper jurisdiction. To support this argument the Ld. Counsel relied on the decision rendered by Tribunal in the case of *Clariant Chemicals India Ltd vs. Commissioner of Central Excise [2015-TIOL-2510 Cestat (Mum)]*.

13.2 On merits, the Ld. Authorized Representative submitted as under:-

- A. The appellant accumulated CENVAT credit in their Bangalore office, which was doing both trading as well as rendering services. In Bangalore they were availing credit on certain input services which were used in manufacturing activity at other unit. Their Bangalore office had transferred by a single invoice an amount of Rs.4.12 crores to their factory at Puducherry as per Rule 2(m) of the Cenvat Credit Rules, 2004 as an input service distributor. The dispute in the present appeal is in respect of this credit taken at Puducherry. The Revenue conducted an investigation and came to the conclusion that part of this credit is attributable to trading activity done at Bangalore unit of the company and, therefore, such part of the credit should be reversed.
- B. In respect of the remaining part, the Revenue had an objection that the invoice issued for transferring the credit from Bangalore to Puducherry did not contain all the particulars mentioned in Rule 4A of the Service Tax Rules, 1994. Therefore, Department issued Show Cause Notices, on mainly two issues; one in respect of the credit relating to trading activity and the other in respect of credit for which the details as required under Rule 4A of the said Rules were not available. As per Rule 4A, the name, address and registration number of the person providing input service and the serial number and date of invoice, bill, challan or as the case may be, issued under sub-rule (i) has to be mentioned. The Revenue has disputed the eligibility of the credit for the reason that the input services on which credit was taken

has no nexus with the manufacturing activity. The documents for transferring the credit did not have all the particulars as required under Rule 4A of the Service tax Rules as applicable to invoices issued by input service distributor. As per sub-rule (6) of Rule 9 of CENVAT Credit Rules, the burden is on the appellant to ensure that only eligible CENVAT credit is taken on proper documents.

C. The input services cannot be considered as eligible input services in terms of definition of input service under Rule 2(I) of Cenvat Credit Rules, 2004 and hence the availment of Cenvat credit by appellant unit at Puducherry, was denied by the Commissioner of Central Excise, Puducherry.

D. Rule 2(I) of CCR, 2004 defines input service as given below:

Rule 2(I), CCR, 2004 (w.e.f. 01.04.2011).

"Input service" means any service-

(i) used by a provider of taxable service for providing an output service, or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal.

and includes services used in relation to 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 up to the place of removal, procurement of inputs, accounting, auditing, financing recruitment and quality control, coaching and training computer networking. credit rating, share registry, security, business exhibition, legal services, Inward transportation of inputs or capital goods and outward transportation up to the place of removal, but excludes services."

E. From the above, it is very clear that to qualify as input services, input service should be used in or in relation to the manufacture of the final product and the input services must be integrally connected with the manufacture of the final product. Further there should be a nexus between the input service and the goods manufactured.

F. The argument of the appellant that the ISD office distributed the credit and hence, the input tax which is distributed has already acquired the nature of credit at the ISD level itself and therefore the eligibility of such CENVAT Credit can be questioned only by the tax authorities under whose jurisdiction the input service distributor had been registered, is not tenable and may not be accepted.

G. As per Rule 9(6) of the Cenvat Credit Rules, 2004 reads as follows:

“(6) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt and consumption of the input services in which the relevant information regarding the value of tax paid, CENVAT credit taken and utilized, the person from whom the input service has been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall be upon the manufacturer or provider of output service taking such credit.”

The above provisions place the burden of proof regarding the admissibility of the Cenvat Credit squarely upon the manufacturer.

H. 'ISD' is an office of the manufacturer. ISD does not and cannot utilize the credit. It is the manufacturer who utilises the credit. As per Rule 9 (6) as above, the burden of proof of admissibility lies with the manufacturer and not with ISD, which is at best just an office of the manufacturer. It is mandated that the manufacturer shall maintain records relating to, inter alia, utilization of credit. In the present case, the appellant who registered as manufacturer has to verify the eligibility of input service credit before availing the Cenvat Credit distributed. The appellant has availed input service credit based on the credit distributed by their corporate office who is registered as ISD at Bangalore. Hence, it is clear that they are not eligible for the wrong and ineligible credit distributed by the ISD invoice. (Reference: *M/s. Ecof Industries (P) Ltd Vs. CCE, Bangalore 2011-TIOL-770 HC KAR - ST*)

I. In the present case, the credit is taken on the services related to trading activity which are in no way connected to the manufacturing activity. The appellant had taken the cenvat credit on services pertaining to Trading activity and hence the quantum of input services attributable to trading activity has to be reversed. It is submitted that it is very clear from the provisions of CCR, 2004 that the services relating to the trading activity are not eligible for Credit as trading is considered as an exempted service w.e.f. 01.04.2011. Prior to this date also as trading is neither service nor manufacture credit on services availed for trading is not admissible. Therefore, the availment of Cenvat Credit on the services pertaining to trading activity is not in order as per Rule 3 of CCR, 2004 and liable to be recovered. As the appellant had availed wrong credit by suppressing the fact with intention to evade payment of duty equal penalty was imposed for contravention of Rule 15(1) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

13.3 It is submitted that the appeals may be dismissed.

14. Heard both sides and perused the records carefully.

15. The first point argued by the Ld. Counsel for appellant is that Show cause notices issued to the appellant- manufacturing unit at Puducherry is without jurisdiction. The Head office situated at Bangalore is registered as ISD and thus distributed the credit to the appellant in terms of Rule 7 of CCR, 2004. The definition of input service Distributor in Rule 2 (m) of CCR reads as under:

“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, [or an outsourced manufacturing unit] as the case may be;”

15.1 Rule 7 provides for the manner of distribution by the input service Distributor. The said provision reads as under:-

"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; (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; (c) credit of service tax attributable to service used wholly in a unit shall be distributed only to that unit; and (d) credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates. Explanation 1.- For the purposes of this rule, —unitll includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise. Explanation 2.- For the purposes of this rule, the total turnover shall be determined in the same manner as determined under rule 5."

15.2 Again Rule 9 speaks about the documents on which credit can be availed. The main contention of the appellant is that as the Head Office at Bangalore has availed credit and distributed the same to the appellant-manufacturing unit at Puducherry, the excise formation at Puducherry lacks jurisdiction to allege wrong availment of credit, issue notice of demand to disallow the credit or recover the same. In other words, it is argued that the Puducherry unit being the unit which has received the credit which was distributed by Bangalore unit, the eligibility of credit cannot be questioned at the end of recipient unit.

15.3 On perusal of the Show Cause Notice, it is seen that the provisions under Sec 11(A) along with Rule 14 have been invoked to raise the demand. Rule 14 of CCR 2004 reads as under:-

"RULE 14. Recovery of CENVAT credit wrongly taken or erroneously refunded. — (1) (i)

Where the CENVAT credit has been taken wrongly but not utilised, the same shall be recovered from the manufacturer or the provider of output service, as the case may be, and the provisions of section 11A of the Excise Act or section 73 of the Finance Act, 1994 (32 of 1994), as the case may be, shall apply mutatis mutandis for effecting such recoveries;

(ii) Where the CENVAT credit has been taken and utilised wrongly or has been erroneously refunded, the same shall be recovered along with interest from the

manufacturer or the provider of output service, as the case may be, and the provisions of sections 11A and 11AA of the Excise Act or sections 73 and 75 of the Finance Act, 1994, as the case may be, shall apply mutatis mutandis for effecting such recoveries.”

15.4 From Rule 14, as above it is clear that the wrongly availed credit is to be recovered from the manufacturer/ service provider. Rule 14 uses the words 'taken and utilised wrongly'. Later, in 2008, the word 'and' was substituted with 'or'. It has to be stated that, whether be it 'AND' or 'OR' the demand can be made against the appellant-manufacturer who has utilised the credit for payment of duty. In the present case, the Bangalore unit is not able to utilise the huge credit. It is only the manufacturing unit that can utilise the credit for payment of duty. For this reason, we have to say that the Show Cause Notice issued to the appellant- Puducherry unit is well within the jurisdiction. Our view is supported by the decision in the case of *Clariant Chemicals India Ltd (supra)*. The relevant part of the decision is reproduced as under: -

"5. The first issued raise by the learned counsel for the appetent is relating to jurisdiction. Before discussing the issue on jurisdiction, it is important to understand the function of a registered dealer under Excise Law and that of input service distributor for jurisdiction of service tax. In the case of registered dealer who is dealing in the excisable goods, such registered dealer normally purchases excisable goods and thereafter sells it to different buyers. When they buy the goods, they get the excise duty paying invoices. When they sell the goods, They indicate the corresponding details and on the basis of the invoices issued by registered dealer, the buyer of such goods is entitled to take the credit of excise duty paid. Thus in the case of registered dealer, there are three entities- the manufacturer of the goods who has cleared the goods on payment of duty, registered dealer and thereafter the buyer (some times the manufacturer of the goods might have registered his depots as registered dealer but that will not make any difference) The role of input service distributor is totally different. Input service distributor is not dealer or Trader in services i.e. he does not buy and sell the services. Input service distributor receives the services for his own consumption, which may include his own office, his branch offices or various manufacturing units located in different places. Nature of services many a times are such that it may not be pertaining to

particular manufacturing unit but may be pertaining to across the manufacturing unit or across various branch offices. In excise administration, excise duty is required to be paid by manufacturing unit wise. Thus, credit of input services is also required to be available to each manufacturing unit separately. Since the services may be across various offices or manufacturing unit, it is in order to sort out this difficulty of the trade, the concept of input service distributor was envisaged wherein a person having various manufacturing units or branch offices etc. would receive the invoices pertaining to services at one place i.e. offices and thereafter distribute the credit of service tax to various manufacturing units. Thus legally ISD as also its manufacturing unit is single legal entity. To our mind, the learned counsel is unnecessarily trying to bifurcate the ISD office and the manufacturing unit as two different distinct and legal entities. The situation is like the brain of a human being controlling different parts of the body, say hand. Similarly, here the head office would normally be controlling different manufacturing units or branch offices. Thus the distinction between the location of ISD and that of manufacturing unit itself is immaterial. Credit is finally availed and utilized by the manufacturing unit. What learned counsel is trying to say is that show cause notice should be issued to head as hand has acted as per the direction of head. In our view, as rightly pointed out by learned AR, cause of action stands with availment and utilization of credit at the manufacturing unit. Of course, ISD and manufacturing unit are integrally connected, and both of them unitedly has to resolve the issue with the department. We, therefore, reject the plea regarding jurisdiction.”

15.5 Another limb of contention on this issue of jurisdiction is that, the appellant- manufacturing unit being the service Recipient, the eligibility of, credit cannot be questioned at the recipients' end. In this regard we have to say that the Bangalore unit avails the credit as an Input Service Distributer. The definition itself shows that ISD means 'an office' of the manufacturer or producer of final products. The method of ISD registration and distribution between several units of a corporate body is a facilitation by which the availment of credit is made convenient when there are more than one unit. The tax paid on input services is availed as credit by the Bangalore unit (ISD). Usually, the invoices are raised in favour of Head office by the service provider even though the services may be consumed in other units. The ISD unit therefore avails the credit on behalf of the other units and then

distributes it as per provisions of law. In our opinion, the appellant manufacturing unit who has received the credit distributed by the ISD unit cannot be said to be a recipient unit in literal sense so as to oust the jurisdiction of the formations at Puducherry. From the foregoing, the issue on jurisdiction is answered in favour of Revenue and against assessee.

16. Let us now proceed to analyse the merits of the case. The eligibility of credit availed on various input services has been disallowed by the Department. To analyse this issue the definition of 'input service' as it stood prior to 01.04.2011 and after this date requires to be understood. The definition after 01.04.2011 has already been reproduced. The period in these appeals involve the period before 01.04.2011 and also after such date. The credit availed on various input services prior to 01.04.2011 have been denied alleging that there is no nexus for input services with the manufacturing activity. Prior to 01.04.2011 all these services the definition of input services had a wide ambit as it contained the words 'activities relating to business'. So for the period prior to 01.04.2011 are availed for activities relating to the credit availed is eligible as these services are business of the manufacturer. For the period after 01.04.2011 it can be seen that in the appellant's own case the credit availed on all services, except Housekeeping services and AMC/warranty services have been allowed. The department having allowed the credit for certain period cannot deny credit for other subsequent/different periods.

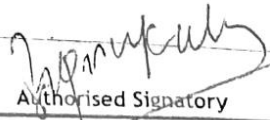
17.1 It is submitted by the appellant that Housekeeping services were availed for the Housekeeping of both factory and office premises. These services are availed to keep the premises in a clean and hygienic manner. The Tribunal in the case of *M/s Indian Additives Limited (supra) 2022(11) TMI 338 -CESTAT Chennai*, held that the services availed for cleaning the office/ factory premises is eligible for credit.

17.2 The reason for denying the credit on warranty charges is that, the invoice does not separately show the service tax component. There can be no denial of the fact that service is involved while discharging warranty

service. The warranty and AMC are provided by common service provider Authorised Sales Provider (ASPs) and would be an eligible input service.

17.3 Another allegation is that the credit is availed on exempted services (trading). The case of the department is that out of Rs. 4,12,00,000/- distributed to the appellant unit, Rs. 1,73,60,558/- relates to trading activity. The Ld. Counsel has explained that a total credit of Rs. 7,93,09,910/- was lying as stock at Corporate office during disputed period. Further Corporate office did not take credit at all of a sum of Rs. 8,30,55,513 during the period though eligible. Thus the total credit at corporate office would be Rs. 16,23,65,423/- (7,93,09,910+8,30,55,513). Out of this total, only Rs.9,49,60,261 pertains to trading activity. Therefore the balance credit was available at the corporate office for distribution. Out of this balance only Rs.4,12,00,000/- has been distributed to appellant unit. That therefore their allegation that the credit distributed involves credit availed in respect of trading is incorrect. We have to say that, the appellant has been putting forward this contention consistently and explaining with figures, that they head office has not distributed credit availed in regard to trading. Appellant has made such plea in the reply issued to Show Cause Notice. The Department has not been able to counter such calculations and figures explained by the appellant. In case, the appellant avails credit in respect of common input services relating to trading they have to reverse the proportion attributable to trading. In the present case, the trading activity takes place mainly at Head office at Bangalore. The credit availed in respect of trading at Bangalore unit is only Rs.9,49,60,261/- on the total turnover. There is a huge balance of unavailed credit or undistributed credit lying in stock with the Bangalore unit. This being so, it cannot be alleged that the credit in respect of trading has been distributed. The Department has not been able to explain as to how Rs.1,73,60,558/- pertains to trading when the credit has been distributed to the appellant unit. It is settled law that it is not required that there should be one to one correlation for availment of credit or utilisation. The same would apply for distribution of credit by ISD also. This being so, the explanation put forward by appellant with their consistent plea is tenable and acceptable.

17.4 It would be beneficial to reproduce a copy of the ISD invoice/challan issued by Bangalore unit to Puducherry unit.

INVOICE / CHALLAN					
Original / Duplicate / Triplicate					
(Issued under Rule 4A(2) of the Service Tax Rules)					
Details of Input Service Distributor Acer India Pvt Ltd "Embassy Heights", 6th Floor No.13, Magrath Road, Bangalore - 560 025 Service Tax Registration No.: AACCA1237AST001			ISD INVOICE NO. & DATE Inv No. ISD/03/2011-2012 Inv Date 24th October 2011		
Details of receiver of Input Credit Distributed Acer India Pvt Ltd Address RS No.132/4, Ramanathapuram village, Villianur Commune, Pondicherry -605 502 Excise Registration No.: AACCA1237AXM002 Service Tax Registration No.: AACCA1237AST002					
Details of input service provider		Details of Credit Distributed			
Sl. No.	Particulars	Service Tax	Education Cess	Secondary Education Cess	Total
1	Being Distribution of Input Service Tax Credit (From July to Sep-2011)	17,637,786	352,756	176,378	18,166,920
Total Service Tax Credit Distributed		17,637,786	352,756	176,378	18,166,920
Amount of Credit Distributed (in words) : One Crores Eighty One Lakhs Sixty Six Thousand Nine Hundred & Twenty Only					
We declare that ; 1. The Service Tax amount so distributed do not exceed the total Service Tax Amount availed 2. The unit is not availed any exemption on Service Taxes and Services and the credit attributable to a services used in a unit exclusively engaged in providing exempted output service is not distributed					
Date: 24.10.2011 Place: Bangalore		for Acer India Private Limited  Authorised Signatory			

17.5 The certificate dated 24.10.2011 issued by Chartered Accountant auditor for the period 07/2011 to 09/2011 on the distribution of input tax credit also substantiates the contention of appellants that they have not distributed the ineligible credit on trading activity.

SHARMA GOEL & CO
Chartered Accountants

No. A-47, Hauz Khas,
Lower Ground Floor,
New Delhi - 110016.
Phone: +91-11-41655400

140

Certificate from the Auditor on the Distribution of Input Service Tax Credit.

1. We hereby confirm that we are the Chartered Accountants, appointed by M/s. Acer India Private Limited (hereinafter 'Company') to certify the verification of service tax credit availed by the Company on the various input services availed and distribution of service tax credit
2. The following records, documents and books of accounts were produced to us by the Company for the purpose of our examination and verified by us.
 - Service Tax Bills (Output Liability) for the period from July-2011 to September-2011
 - Service Tax Bills (Input Tax Credit) for the period from July-2011 to September-2011
 - Service Tax returns in ST-3 from April-2010 to March-11
 - Audited Balance Sheet for the Financial Year 2010-11
3. On the basis of our examination so carried out and on the basis of the information and explanations given to us, we state that:
 - a) The Company is registered with Service Tax Department vide Service Tax registration No.AACCA1237AST001 with Nature of Registration as "CENTRALISED REGISTRATION FOR MORE THAN ONE PREMISES" having registered place of business in "Embassy Heights", 6th Floor, No.13, Magrath Road, Next to Hosmat Hospital, Bangalore -560 025.
 - b) The Company has the following category of taxable services
 - Manpower Recruitment Agency
 - Commercial Training & Coaching
 - Maintenance or Repair Services
 - Information Technology Software Services
 - Input Service Distributor
 - c) The Company provides the above services and all the invoices are raised from Registered Premises at Bangalore and also receives consideration in Bangalore itself
 - d) The Company avails the input tax credit on all the above taxable services at its registered premises at Bangalore. During the financial year 2011-2012 for the period from July 2011 to September-2011, the Company has availed the input tax credit of the tune of Rs.2,24,26,284.00.



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SHARMA GOEL & CO
Chartered Accountants

- e) The company has a manufacturing unit located at Pondicherry and are registered with Central Excise Department with registration No.AACCA1237AXM002. 141
- f) The Company cannot maintain separate books of accounts as prescribed under Rule 6 (2) of Cenvat Credit Rules, 2004. The Company has opted to reverse the Cenvat Credit as per Rule 6 (3A) (ii) and has intimated the same to the department as prescribed under Rule 6(3A) (a) of Cenvat Credit Rules, vide their letter dated 19th October, 2011 submitted to the office of the Service Tax Commissionerate, Bangalore. The Company has also intimated to the department their desire to adopt the current month revenue figures & COGS figures to arrive at the ineligible portion of Cenvat Credit.

Particulars	Jul-11	Aug-11	Sep-11
Total Turnover	1,440,984,783	1,793,838,262	2,608,472,309
Less: MFG	366,624,463	468,443,920	1,001,733,955
Less: Services	8,054,657	6,846,401	6,291,570
Trading Services	1,066,305,663	1,318,547,941	1,600,446,784
Less: COGS	959,675,097	1,186,693,147	1,440,402,106
GP (Trading Services Value)	106,630,566	131,854,794	160,044,678

- g) The Company accordingly has worked out the portion of Ineligible credit as per formula prescribed under rule 6 (3A) (b) (ii) of Cenvat Credit Rules and reversed an amount of Rs.42,59,364/- for the period July-2011 to September-2011.
- h) The Company has transferred the residual amount of Rs.1,81,66,920/- on the strength of an Input Service Distributor as applicable under rule 4A read with rule 9 of Cenvat Credit Rules, 2004 vide Invoice No.ISD/03/2011-2012 dated 24th October 2011 based on the percentage of Revenue for relevant periods.
- i) We have verified that the Service Tax invoice specifically relating to Input tax credit for the period from July - 2011, to September - 2011, and found admissible as per Rule 3 (1) of the Cenvat Credit Rules, 2004
- j) On the basis of our examination so carried out and on the basis of the information and explanation given to us, we state that the details as given in the Declaration of the Calculation / Summary of Service Tax Credit invoices (attached in enclosure II) are in agreement with the books of accounts of the Company.

For SHARMA GOEL & CO.,
Chartered Accountant

Vivekananda K. Prabhakar

VIVEKANANADA K. PRABHAKAR

Partner

Membership No. 203550.

Bangalore,

Date: 24th October 2011



18. From the discussions above, we find that the denial of Cenvat Credit for different periods and the demand raised thereon cannot sustain. The issue on merits is answered in favour of assessee and against the Revenue.

19. In the result, the impugned orders are set aside.

20. The appeals are allowed with consequential reliefs, if any.

(Order pronounced in open court 14.11.2023)

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

sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

RKP