CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

SINGLE MEMBER

Excise Appeal No. 51703 of 2019

[Arising out of Order-in-Appeal No. 2499(CRM) CE/JDR/2019 dated 18.03.2019 passed by Commissioner of Central Goods & Service Tax, (Appeals) Jodhpur]

M/s J K Type & Industries Limited **Appellant**
P O, Tyre Factory, Kankroli, Distt.
Rajsamand-313 342 (Rajasthan)

Versus

Commissioner of Central Goods & Service Tax, Udaipur **Respondent**
142-B, Sector-11, Hiran Magri,
Udaipur-313 002 (Rajasthan)

Appearance
Shri B L Narasihman, Advocate for the appellant
Ms. Tamana Alam, Authorized Representative for the respondent

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

Date of Hearing/ Decision: 14.01.2020

FINAL ORDER NO. 50073 /2020

Per Ashok Jindal:

The appellant is in appeal against the impugned order, wherein the Cenvat Credit has been denied to the appellant which has been distributed by the Input Service Distributor (ISD).

2. The facts of the case are that the appellant is having their head office at Delhi and the manufacturing units are located in Distt. Kankroli, Rajasthan. The head office is distributing the Cenvat Credit of service tax to the appellant. The head office availed service tax on 'Club & Association and Transport of Passengers by Air' services. The said services have been used

by the Appellant and whole of the Cenvat credit was distributed to the appellant by the head office. The Revenue is of the view that the services are not input service in terms of Rule 2(l) of the Cenvat Credit Rules, 2004. Therefore, the appellant is not entitled to avail Cenvat Credit on these services. In these circumstances, Cenvat Credit is not available to the appellant, therefore, Cenvat Credit was denied by way of impugned order. Against the said order, the appellant is before me.

3. The learned Counsel for the Appellant submits that the admissibility of Cenvat Credit has not been challenged by the Revenue at the end of the ISD, therefore, the availment of Cenvat Credit by the Appellant cannot be disputed as appellant has paid service tax on the services in question.

4. On the other hand the learned Authorised Representative on behalf of Revenue reiterated the impugned order.

5. Heard the parties on consideration of issue placed before me, I find that the issue arises by me is whether Cenvat Credit can be denied to the appellant who has received the Cenvat Credit on distribution by ISD and the availment of Cenvat Credit has not been disputed at the end of the ISD? The said issue has been examined by this Tribunal in the case of **M/s Henkel Anand India Pvt. Ltd. vs. Commissioner of C. E & ST, Gurgaon-I** in **Final Order NO. 61130 of 2019 dated 02.12.2019**, wherein this Tribunal has observed as under;

> "6. On consideration of the submissions made by both the sides, I find that in this case, the first issue is that whether any notice has been issued to the ISD or not? The answer came that no notice has been issued to the ISD.
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> 7. In terms of Rule 3 of the Cenvat Credit Rules, 2004, whatever service tax has been paid by the appellant, the

appellant is entitled to avail Cenvat credit on that. Admittedly, the distribution of the Cenvat credit has not been disputed, therefore, the appellant is entitled to avail Cenvat credit on this ground only. Further, I gone through the decision of Hon'ble High Court of Bombay in the case of **M/s Oerlikon Balzers Coating India Pvt Ltd (supra),** wherein the Hon'ble High Court has held as under:

"8. It would be appropriate that we reproduce Rule 7 as existing prior to 2012 and post 2012 which is as under :-

Rule 7 as Existing Prior to 2012 :-

RULE 7. Manner of distribution of credit by input service distributor - The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely : (a) The credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon; or

(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

Rule 7 Post 2012 - amendment

RULE 7. Manner of distribution of credit by input service distributor - The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely :-

(a) The credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon; or

(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly in a unit shall be distributed to the unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rate on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period."

6. As issue has been settled by this Tribunal in case of **Henkel Anand India Pvt Ltd. (supra)**, therefore, I hold that admissibility of Cenvat Credit by the appellant cannot be disputed at this stage. Therefore, I set aside the impugned order and allow the Cenvat Credit to the appellant by allowing the appeal.

(Dictated and pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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