IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Excise Appeal No.76610 of 2017

(Arising out of Order-in-Original No.06/COMMR/CE/KOL.II/Adjn/2017-18 dated 01.06.2017 passed by Commissioner of Central Excise, Kolkata II)

Commissioner of Central Excise, Kolkata II
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Appellant

VERSUS

M/s Tide Water Oil Co. (India) Limited
8,Dr.Rajendra Prasad Sarani, Kolkata 700001

Respondent

Appearance:

Shri S.Mukhopadhyay, Authorized Representative for the Appellant
Shri Rajeev Agarwal, Advocate for the Respondent

WITH

Excise Appeal No.76621 of 2017

(Arising out of Order-in-Original No.06/COMMR/CE/KOL.II/Adjn/2017-18 dated 01.06.2017 passed by Commissioner of Central Excise, Kolkata II)

M/s Tide Water Oil Co. (India) Limited
8,Rajendra Prasad Sarani, Kolkata 700001

Appellant

VERSUS

Commissioner of Central Excise, Kolkata II
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

Appearance:

Shri Rajeev Agarwal, Advocate for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI RAJU, TECHNICAL MEMBER

FINAL ORDER NO.75113-75114/2022

DATE OF E-HEARING : **15.11.2021**
DATE OF PRONOUNCEMENT : **23.02.2022**

Per P.K.Choudhary :

Both the appeals filed against the adjudication order dated 01.06.2017 passed by the Ld. Commissioner, Central Excise, Kolkata, are taken up together for disposal by this common order. Appeal No.E -76621/2017 has been filed by the assessee whereas, Appeal No.E – 76610/2017 has been filed by the Department against the aforesaid order.

2.1 Briefly stated, the facts in this case are that the assessee, M/s. Tide Water Oil Company India Limited, is engaged in the manufacture of lubricants and greases on which applicable Central Excise duty is being paid. They are availing the benefits of Cenvat Credit under the provisions of CENVAT Credit Rules, 2004.

2.2 The assessee's Head Office in Kolkata was duly registered as an Input Service Distributor ('ISD') prior to 22.11.2009 (i.e. prior to the period in dispute), however, the same got excluded while seeking amendment in Registration Certificate. The ISD registration was thereafter included on 24.08.2015. Thus, in the service tax registration certificate, the ISD registration remained excluded during the period 22.11.2009 to 23.08.2015, for which the demand of central excise duty has been raised in the impugned order for the period April 2011 to August 2015 vide issuance of Show Cause Notice dated 21.03.2016.

2.3 The Ld. Commissioner has disallowed the input service credit availed by the manufacturing plant on the strength of ISD invoices issued from the Kolkata Head Office since the same was not appearing in the Registration Certificate as 'ISD'. Accordingly, the Central Excise duty demand of Rs.6,23,02,212/-was confirmed by the Ld. Commissioner, Central Excise, Kolkata, alongwith equivalent penalty against which the assessee has preferred the instant appeal before us.

2.4 No interest was, however, charged in the aforesaid adjudication order against which the Department is in appeal.

3. Sri Rajeev Kumar Agarwal, Advocate appeared for the assessee. Sri S.Mukhopadhyay Ld. Authorised Representative, appeared for the Department.

4. The Ld. Advocate appearing for the assessee submitted that the demand in the instant case is only for the reason that the Head Office in Kolkata was not registered with the Service Tax Department. He submitted that the CBIC (previously known as 'CBEC') has accepted the ruling dated 08.01.2016 rendered by the Hon'ble Gujarat High Court in **CCE vs. Dashion Ltd [2016 (41) S.T.R. 884 (Guj.)]** wherein it has been held that substantial benefit of credit cannot be denied for reasons of procedural infirmity in case the ISD registration is not obtained. The same has been confirmed by the Board in **Circular no. 1063/2/2018-CX dated 16.02.2018**, where details of the various Orders of the High Courts and Tribunals that have been accepted by the Board have been stated. On the basis of the above, he submitted that since the issue has attained finality and hence, the demand is liable to be set aside in its entirety. He further submitted that credit amount of Rs. 4,65,724/- pertaining to their Mumbai office has already been reversed which is not being contested and the payment of the same has also been appropriated in the impugned order. He also contested the demand on the grounds of limitation and submitted that no evidence has been adduced in the Show Cause Notice to show wilful fraud or suppression so as to justify the imposition of penalty.

5. The Ld. A.R. appearing for the Revenue reiterated the findings of the Ld. Commissioner and submitted that the assessee cannot be extended the benefit of Cenvat credit for want of ISD registration during the impugned period. He further prayed that interest amount which has not been levied by the Commissioner should also be levied on the demanded duty amount.

6. Heard both sides through video conferencing and perused the appeal records.

7. We find that the only issue that arises for consideration is whether the Appellant assessee should be denied CENVAT credit for want of registration as 'ISD' during the relevant period. In the Discussions and Findings portion of the impugned order (para 5 and para 6), no dispute has been raised by the Ld. Commissioner with regard to the nature of input service and the fact of payment of service tax thereon.

8. We find that the issue has already been settled by the Hon'ble Gujarat High Court in CCE vs. Dashion Ltd (supra) wherein affirming the view taken by the Tribunal's Ahmedabad Bench, it has been held that merely for want of registration as ISD, the assessee should not be denied substantial benefit of Cenvat Credit. The relevant portion of the Hon'ble High Court's decision is reproduced below:-

> *"7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed.* ***However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable.*** *Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion,*

rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No. 1 therefore shall have to be answered in favour of the respondent and against the assessee."

We further note that the Department in **Circular no. 1063/2/2018-CX dated 16.02.2018 (Para 2.3)** has accepted the above decision of the Hon'ble Gujarat High Court by stating that *"Further non-registration of ISD is only a procedural irregularity for which substantial benefit of CENVAT credit cannot be denied when all the necessary records have been maintained by the respondent."*

9. Since the issue has been decided in favour of the assessee, we do not find any reason to sustain the impugned demand order and hence, the same is set aside, except to the extent of Rs.4,65,724/- which is not being contested by the Appellant assessee. Penalty imposed in the impugned order is also set aside.

10. The appeal filed by the assessee is thus allowed in the above terms with consequential relief as per law. The appeal filed by the Department is rejected.

(Pronounced in the open court on **23.02.2022**)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(Raju)
Member (Technical)

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