

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

Excise Appeal No.75508 of 2016

(Arising out of Order-in-Original No.13/Commr.//CE/Kol.II/Adjn/2015-16 dated 20.01.2016 passed by Commissioner of Central Excise, Kolkata II)

M/s Shalimar Paints Ltd.

Goabaria, P.O.-Danesh Sheik Lane, Howrah-711109

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah

15/1, Strand Road, Kolkata-700001

Respondent

WITH

Excise Appeal No.607 of 2011

(Arising out of Order-in-Original No.26/Commr.//CE/Kol.II/Adjn/2015-16 dated 31.03.2011 passed by Commissioner of Central Excise, Kolkata II)

M/s Shalimar Paints Ltd.

Goabaria, P.O.-Danesh Sheik Lane, Howrah-711109

Appellant

VERSUS

Commissioner of CGST & Excise, Howrah

15/1, Strand Road, Kolkata-700001

Respondent

Appearance:

Shri Rajesh Chhibber, Advocate for the Appellant
S/Shri J.Chattopadhyay & A.Roy, both Authorized Representatives for the Respondent

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO.75448-75449/2022

DATE OF E-HEARING : 15.06.2022

DATE OF PRONOUNCEMENT : 08 AUGUST 2022

Per P.K.Choudhary :

Present appeals have been filed by the Appellant involving similar issues and hence the same are taken up together for hearing.

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2.1 The facts of the case in brief are that the Appellant is having three manufacturing units at Nasik, Sikandrabad and Howrah and Head Office at Kolkata. The Appellant was receiving services of Goods Transport Agency (in short GTA) at the head office for removal of goods from respective factories to its various depots. Though the Head Office was registered with the Service Tax Department since 2007 and they were distributing the credit to their units, they were not having ISD registration which was granted later on in 2016. Since the Head Office was making payment in respect of all input services received at the Head Office and inward and outward GTA services at/to factories/depots, the Head Office passed on entire credit to its Howrah factory, the Appellant herein. Due returns were also filed with the Department.

2.2 That on being enquired by the Department, the Appellant vide letter dated 10.01.2008 explained its stand on entitlement of credit in the manner stated above. Thereafter, summon dated 09.05.2008 was issued to Authorized Signatory Shri T.K. Ghosh asking him to appear on 16.04.2008 i.e. before the date of summon. However, his statement was recorded on 09.05.2008 itself. Nothing happened thereafter for over a year when show cause notice dated 28.01.2010 was issued for the period from January 2005 to March 2008. Thereafter another Show-cause Notice was issued on 02.05.2014 i.e. after more than four years from the first show cause notice for the period from April 2009 to March 2012. No Show-cause Notice was issued for the year 2008-09.

2.3 Both the notices were adjudicated upon by separate orders against which the Appellant filed two appeals before the Tribunal.

2.4 The case of department is that the GTA credit could be availed only upto the place of removal and not from place of removal, the Head Office could not distribute credit without having ISD registration, the credit was to be proportionately distributed to all the units. The show cause notices raised demand invoking extended period which were adjudicated upon by the lower authority confirming the demand

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on account of denial of credit and that too by invoking extended period.

2.5 As regard admissibility of credit of GTA services, it is submitted by the learned counsel that the period involved was prior to 1.4.2008 when the definition of input service was amended by restricting the credit on GTA services from the place of removal to to the place of removal. He submitted that the issue has otherwise been settled by the Hon'ble Supreme Court in the case of CCE vs. Ultratech Cement Ltd. reported in 2018(9)GSTL337(SC) followed by the Tribunal in the case of Ultratech Cement Ltd. vs. CCE reported in 2019(366)ELT891(Tri. Chd.). Therefore, the credit was rightly admissible to the appellant.

2.6 As regards invocation of Rule 7 of Cenvat Credit Rules (CCR), 2004 it is submitted by the learned Counsel for the Appellant that prior to 1.4.2016 there was no mandatory condition under Rule 7 of CCR to distribute the credit proportionately. The counsel has relied upon the decision of the Tribunal in the case of Piramal Glass P. Ltd. vs. CCE&ST Surat reported in 2021(55)22GSTL-22(Tri. Ahmd.).

2.7 As regard the passing of credit without obtaining ISD registration by the Head Office, here also the Ld.Counsel submits that the issue involved being of general in nature, the law has already been settled by Hon'ble Gujarat High Court in Doshin Ltd. vs. CCE as reported in 2016 (41) STR 884 (Guj.). The Appellant also relied upon the decision of the Hon'ble Madras High Court in the case of CCE vs. Pricol Ltd. reported in 2021 (48) GSTL-235 (Mad) and the Tribunal's decision in the case of HICAL Technologies P. Ltd. vs. CCE : 2021 (44) GSTL-101 (Tri. Bang.) and in the case of Rajender Kumar & Associates vs. CST : 2021 (45) GSTL-184 (Tri. Del.).

2.8 As regards invocation of extended period, it is contended by the learned counsel that when the credit is otherwise admissible on merits, there does not arise any need to go into the issue of limitation. In any case, he submitted that the very fact that the law has been settled in

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their favor on all the counts, there could not be any scope for invocation of extended period as the ingredients for invocation of extended period are not satisfied in the present case. He submitted that in any case the information was available with the department having jurisdiction over the Head Office from the very beginning and from 2008 with the department having jurisdiction over the Appellant and still the show cause notice was issued in 2010. As regards the subsequent show cause notice issued on 02.05.2014, apart from other submissions, the learned counsel has relied upon the judgment of Hon'ble Supreme Court in the case of Nizam Sugar Factory reported in 2006(197)ELT465(SC) that extended period cannot be invoked in subsequent show cause notice.

3. The Ld.Departmental Representative re-iterated the findings in the impugned order.

4. Heard both sides and perused the appeal records.

5. As regard the admissibility of credit on GTA services upto 1.4.2008, the issue is no more res integra on merits itself in the light of judgment of Hon'ble Supreme Court in the case of CCE vs. Ultratech Cement Ltd. (Supra) and decision of the Tribunal in the case of Ultratech Cement Ltd. (supra). Therefore, following the same, we hold that the credit on GTA services from the place of removal upto 1.4.2008 was rightly admissible to the Appellant.

6. As regard the issue of distribution of credit prior to 1.4.2016, it is observed that Rule 7 of CCR provided mechanism to distribute the credit and it was only after amendment made in 2016, the condition for proportionate distribution was inserted. This issue has also been settled by the Tribunal in the case of Piramal Glass P. Ltd. (supra) that prior to 1.4.2016 there was no need to proportionately distribute credit to all the units. Therefore, the credit was rightly distributed to the appellant by its Head Office during the period in dispute.

7. As regard the distribution of credit by the Head Office without obtaining ISD registration, here also the Ld.Counsel submits that the

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issue involved being of general in nature, the law has already been settled by the Hon'ble Gujarat High Court in Doshin Ltd. (supra). The Appellant has also relied upon the Judgment of Hon'ble Madras High Court in the case of CCE vs. Pricol Ltd. (supra) and the Tribunal's decisions in the case of HICAL Technologies P. Ltd. (supra) and in the case of Rajendra Kumar & Associates. Aforesaid decisions are squarely applicable to the facts of the present case. Hence the impugned order denying credit on the basis of non- registration of Head Office as ISD is not sustainable.

8. As regards invocation of extended period, since we are allowing the appeals on merits itself, there otherwise remains no need to look into the issue of limitation. However, it is an admitted fact that the Appellant was claiming credit on GTA services and this was duly entered in their statutory records, Head Office was registered with Service Tax Department and though the Department initiated enquiry in 2008 but still chose to issue show cause notice only in 2010. Further second show-cause notice was issued in 2014. This issue has already been dealt with by the Hon'ble Supreme Court in the case of Nizam Sugars Ltd. (supra). Once it is settled that the decision is in favour of the Appellant on merits itself, there can otherwise be no scope for denial of credit by invoking extended period.

9. Hence, the impugned orders are not sustainable on merits and on limitation as well and we order accordingly. The appeals are allowed with consequential relief to the Appellants in accordance with law.

(Pronounced in the open Court on **08.08.2022**)

Sd/

(P. K. Choudhary)
Member (Judicial)

Sd/

(P. Anjani Kumar)
Member (Technical)

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