

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT -IV

Excise Appeal No.E/53423/2015 [SM]

[Arising out of Order-in-Appeal No.ALW-EXCUS-000-COM-005-15-16 dated 08.06.2015 passed by the Principal Commissioner Central Excise, Alwar]

M/s.Indo Alusys Industries Ltd. ...Appellant

Vs.

C.G.S.T., C. & C.E., Alwar ... Respondent

Present for the Appellant : Mr.Prabhat Kumar, Advocate &
Mr. Arjun Malik, Advocate

Present for the Respondent: Mr.K.Poddar, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: 29/11/2018

Pronounced on : 21/12/2018

FINAL ORDER NO. 53455 /2018

PER: RACHNA GUPTA

The appellant herein have challenged the order of Dy. Commissioner bearing No.1516 dated 08.05.2015. The appellants are engaged in manufacture of aluminium alloy extruded products and are availing the cenvat credit of Service Tax. Department observed that M/s.IAIL, Bhiwadi were taking cenvat credit on the strength of invoices issued by their head office (IAIL, Delhi) who have the input service credit distributor

registration. IAIL, Delhi were also engaged in providing services to their customers. They were taking complete order of providing and fixing anodized aluminium doors and windows with extruded build-up aluminium section. For providing these services, the doors and windows were manufactured at IAIL, Bhiwadi and are cleared to their Aluminium Architectural Product Division (AAP), which is centralized registered under the category of commercial and industrial construction services. It was also observed that M/s. IAIL, Delhi issued invoices for distribution of credit of whole of the service tax paid by them on various services including the service used for providing output service and other activities by them. Resultantly, a show cause notice No.39 dated 03.01.2014 was served upon the appellant proposing recovery of wrongly availed cenvat credit amounting to Rs.77,61,280/- during December, 2012 to September, 2013 alongwith the interest at the appropriate rate and the proportionate penalties. The said show cause notice was adjudicated vide the order under challenge of Principal Commissioner vide which the cenvat credit amounting to Rs.18,22,207/- out of Rs.77,61,980/- was confirmed to be recoverable. Rest of the credit was allowed to the appellant. Still being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Prabhat Kumar, Advocate for the appellant and Shri K. Poddar, D.R. for Department.

3. Ld. Counsel for the appellant mentioned that it is an admitted fact that a consolidated balance sheet comprising of the accounts of the assessee's company situated at Bhiwadi, accounts of head office of assessee's company at Delhi and the AAP division of the assessee's company at Delhi is prepared. It is submitted that the appellant has correctly and legally availed the input service credit. The demand confirmed is also liable to be set aside. It is further impressed upon that though the sub-rule (d) of Rule 7 of Cenvat Credit Rule, 2004 has been wrongly interpreted by the Department, still if the service tax availed by Bhiwadi Unit is required to be distributed only among the units to whom the services have been provided, the amount of credit of credit of Rs.77,61,280/- will have to be bifurcated into 2 segments:

- (i) Credit pertaining to input services, which is exclusively used by Bhiwadi Unit for manufacture of final products. (Rs.74,30,645/-)
- (ii) The credit pertaining to the services commonly used by Bhiwadi Unit and other unit of the assessee. (Rs.3,30,635/-)

4. Thus, there is nothing to be recovered from the appellant. The demand confirmed is also prayed to be set aside. Appeal is accordingly, prayed to be allowed.

5. While rebutting these arguments, it is submitted that the adjudicating authority below has done a meticulous exercise on

examining all the services of the appellant and its units and the distribution of credit thereof. It is thereafter only that a major demand of recovery has been dropped and recovery of cenvat credit is held allowed only to the extent of Rs.18,22,207/-. Justifying the said order, the appeal is prayed to be dismissed.

6. After hearing both the parties and observing the entire record, I am of the opinion as follows:-

While discussing Rule 3 as well as Rule 7 of Cenvat Credit Rules, Principal Commissioner has already dropped the major demand. However, the cenvat credit to the following services has been denied:-

- (i) Advertising Agency Services for publishing of company profile on net (Rs.47,104/-)
- (ii) Cleaning services for head office, housekeeping (Rs.28,128/-)
- (iii) Courier agency service (Rs.13,302/-)
- (iv) Design service (Rs.10,712/-)
- (v) Insurance of vehicle services(Rs.39,792/-)
- (vi) Manpower agency for recruitment service (Rs.12,236/)
- (vii) Management or business consultant service (Rs.50,607/-)
- (viii) Membership expenses (Rs.3,708/-)
- (ix) Office maintenance (Rs.20,207/-)
- (x) Renting of immovable property for head office rent (Rs.2,94,348/-)

- (xi) Telephone service used for telecommunication service
(Rs.1,20,294/-)

7. Since it is an undisputed fact that the appellant's head office is situated at Delhi and their factory at Bhiwadi and that head office is designated as Input Service Distributor (ISD), also there is no dispute on availment of cenvat credit at ISD level, I observe that the services on which cenvat credit is denied are covered by various decisions which are as follows:-

- (i) Advertising Agency Services for publishing of company profile on net - **2009 (242) ELT 168 (Bom.)**
- (ii) Courier agency service - **2015 (317) ELT 586 (Tri.-Del.)**
- (iii) Insurance of vehicle services - **2013 (293) ELT 385 (Tri.-Del.)**
- (iv) Manpower agency for recruitment service - **2015 (39) STR 85 (Tri.-Del.)**
- (v) Management or business consultant service - **2014 (34) STR 752 (Tri.-Bang.)**
- (vi) Membership expenses - **2014 (34) STR 752 (Tri.-Bang.)**
- (vii) Office maintenance - **2013 (31) STR 588-Del.**
- (viii) Telephone service used for telecommunication service - **2012 (277) ELT 202 (Tri.-Chennai)**

8. The issue is, therefore, no more *res integra*. Even in appellant's own case also this Tribunal vide Final Order No.52164/2016 in Appeal No.53629/2015 and Final Order No.56583/2017 in Appeal No. E/51056/2017 has decided this issue in favour of the appellants.

9. Resultantly, I hold that the amount of cenvat credit as has been denied by the adjudicating authority below merely for want of documents is not sustainable in view of the settled proposition of issue as discussed above. Order under challenge is, therefore, set aside. Appeal stands allowed.

[Pronounced in the Open Court on 21.12.2018]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita