

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - SM
COURT - I**

Appeal(s) Involved:

E/30686/2018-SM

(Arising out of Order-in-Appeal No. HYD-EXCUS-SC-AP2-
0276-17-18-ST dated 15/03/2018 passed by Commissioner
of GST & Central Excise, Hyderabad)

Sri Krishna Pharmaceuticals Ltd

Appellant(s)

Versus

**The Commissioner of Central Tax,
Hyderabad**

Respondent(s)

Appearance:

Mr Lalit Mohan Chandna Adv for the Appellant.

Mr A.V.L.N. Chary, A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

Date of Hearing: 05/12/2018

Date of Decision: 05/12/2018

Final Order No. A/ 31554 / 2018

[Order per: M.V.Ravindran.]

This appeal is filed against order-in-appeal No. HYD-EXCUS-SC-AP2-
0276-17-18-ST dated 15/03/2018.

2. Heard both sides and perused the records. On perusal of records it
transpires that the issue is regarding denial of CENVAT credit.

3. As regard the CENVAT credit of Rs 3,051/-availed on proper invoices, appellant is not contesting the same. Accordingly the impugned order to that extent is upheld.

4. As regards the CENVAT credit of Rs 2,00,200/- I find that this credit was availed by the appellant on the invoices raised by the landlord towards renting of immovable property. The said immovable property was situated in Mumbai and was used for business purposes and other activities in furtherance of the business of the appellant. The invoice raised by the landlord was in the name of the appellant. Hence the appellant took the CENVAT credit for their Uppal unit as their registered office was there in Uppal Unit. It is the case of the Revenue that appellant should not have availed CENVAT credit at Uppal unit and should have distributed the credit to all the other units which are benefitted by the services rendered at the Mumbai property.

5. I find that the issue is no more *res integra*. The Division bench of the Tribunal in the case of Doshion Ltd Vs CCE Ahmedabad [2013 (288) ELT 291 (Tri-Ahmd)] (wherein I was one of the Members) in paragraph No 5 held as under:-

“5. We have considered the submissions made by both sides. We find considerable force in the arguments advanced by the learned counsel. The registered office and Vatva office both are located in the same place and appellant has simply utilised the credit at Vatva instead of distributing it to various units. As submitted by the learned counsel, during the relevant period, there was no restriction for utilisation of such credit without allocating proportionately to various units. The omission to take registration as an Input Service Distributor can at best be considered as procedural irregularity and in view of the decisions cited, has to be considered sympathetically. Further, it is also noticed that appellant has not got any extra benefit by doing this. In fact from the statement of Shri Chandresh C. Shah, as explained that above Cenvat credit available to them, 20% of service tax payable only was paid and balance was paid in cash. In fact, proper distribution would have enabled them to utilise full credit. It would show that the exercise is totally Revenue neutral and no loss has been caused to the Revenue (infact Revenue has gained). In the absence of any legal requirement to avail credit based on the services received during the relevant time and in the light of

the decision cited by the learned counsel, the procedural irregularity has to be ignored and the demand confirmed has to be set-aside on this ground. In the result, demand for Cenvat credit of Rs. 1,07,07,142/- with interest and penalty equal to the same imposed under Section 11AC of Central Excise Act, 1944 are set-aside.”

The said view is followed by the Tribunal in the case of Demosha Chemicals Pvt Ltd Vs CCE Daman [2014(34)STR 758 (Tri-Ahmd)] and Trident Power craft Pvt Ltd Vs CCE & ST (LTU) Bangalore [2016(41)STR 687 (Tri-Bang)]. In view of the fact that the issue is well settled, I find that the impugned order to the extent it denies the CENVAT credit of Rs 2,00,200/- is unsustainable and liable to be set aside and I do so. The appeal stands disposed of as indicated hereinabove.

(Order pronounced and dictated in open court)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy