CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench

Court – I

Appeal No. E/31086/2018

(Arising out of Order-in-Appeal No.VIZ-EXCUS-002-APP-070-18-19 dt.11.06.2018 passed by CCCE & ST (Appeals), Visakhapatnam)

M/S **Mylan Laboratories Ltd,**
Unit-9, Road No. 112,
JNP City, Parwada (Mandal),
Visakhapatnam – 531 021 **......Appellant**

VERSUS

Commissioner of Central Tax –
Visakhapatnam - GST
GST Commissionerate, Port Area,
Visakhapatnam – 530 035 **......Respondent**

Appearance

Ms Siri Reddy, Advocate for the Appellant.
Shri A.V.L.N. Chary, Authorized Representative for the Respondent.

Coram:

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30512/2019

Date of Hearing: 07.05.2019
Date of Decision: 07.05.2019

[Order per: P.V. SUBBA RAO.]

1. This appeal is filed against Order-in-Appeal No. VIZ-EXCUS-002-APP-070-18-19 dated 11.06.2018.

2. The issue which falls for consideration in this case is whether the appellant is entitled to take Cenvat Credit on Input Service Distributor (ISD) invoice received from their Head Office which was issued after 01.09.2014 beyond the period of six months from the date of the input invoices. The

sixth proviso to Rule 4(7) of Cenvat Credit Rules (CCR), 2004 was inserted with effect from 01.09.2014 as below:

> *"Provided also that the manufacturer or the provider of output service shall not take Cenvat Credit after six months from the date of issue of any of the documents specified in Sub Rule (1) of Rule 9."*

3. In this case, the appellant have availed Cenvat Credit on the basis of ISD invoices issued by their Head Office which are valid documents under Rule 9(1)(g) as invoice bill or challan issued by ISD under Rule 4A of Service Tax Rules, 1994. It is not in dispute that the appellant being a manufacturer of goods has availed Cenvat Credit within six months from the date of issue of ISD invoices. However, further enquiries showed that the Head Office of the appellant who were registered as ISD had issued invoices between 01.10.2014 and 18.04.2015 and also issued invoices between 30.11.2013 and 18.09.2014. In respect of these invoices it was found that ISD invoices received by the Head Office were transferred though ISD invoices to the appellant after a period of six months. Accordingly, a show cause notice was issued seeking reversal of Cenvat Credit of Rs.1,06,652/- against these invoices. Learned counsel for the appellant submits that of these invoices, only two invoices were issued post 01.09.2014 in respect of which their Head Office has taken Cenvat Credit after a period of six months. The total Cenvat Credit amounting to Rs.19,274/- has already been reversed by them in respect of these invoices. In respect of remaining invoices learned counsel submits that the input invoices were issued prior to 01.09.2014 when the proviso was introduced. Therefore, she would urge that the restriction of not availing Cenvat Credit beyond six months from the date of invoice would not apply because there is no indication in the Rule that this proviso applies retrospectively. In other words, although input invoices were dated prior to 01.09.2014 the credit was taken after 01.09.2014 and after a period of six months from the date of invoices. She would urge that in the absence of any specific provision for retrospective application, the limitation only should apply prospectively and they already reversed Cenvat Credit to the extent of those two invoices. She further urges that the fault, if any, is on account of their Head Office who are registered with the department as ISD. As far as they are concerned, the credit was taken within six months from the date of issue of ISD invoices which are themselves invoices specified under Rule 9(1). Lastly, she also argues that the restriction placed under sixth proviso

to Rule 4(7) of CCR, 2004 only on availment of Cenvat Credit by the manufacturer or by the service provider but not on the ISD. She would urge that till date there is no restriction on when the ISD can take credit of the input invoices. Therefore, the entire demand including an amount of Rs.19,274/- needs to be set aside. She also argues that even if on merits the case is held against them no malafide can be interpreted on them because there is no fraud, collusion, wilful misstatement etc. on their part and extended period of limitation cannot be invoked. The fault, if any, was on the part of their Head Office. She relies on the case law of this bench in the case of Hetero Drugs Ltd as reported in 2019 (4) TMI 430 (Tri-Hyd) in support of her contention.

4. Learned departmental representative draws the attention of the bench to the sixth proviso to Rule 4(7) of CCR, 2004 and asserts that after 01.09.2014 no Cenvat Credit can be availed on the strength of an invoice after a period of six months. It is his assertion that it does not matter whether the invoice was issued prior to 01.09.2014 or later. With effect from this date no Cenvat Credit can be availed in view of the insertion of the proviso. He therefore reiterates the findings of the impugned order and asserts that the demand needs to be upheld and the appeal may be rejected.

5. I have considered the arguments on both sides and perused the records. With effect from 01.09.2014 following proviso was inserted in Rule 4(7) of CCR, 2004.

> *"Provided also that the manufacturer or the provider of output service shall not take Cenvat Credit after six months of the date of issue of the documents specified in Sub Rule (1) of Rule 9."*

6. A plain reading of this proviso shows that it imposed restrictions on availment of Cenvat Credit by the manufacturer or the provider of output service. It does not impose any restriction on availment of Cenvat Credit by an ISD for further distribution. If one were to apply principles of equity the same law should apply to the ISD also but in fiscal statutes there is no rule for equity and the law should be interpreted as they are written. It is not in dispute that as manufacturer, the appellant have availed Cenvat Credit within six months from the date on which they received the ISD invoices which are one of the documents specified in Rule 9(1). The Head Office of

the appellant who are registered as ISD have availed Cenvat Credit beyond the period of six months. I do not find any restriction has been placed on availment of Cenvat Credit by ISD during the relevant period under this proviso. In view of the above, I find that the appellant is entitled to avail Cenvat Credit and therefore, the impugned order is unsustainable and needs to be set aside.

7. Appeal is allowed and the impugned order is set aside with consequential relief.

(Order dictated and pronounced in the open court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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