IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

COURT-IV

Appeal Nos. E/1366,1524/2011

[Arising out of the Order in Original Nos. 12-14/2011/CE/JPR-II/COMMISSIONER dated 09.03.2011 and 16-17/2011/C.EX/JPR-II dated 15.03.2011 passed by Commissioner, Central Excise, Jaipur]

M/s. Secure Meters Limited … Appellant

Vs.

Commissioner of Central Excise & S.T., Jaipur … Respondent

Appearance:

Rep. by - Shri B.L. Narsimhan, Advocate for the appellants.
Rep. by - Shri Yogesh Agarwal DR, for the respondent

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing : **28.02.2017**

Date of Decision : **03.03.2017**

Final Order No. 52089-52090/2017-DB

Per V. Padmanabhan

Both the present appeals involve a common issue hence, are being disposed of through this common order

2. The appellant is a manufacturer of electric energy meter which attracts Central Excise duty. Appellant has five manufacturing units one in Kaladwas, Udaipur and four units in Himachal Pradesh. The Kaladwas unit pays appropriate Central Excise duty on the products manufactured and cleared

therefrom. The four units at Himachal Pradesh are availing area based exemption under Notification No. 50/2003-CE. In respect of the following common input services, which are common to all the five manufacturing units, appellant took Cenvat credit of the service tax paid thereon by the service providers:-

(a) Scientific and technical consultancy
(b) Advertising agency service
(c) Leased circuit service
(d) Business Auxiliary service
(e) Management Consultancy service
(f) Clearing and Forwarding Agency service

In respect of the above common input services, the Cenvat credit was taken by the entire Input Service Distributor (ISD) of the appellant. The ISD thereafter distributed the Cenvat credit to the Kaladwas unit. Based on the ISD invoice which has distributed the credit, appellant at Kaladwas unit took Cenvat credit and utilized the same for payment of excise duty on the final products cleared by it. In the present proceeding, the Revenue sought to deny the Cenvat credit taken by the Kaladwas unit and after due process of law, the adjudicating authority has confirmed the demand along with interest against the appellant and also imposed penalties. Aggrieved by the same, the appellant filed the present appeals.

3. With the above background, we have heard Shri B.L. Narsimhan, ld. Advocate and Shri Yogesh Agarwal, ld. DR.

4. It is submitted on behalf of the appellant that the services in question are common input services to all the manufacturing units of the appellant one dutiable unit as well as four exempted units. It is not in dispute that none of the above services is exclusive for any of the units manufacturing exempted goods. These services are specified under Rule 6 (5) of the Cenvat Credit Rules, 2004. In terms of the said Rule, the credit shall be allowed even if the services are used in both, dutiable and exempted goods/services. It is the claim of the appellant that full Cenvat credit will be available to them since the services are not exclusively used in relation to manufacture of exempted goods. Once it is decided that full Cenvat credit is available to these services, the same will be allowable to be distributed by ISD, in terms of Rule 7 of Cenvat Credit Rules, to any or all of the units. In terms of Rule 7(b) also, there is no embargo in distributing the entire credit to the unit manufacturing dutiable goods since none of the services is used in unit exclusively engaged in the manufacture of exempted goods. He also relied on the case laws *Ecof Industries Pvt. Limited vs. CCE, Bangalore – 2010 (17) STR 515 (Tri. Bang.) and CCE, Belapur vs. Elder Pharmaceuticals Limited – 2015 (37) STR 241 (Tri. Mumbai).*

5. Ld. DR supported the impugned order. He submitted that the service providers rendering the services in question should have raised the bills separately in respect of the services to be used in different units. Since the service providers have failed to do so, he submitted that the ld. Commissioner

has rightly disallowed the credit attributable to four exempted units located in Himachal Pradesh.

6. For ready reference, the relevant Cenvat Credit Rule is reproduced below:-

> **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 use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

7. There is no dispute that the six services in question, for which Cenvat credit has been taken by ISD and distributed entirely to non duty paying unit Udaipur are specified in Rule 6(5). The ld. Commissioner, in the impugned order, has accepted the submission of the appellant that the above services are not exclusively used in the manufacture of exempted goods or providing exempted services. The findings in this regard are reproduced below:-

> **"Rule 6 (5)** : Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-*clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr)* of clause (105) of section 65 of the Finance Act shall be allowed unless such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services. **"**

8. In view of the above fact, in terms of Rule 6(5) of Cenvat Credit Rules, the full Cenvat credit will be available to the assessee, if such services were used in a manufacturing unit making both, the exempted as well as dutiable goods. In the present case, the full Cenvat credit has been availed by the ISD who is required to distribute the same to various units as per Rule 7of Cenvat Credit Rules. The Rule 7 (as it stood at the relevant time) only enforces the condition that credit of service tax attributed to services used in units exclusively engaged in the manufacture of exempted goods or providing exempted services shall not be distributed. The appellant's four manufacturing units are covered by area based exemption and no such duty is payable on the goods manufactured there. However, there is nothing on record to suggest that any of the services have been used only in the units manufacturing exempted goods. In fact, the nature of services tells us that these are used at the level of corporate of the manufacturing units of the assessee. Under the circumstances, restricting the distribution of Cenvat credit in terms of Rule 7 is not justifiable. The restrictions are there only in distribution of credit in respect of services which are exclusively used in relation to manufacturing of exempted goods.

8. It may be mentioned that Rule 7 of Cenvat Credit Rules, was amended vide Notification No. 5/2014-CE (NT) dated 24.02.2014 whereby the expression was substituted with "*used by one or more units*" in the place of "*used in a unit*".

Further, such an amendment will have no bearing in the present proceedings which cover the period prior to Jan 2010. The submissions of the appellant is supported by the decision of Tribunal in the case of *Elder Pharmaceuticals Limited (supra)*.

9. In view of the above, the impugned orders are set-aside and the appeals are allowed.

[Pronounced in open court on 03.03.2017]

(**M.V. Ravindran**)
Member (Judicial)

(**V. Padmanabhan**)
Member (Technical)

KL.