

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I
Single Member Bench

Excise Appeal No. 30364 of 2022

(Arising out of **Order-in-Appeal** No.VIZ-EXCUS-001-APP-011-22-23, dated 15.06.2022
passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

IVAX Paper Chemicals Ltd.,

Survey No. 11, 16 & 18,
Near Sai Baba Temple,
Gumpam, Vizianagaram,
Andhra Pradesh – 535 204.

..

APPELLANT

VERSUS

**Commissioner of Central Tax
Visakhapatnam– GST**

GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

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RESPONDENT

APPEARANCE:

Shri Akbar Basha, CA for the Appellant.

Shri S. Hanuma Prasad, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30159/2023

Date of Hearing:23.05.2023

Date of Decision:23.06.2023

[ORDER PER: A.K. JYOTISHI]

The Appellant have filed appeal against Order-in- Appeal No. VIZ-EXCUS-001-APP-011-22-23 dated 15.06.2022, passed by Commissioner of Central Tax and Customs (Appeals), Guntur. The Commissioner (Appeals) has rejected their appeal against Order-in-Original No. 11/2020-21-DC dated 25.08.2020 and has upheld the said Order-in-Original passed by the Deputy Commissioner of Central Tax, Central Excise & Service Tax vide order dated 25.08.2020.

2. The issue, in brief, is that in the course of audit and scrutiny of records of the appellant it was, interalia, observed that they had availed "input service" tax credit on the basis of invoices and bank payment vouchers issued in the name of their head office located at Banjara Hills, Hyderabad. Further verification, interalia, revealed that the appellants are having units located at Gumpam, Kathua and Kovai and that the expenses pertaining to two or more units have been incurred by their head office and entire service tax involved therein is completely passed on to the assessee located at Gumpam only. Further, on verification of such Debit Advice/Invoices issued

in the name of Head Office at Hyderabad the actual usage of services involved therein could not be co-related with their unit located at Gumpam and hence the nexus between the invoices and utilisation of input service tax credit could not be established.

3. The Department relied on the provisions under Rule 9(1)(g) as also on Rule 7 of CENVAT Credit Rules, 2004 and came to conclusion that the expenses incurred by the "head office" can be distributed only by way of a bill or challan issued under Rule 4A of Service Tax Rules, 1994 and in accordance with the provisions for distribution as stipulated in Rule 7 of Cenvat Credit Rules, 2004. Thus, their head office has contravened Rule 4A of Service Tax Rules as well as Rule 7 of CCR 2004 in as much as they have passed on the credit to manufacturing unit on the basis of invoices issued by the service provider and not by way of ISD challan. It was also alleged that they had taken ineligible credit in respect of certain ineligible services provided by M/s M. Varalakshmi, which was in the nature of construction services and hence excluded from the purview of input service in terms of Rule 2(l) of CCR 2004.

4. The Original Adjudicating Authority, interalia, held that the appellant has not followed the procedure for distributing the input service tax credit in view of Rule 9(1)(g) of CCR 2004 as well as Rule 7. The Original Authority held that invoice and bank challans were issued in the name of their head office situated at Banjara Hills, Hyderabad, but the service tax paid thereon was not properly distributed and the whole credit was wrongly availed by only one unit i.e. at Gumpam. On the issue of availing credit on construction services, he noted that it was on account of ineligible service and hence not admissible. This credit of Rs. 1,05,424/- not held admissible, is not contested by appellant and were ready to pay the same.

5. In the Order-in-Appeal, the Commissioner (Appeals), interalia, held that in the facts of the case and in terms of Rule 2(l) of CCR 2004, in the case of a stock transfer of goods, the credit of input service (bank charges), attributable to subject goods (transferred to other units) cannot be considered to be used for manufacture of products at Gumpam unit. He further held that in the case of service tax attributable to more than one unit, it is required to be distributed on pro-rata basis of the turnover of such units during the relevant time. Therefore, he held that the substantive compliance for distribution and admissibility of the credit has to be followed

evenly the procedural compliance of registration as ISD has not been done. So far as issue of construction services availed from Varalakshmi is concerned, the Commissioner (Appeals) found that contradictory evidence has been provided by the appellant and therefore cannot be relied upon to avail credit of such services. Accordingly, the appeal was rejected and the Order-in-Original was upheld. The appellants are in appeal before this Tribunal against the impugned order of Commissioner (Appeals).

6. The Learned Counsel for the appellant, interalia, reiterated the submissions made in their grounds of appeal. His main argument is that there is no "head office" in Hyderabad and the Hyderabad office is merely having a central bank account, which makes the payments for all locations for ease of business. They have also submitted a copy of financial statement to substantiate the accounting methodology in support that it is not followed on the basis of head office-branch office basis, rather all the units have their separate accounting system and only the payments was done from the Hyderabad office having a common bank account for all branches/units.

7. It is observed that admittedly they are importing the raw materials in the name of their Gumpam plant and later on a part of that is also stock transferred to their other units as such, on payment of central excise duty apparently under Rule 3(5) of Central Excise Rules. Since all the imports are taking place in the name of the appellant's Gumpam unit, the bank charges paid are in relation to such imports of inputs, even though the debit advice/invoice issued by the bank mentioning their Hyderabad office, have been taken by them. They have submitted some sample copies of Bill of Entries in respect of their claim. They have also relied on certain judgments in respect of their claim that they have rightly availed the credit in respect of bank charges on the strength of invoices issued by the banks. A number of cases have been relied by the appellants in defence of their claim for rightfully taking the credit at Gumpum unit including the followings,

- i) Action Construction Equipment Pvt Ltd., Vs CCE, Delhi-IV [2015 (326) ELT 731 (Tri-Del)]
- ii) Laxmi Organic Industries Ltd., Vs Commissioner of Central Excise, Raigad [2018 ACR 680 CESTAT Mumbai]
- iii) Sanghi Industries Ltd., Vs CCE, Rajkot [2014 (2) TMI 278 – CESTAT-Ahmedabad]
- iv) CC & E Vapi Vs DNH, Spinners [2009 (16) STR 418]

- v) Hindustan Zinc Ltd., Vs CC & CE, Jaipur-II
[(2013) 2012 (3) TMI 367 – CESTAT – NEW DELHI]
- vi) CCE, Surat-III Vs Creative Enterprises
[2009 (235) ELT 785 (Guj)]
- vii) CCE Vs Dashion Ltd., [2016 (41) STR 884 (Guj)]

The appellant also submitted that, as the availment of credit was duly reflected in their returns, show cause notice should have been issued within the normal period of limitation, therefore, invocation of extended period is not applicable in the facts of the case, relying on certain judgments namely

- i) UOI Vs Rajasthan Spinning and Weaving Mills
[2009 (238) ELT 3(SC)]
- ii) Continental Foundation Jt Venture
[2007 (216) ELT 177 (S.C.)]
- iii) Mani Precision Products Ltd., Vs Comm. Of Central Tax, Bang-East
[2021 (55) GSTL 540 (Tri-Bang)]

8. The Learned Counsel further submits that all imports are made by the Gumpam unit only as the Bill of Entries clearly shows the Gumpum Unit as importer. Further, a statement supplied by them show Bill of Entry and corresponding debit advise, which bank has raised for, interalia, bank charges. Reference number and dates along with sample Bill of Entry have also been enclosed as annexure 3 of the appeal memorandum. This is to support their claim that their entire import had been made by the Gumpam unit, and the bank charges charged by bank are clearly co-relatable to such imports attributable to their unit at Gumpum only and hence they were entitled for taking the credit on the strength of said documents itself. He further reiterated that Hyderabad office is not head office and is merely a liason office for making bank payments etc.

9. The Learned DR reiterated the submissions and the grounds for confirming the demand by the Original Authority and the Commissioner (Appeals).

10. The issue, which is to be decided is whether the appellants have taken the credit of "input services" in respect of import of raw materials correctly or otherwise. Also, whether they have taken the credit of ineligible service namely "construction service" or otherwise. While the Department's case is that the input credit in respect of bank charges are not admissible to the appellant on the grounds that their head office at Hyderabad has made the

payments and incurred the bank charges but thereafter failed to distribute the credit in accordance with the provisions under relevant CCR applicable for distributing such credit and hence suo moto credit by Gumpam Unit is not admissible. On the other hand, the appellants are insisting that the Hyderabad office is not their "head office" and therefore it is not a case of distribution of credit as being made out by the Department. Their argument is that they have imported the raw material at their Gumpam Unit as is evident from the Bill of Entry in respect of which payments including bank charges have been incurred by their liasoning office at Hyderabad on their behalf. The service tax paid on such bank charges were also evident from the debit advice/invoices raised by the banks even though the same was raised on their Hyderabad liasoning office, but the fact remains that it was with respect to the raw materials actually imported by them at their Gumpam Unit only. Therefore, merely because such invoices, challans etc., issued by the bank, is not showing the name or address of their unit or location, which is otherwise co-relatable from the some other documents, they cannot be denied the substantive credit merely because of that omission.

11. In order to examine whether it is a case of transfer of credit by ISD or it is a case of taking of credit on the strength of "invoice" not having the name of the concerned unit/recipient, the provisions of Rule 9(1)(g) and Rule 7 of CCR need to be seen. As per Rule 9(1), the cenvat credit can be taken by the manufacturer on the basis of certain documents like invoices, bill or challan etc. It can also be taken on the strength of invoice, bill, challan and issued by ISD (input service distributor) under Rule 4A of Service Tax Rules 1944. In this case, it is seen that while Department has claimed the Hyderabad office as "head office" and therefore in order to pass the credit, they should have taken ISD registration and should have also followed the statutory procedure for distribution, whereas the appellants are argues that documents like challan issued by banks are sufficient document under Rule 4A and hence on that strength that itself they can take credit.

12. The Rule 9(1) interalia provides for the documents on the strength of which credit can be taken. The Department's case is that the office at Hyderabad is an "input service distributor". The definition of input service distributor is as follows:

(m) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under

rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider [or an outsourced manufacturing unit], as the case may be;

The definition of ISD interalia means that while any office of the manufacturer which receives invoice issued under Rule 4A of the Service Tax Rules 1944 towards the purchase of input services can become ISD and thereafter eligible to issue invoice, bill or as the case may be, challan for the purpose of distributing the said credit of service tax paid on the said service to such manufacturers or producers as the case may be. However, such invoices have to be towards the purchase of input services.

13. Therefore, what it means is that ISD can be any office, where the invoices issued under Rule 4A are received and distributed. The invoices under Rule 4A of STR provides for issuance of a specific invoice bill or challan giving certain details etc. In fact, in the case of a bank company an invoice, a bill or challan, as the case may be, also includes any document by whatever name called, whether or not serially numbered and whether or not containing address of the person receiving taxable services but it should contain other information in such documents as required under the said sub-rule.

14. Therefore, now what is to be considered is whether the debit advice/invoice issued by the banks to their office in Hyderabad, can be considered as an "eligible documents" issued under the provisions of Rule 4A or otherwise. On going through the challans it is obvious that all the relevant details required for issuing the challan under Rule 4A of Service Tax Rules 1994 has been complied with by the concerned bank, which clearly shows the amount of service tax paid, nature of service and also their service tax registration number. However, the next question would be whether such debit advise issued by the banks can be considered as an eligible documents under Rule 4A for the purpose of taking credit by the Gumpam unit under Rule 9(1) of CCR even though the name mentioned on the debit advice is that of their Hyderabad office and not that of the Gumpam unit. The appellants have meticulously explained the co-relation between the Bill of Entry under which they had received the raw materials and the banking charges paid for such imports. Therefore, it is a case where there is no need for any ISD distribution and the only issue which needs to be decided is whether the invoice/advise raised by the banks are sufficient to allow the Gumpam unit to take the credit.

15. It is undisputed fact that such imports have taken place with reference to Gumpum unit only and the input service in issue is an eligible input service. It is also noted that in the case of provision of services by Bank etc, much latitude has been given regarding nature of documents which could be issued under Rule 4A. There is no allegation in the show cause notice that the raw materials were not received in the Gumpam unit. Therefore, non-mentioning of the name and address of the unit receiving such services despite having actually received and also have incurred expenses towards that, can not result in complete denial of credit. Thus, the challans/debit advice issued by bank, if correlatable to Bill of Entries in the name of Gumpum Unit, indicating payment of service tax, has to be as a treated as valid document for the purpose of taking credit under Rule 9(1) by the appellant. I find that following case laws cited by appellant support the view discussed afore.

- i) Laxmi Organic Industries Ltd., Vs Commissioner of Central Excise, Raigad [2018 ACR 680 CESTAT Mumbai]
- ii) Sanghi Industries Ltd., Vs CCE, Rajkot [2014 (2) TMI 278 – CESTAT-Ahmedabad]
- iii) CC & E Vapi Vs DNH, Spinners [2009 (16) STR 418]
- iv) Hindustan Zinc Ltd., Vs CC & CE, Jaipur-II [(2013) 2012 (3) TMI 367 – CESTAT – NEW DELHI]

In the case of Laxmi Organic Industries Ltd., case, the Tribunal held that credit cannot be denied on the ground that either the invoice is not in appellant's name but in the name of their Head office or that the Head office is not registered under the ISD. In the Sanghi Industries Ltd., case, the Ahmedabad Bench of Tribunal held that the denial of credit because credit availed on the basis of invoice and not ISD challan cannot be denied being procedural in nature. Similarly, in the case of DNH, Spinners, it was held the credit cannot be denied on technical grounds that documents were not in the name of assessee's factory but issued in the name of Head office situated elsewhere. It is no longer res integra that if there is any procedural mistake but there is substantive compliance, the substantive benefit cannot be denied.

16. As regards this case law cited by the appellants in support of their claim that the credit cannot be denied on the grounds of absence of ISD registration or its distribution in accordance with the prescribed Rules, since

it has been observed that there was no need for the liaison office at Hyderabad to act as an ISD and follow the required procedure, the case laws cited are not relevant.

17. There is, however, another aspect which also needs to be addressed. It is admitted fact that the Gumpam unit has been stock transferring some of their raw materials imported by them originally to their other units after taking credit. They were apparently following procedure under Rule 3(5) for clearing the raw materials as such, however, they were paying duty instead of reversing credit. Therefore, the issue is whether they are entitled to take the credit to the extent they have not used such services or raw material in or in relation to manufacture of final product within their factory at Gumpam. The provisions under CCR provides for clearance of input or capital goods as such by reversing the credit taken originally on such inputs or capital goods. It is admitted that this provision has not been adhered to in the instant case, as the inputs were being cleared on stock transfer basis on the payment of central excise duty even when there was no manufacture involved, which is different then the mechanism provided for clearance of inputs as such, on which the credit has been take under. Appellants have relied on following judgments in support of their contention that once duty is paid, the availment of credit cannot be denied.

- i) Action Construction Equipment Pvt Ltd., Vs CCE, Delhi-IV
[2015 (326) ELT 731 (Tri-Del)]
- ii) CCE, Pune-II Vs Ajinkya Enterprises
[2013 (294) ELT (203)]
- iii) CCE, Surat-III Vs Creative Enterprises
[2009 (235) ELT 785 (Guj)]

The Action Construction Equipment Pvt Ltd., case is not applicable as in the present case the appellants have clearly not followed Rule 3(5) of CCR. In the case of Ajinkya Enterprises, the issue was whether the duty can be paid on activity which was not amounting to manufacture or otherwise and if duty is paid and accepted by Department or no refund preferred, the credit need not be reversed. The facts are clearly distinguishable in the present case as appellants were not under any mistaken belief that duty is payable. The reliance placed in the judgment of Hon'ble Gujarat High Court in the case of Creative Enterprises also does not help the case of the appellant. Hon'ble High Court dismissed the appeal holding that in this case the Tribunal had justified if the activity of the appellant did not amount to manufacture there

cannot be any question of levy of duty and if duty is levied, credit cannot be denied on the ground that there is no manufacture. The facts of this case is clearly distinguishable in as much as the appellants have knowingly transferred the inputs as such and there has never been any dispute whether any manufacturing activity or otherwise has been carried out in relation to these inputs, either on the part of the appellant or on the part of the Department. Thus, this case law also does not support their contention that once they have paid the duty, the credit cannot be reversed even when they have not followed the prescribed procedure for removal of input as such by reversing the credit taken on such inputs.

18. Therefore, in the facts of the case, the Hyderabad office is not required to act as an input service distributor (ISD) if they so desired, since they are not the office required to act as ISD and therefore there was also no requirement on their part to follow any procedure like registration or distribution in accordance with the procedure prescribed under the respective rules. On the other hand, the unit Gumpam is eligible to take credit on the strength of the debit advice/invoices issued by the banks clearly showing the payment of service tax in respect of Bill of Entry, under which the inputs were received at their Gumpam unit and the service i.e. "banking charges" on the import of raw material, which is an eligible service for taking credit. To that extent, they are entitled to take credit. However, this taking of credit is subject to the fundamental rule under CCR that the same must be used in manufacturing of the final product by said manufacturer or for provision of service. Here admittedly there has been stock transfer of such inputs on which they had taken credit initially and even though, they have paid central excise duty on the same, it cannot be considered as a method for reversing the credit for clearance of input as such. And to that extent, the inputs not used at Gumpam Unit cannot be considered to have been used in their factory. Accordingly, to that extent, they would not be entitled for credit. However, the co-relation of the invoice/challans issued by the bank and the Bill of Entries under which the inputs have been received by Gumpam unit needs to be done in detail as per the Appellants provide all the relevant documents to Original Authority. Thereafter, to the extent to which such inputs, not having been consumed in the Gumpam unit, the credit has to be denied on account of their having not been used in relation to the manufacture of the final product. The remaining credit is to be allowed. The interest and penalty applicable under section

15(2) of CCR 2004 read with Section 11AC (1)(c) of Central Excise Act 1944 would also be applicable on such ineligible credit.

19. As regard the credit on "construction service", it is clearly not admissible and so to that extent the amount of Rs. 1,05,424/- out of total demand of Rs. 13,01,140/- as confirmed by the Original Authority and also upheld by Commissioner (Appeals) needs to be upheld. Thus, the extent of demand on account of credit of ineligible service i.e. construction service, the Order of Original Authority and Commissioner (Appeals) is upheld and for remaining amount of demand, the order is set aside for the purpose of redetermination of admissible credit having regard to observations in foregoing paras.

20. As regards invocation of extended period, since the admitted fact is that they have not correctly followed the procedure for clearing inputs on which credit was taken, as also the fact that appellant have not come out clean before the Department with all the relevant facts before the audit, I do not find that sufficient grounds have been brought on record by appellants so to interfere with the observations of Commissioner(Appeals) on this issue. Therefore, the extended period has been rightly invoked in the facts of the case.

21. Therefore, the Order of Commissioner (Appeals) is modified to the extent, as discussed in foregoing paras and the case is remanded back to the Original Authority for redetermination of the eligible credit in view of my observations in the foregoing paras, after going through all the documents to be submitted by the appellants within a period of 3 months. The appeal is partly allowed by way of remand for redetermination of amount of eligible credit out of total demand and for recovery of remaining amount, levy of interest applicable and imposition of penalty with reference to such ineligible credit, so determined.

(Order pronounced in the open court on 23.06.2023)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)