IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.40787 of 2015

(Arising out of Order in Original No. 01/2015 (Commissioner) dated 20.1.2015 passed by the Commissioner of Customs and Central Excise, Coimbatore)

M/s. Pricol Ltd. (Plant – IV) **Appellant**
Shanmuga Steel Complex
2/192, Main Road
Karamadai – 641 104.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 6/7, A.T.D. Street
Race Course Road
Coimbatore – 641 018.

<u>APPEARANCE:</u>

Shri M. Karthikeyan, Advocate for the Appellant
Shri M. Ambe, Authorized Representative for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 40975/2024

Date of Hearing : 02.05.2024
Date of Decision: 26.07.2024

Per M. Ajit Kumar,

This appeal is filed by the appellant M/s. Pricol Ltd. (Plant – IV) against Order in Original No. 1/2015 dated 20.1.2015 passed by the Commissioner of Central Excise, Coimbatore.

2. Brief facts of the case are that the appellants who are manufacturers of oil pump, gears, pinions, valve assembly, central locking and security systems and vehicle tracking systems falling under Chapter Heading 84 of the CETA, 1985 appeared to have contravened the provisions of Rule 3 and 9 of the CENVAT Credit Rules, 2002 r/w Rule 4A of the Service Tax Rules, 1994, inasmuch as they have availed

ineligible service tax credit distributed by the Input Service Distributor (ISD) M/s. Pricol Ltd. Coimbatore to the tune of Rs.2,23,57,000/- during the period from May 2008 to March 2010 and utilized the same for payment of central excise duty on the goods cleared in the subsequent months. Hence Show Cause Notice was issued to the appellant proposing to recover ineligible CENVAT credit by deliberately suppressing the facts with intention to evade payment of service tax along with interest and for imposing penalty. After due process of law, the Adjudicating Authority confirmed recovery of the ineligible CENVAT credit availed by the appellant along with interest and also imposed equal penalty under sec. 11AC of the Central Excise Act, 1944. Hence the present appeal by the appellant before this Tribunal.

2.1 No cross-objection has been filed by the respondent-department.

3. Shri M. Karthikeyan, learned counsel appeared for the appellant and Shri M. Ambe, learned Authorized Representative appeared for the respondent.

3.1 The learned counsel for the appellant submitted that, the appellant was availing CENVAT credit of service tax based on ISD invoices issued by their corporate office M/s. Pricol Ltd. Coimbatore who was an ISD registrant. Their ISD registered office was taking credit in respect of more than 1000 invoices and distributing such credit to the plants at the month end by raising one invoice for each plant. Since the invoice does not have sufficient space to show the name, address, registration number of the service provider, invoice number and date of such service providers, an annexure to the ISD invoice provided the details of input service involved was attached. All the above details of the suppliers was captured invoice wise in the ISD register maintained and a copy of the same for a sample month was submitted along with the reply to the department. A similar demand was raised against the appellant for past period also which was dropped by the Appellate Commissioner and the dept appeal against the same was decided in favour of the appellant by the Tribunal vide Final Order No. 924/2012 dated 12.09.2012. With respect to non-receipt of services by the appellant he submitted that, as per Rule 7 CCR as on the disputed period, to avail ISD credit there was no mandate that the credit availing entity should have received the services. He placed reliance on the decision of the Hon'ble Karnataka High Court decision in the case of **ECOF industries (P) Ltd.** reported in 2012 (277) ELT 317. With respect to the allegation on splitting and utilising service tax credit as Education cess credit the appellant submits that there was a bar on utilising education cess credit except for paying education cess liability but there was no such bar on service tax credit utilisation and it can be used for paying education cess liability. Reliance in this regard is placed on the decision of the Hon'ble CESTAT Kolkata in the case of **M/s. Paharpur Cooling Towers Ltd** vide Final Order No. 76503/2023 dated 28.08.2023. He prayed that the appeal preferred by them may be allowed by setting aside the impugned order with consequential relief.

3.2 The learned AR Shri M. Ambe has taken us through the OIO and has reiterated the points given therein.

4. We have gone through the appeal carefully and have heard the rival parties. We find that the dispute centers around the following three issues for denial of CENVAT credit and demand of duty etc.

a) The ISD invoices issued to the appellant did not contain the particulars prescribed under Rule 4A of the Service Tax Rules, 1994 such as name, address, registration number of the ISD; serial number and date of invoice etc.

b) During the period August 2009, September 2009 and February 2010, the appellant had availed credit by splitting the credit as service tax, education cess, secondary higher education cess and utilized the same accordingly.

c) The appellant was not entitled to avail the credit based on the ISD invoices as the appellant unit had not received the input services covered under the said invoices.

5. As regards the issue pertaining to the invoices issued by the ISD distributor to the appellant not containing the particulars prescribed under Rule 4A of the Service Tax Rules, 1994 such as name, address, registration number of the ISD; serial number and date of invoice etc. this Tribunal in its earlier decisions in Final Order Nos. 924/2012 dated 12.09.2012; 40101/2023 dated 02.03.2023 and 41232- 41233/2018 dated 16.03.2018 pertaining to the appellant have held that, credit cannot be disallowed when the appellant is providing the said details in the annexure to the invoice which is verifiable. Judicial discipline requires that we follow the same.

6. As regards the issue of the appellant splitting the credit as service tax, education cess, secondary higher education cess and

utilising the same accordingly, we find that 'Secondary and Higher Education Cess', has been made Cenvatable by suitably amending the Cenvat Credit Rules, 2004 vide Budgetary Notification No. 10/2007-CE (NT), whereby the credit of the education cess on excisable goods and the secondary and higher education cess on excisable goods and education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or secondary and higher education cess on excisable goods or for the payment of education cess on taxable services. Hence there was no bar on service tax credit being split and utilized for paying education cess liability.

7. As regards the issue that the appellant is not entitled to avail the credit based on such ISD invoices as the appellant unit had not received the input services covered under the said invoices, the issue has been considered by the Hon"ble Karnataka High Court in the case of **Ecof Industries Pvt. Ltd** (2012 (277) ELT 317) wherein it was held as under.

> "4. The assessee had availed the Service tax credit based on the invoices issued by the Chennai office indicating that the Service tax are taken by their unit at Malur. That the Service tax paid by the Chennai unit pertains to advertisement of their product 'Sabena Dish Wash Bar' which was manufactured by their Cuttack Unit and not by the unit at Malur. Therefore, the assessee was dealing with the very same product. Rule 7 of the Cenvat Credit Rules governs procedure/manner of distribution of credit by input service distributor by imposing two conditions therein, which are as follows :
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> "a. Credit distributed under the invoice of ISD does not exceed the amount of Service tax paid. b. Credit of Service exclusively used for exempted goods or exempt service is not distributed."
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> 5. Therefore, the assessee is entitled to distribute the Cenvat credit on the input services on its manufacturing unit or other units providing the output services. The view taken in the order in appeal that the distribution of credit is for the advertisement of the product, which is not at all manufactured at Malur Unit, therefore, cannot be accepted. The finding recorded by the Appellate Authority that the assessee is entitled to take credit only in the unit where the product is

manufactured is therefore not the mandate of Rule 7 of the Cenvat Credit Rules."

8. For the reasons discussed, we find that the appellant was eligible for availing the credit and the demand for duty and imposition of penalty in the impugned order cannot be sustained. The impugned order hence merits to be set aside and is so ordered. The appellant is eligible for consequential relief if any as per law. The appeal is disposed of accordingly.

(Pronounced in open court on 26.07.2024)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

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