

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD  
Single Member Bench  
Court - I

**APPEAL No. E/30666/2018**

*(Arising out of **Order-in-Appeal** No. VIZ-EXCUS-001-APP-263-17-18, dated 28.02.2018 passed by CCCT (Appeals), Guntur)*

HINDUSTAN PETROLEUM CORPORATION .. APPELLANT  
LIMITED

Vs.

CCT, VISAKHAPATNAM GST .. RESPONDENT

**Appearance**

Smt. Sweta Girdar, Advocate for the Appellant.

Shri Guna Ranjan, Superintendent /AR for the Respondent.

**Coram:**

Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 20.11.2018

Date of Decision: 14.12.2018

**FINAL ORDER No. A/31562/2018**

[Order per: Mr. P.V. Subba Rao]

1. This appeal has been filed against Order-in-Appeal No. VIZ-EXCUS-001-APP-263-17-18, dated 28.02.2018. Heard both sides and perused the records.

2. The appellant herein is a Public Sector Undertaking engaged in manufacture of various petroleum products and have been availing the benefit of CENVAT credit. They had taken some land on lease from M/s Coromandel International Limited who, in turn, have charged them service

tax along with lease rentals through four debit notes, dated 23.02.2015. After paying the amount to M/s Coromandel International Limited, appellant availed CENVAT credit of the service tax paid on these debit notes. A show cause notice was issued on 10.09.2015 seeking to disallow the CENVAT credit availed by the appellant on the ground that the subject invoices are debit notes which are not eligible documents for availing CENVAT credit in terms of Rule 9(1) of CENVAT Credit Rules, 2004. The show cause notice also proposed to levy interest under Rule 14 of CCR 2004 read with Section 11AA of Central Excise Act, 1944. It was also proposed to impose penalty under Rule 15 of CENVAT Credit Rules, 2004. After following due process of law, the original authority confirmed the demand along with interest and imposed penalty on the appellant. Aggrieved, appellant appealed before the first appellate authority who, vide the impugned order, upheld the Order-in-Original and rejected the appeal. Hence this appeal.

3. Ld. Counsel for the appellant submits that although Rule 9(1) of CCR 2004 does not indicate debit notes as one of the eligible documents for claiming CEVAT credit, the debit notes in question had all the details indicated under Rule 9(2) of CCR 2004, except that the amount of service tax is indicated in pen and was not printed in the debit notes. He produces copies of the debit notes in question. He further submits that in the case of Bharati Hexacom Limited [2018(12)GSTL 123 (Raj.)], the Hon'ble High Court of Rajasthan held that CENVAT credit can be allowed on the basis of

debit notes and upheld the order of the Tribunal in this regard. He further relies on the order of the Tribunal in the case of Dhananjay Industrial Engineer (P) Ltd [2017(52) S.T.R. 320 (Tri.-Mumbai)] wherein it was held that even though it is not pre-printed, commercial invoice is valid document for availing the CENVAT Credit provided all the relevant information is contained in it. He also relied on the order of the Tribunal Delhi in the case of Gabriel India Limited [2017(48)S.T.R. 492 (Tri.-Del.)] in which it was held that CENVAT Credit taken based on debit notes should not be denied when the eligibility of input service credit is not disputed.

4. Ld. DR reiterates the submissions of the lower authorities and argued that the credit has wrongly been availed by the appellant and accordingly the impugned order needs to be upheld and appeal needs to be rejected.

5. I have considered the arguments on both sides and perused the records. The only point of contention is whether the credit can be allowed on the strength of four debit notes in question issued by M/s Coromandel International Limited in favour of the appellant, because (a) debit notes are not specifically included as valid duty paying document under Rule 9(1) of CCR 2004 and (b) whether the debit notes, while printed, do not indicate the amount of service tax paid and this amount has only been written in hand. The First appellate authority in the impugned order held that CENVAT Credit on the strength of debit notes is not permissible as it is not a document prescribed under Rule 9(1) of CENVAT Credit Rules, 2004. He

further held *“moreover, even for the sake of assumption but not admitting that allowing of credit may be examined on the strength of the details contained in the document, as could be seen from the appeal record, the fact is that the appellant instead of furnishing copies of the four Debit Notes for examination, had only furnished a photocopy of the communication dated 02.02.2015 along with a statement of rental details which is quite inadmissible”*. Thus holding, the first appellate authority upheld the confirmation of demands along with interest and imposition of penalty. It is true that Rule 9(1) of CCR 2004 does not specifically indicate debit notes as one of the documents on the strength of which CENVAT Credit can be availed. However, the Hon’ble High Court of Rajasthan in the case of Bharati Hexacom Limited (supra) held that CENVAT credit can be availed on the basis of debit notes. This is a binding legal precedent, ratio of which applies to the present case.

6. The second ground on which the first appellate authority sought to deny credit is that the appellant had not submitted debit notes before him. Copies of these debit notes have now been enclosed in the paper book submitted by the appellant which contains all the relevant details. The service tax amount has been indicated in pen in these four debit notes but that should not be a limitation for availing of CENVAT credit and there is no requirement in the CCR 2004 that all the details of the invoice should be printed on a computer. There is no allegation in the show cause notice that service tax has not been paid by the service provider.

7. In view of the above, I find that CENVAT credit is admissible to the appellant on the four disputed debit notes and the impugned order is liable to be set aside and I do so.

8. The Impugned order is set aside and the appeal is allowed.

*(Pronounced in open court on 14.12.2018)*

(P. VENKATA SUBBA RAO)  
MEMBER (TECHNICAL)

vrg