

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Excise Appeal No.171 of 2011**

(Arising out of Order-in-Original No.74/COMMR/BOL/10 dated 20.12.2010 passed by Commissioner of Central Excise, Bolpur.)

**M/s. SPS Steel Rolling Mills Limited  
(Formerly SPS Steel & Power Limited)**

(Dr. Zakir Hussain Avenue, Durgapur, Dist.Bardhaman, Pin-713206.)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise, Bolpur**

**.....Respondent**

(Nanoor Chandidas Road, Sian, Bolpur, Dist.Birbhum, West Bengal.)

**APPEARANCE**

NONE for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)  
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 75208/2023**

DATE OF HEARING : 28 March 2023

DATE OF DECISION : 28 March 2023

**P.K. CHOUDHARY :**

When the matter was called, none appeared on behalf of the Appellant, neither any prayer for adjournment has been received. Since it is an old Appeal pertaining to the year 2011 and the dispute in the present Appeal lies in a narrow compass, hence it is taken up for hearing with the consent of the Ld.Authorized Representative for the Department.

2. The Appellant is engaged in the manufacture of various excisable iron and steel products such as Sponge Iron and MS billet. The Head Office of the Appellant is situated in Kolkata and the input services

invoices were raised in the name of the Head Office. During the period from 16.06.2005 to 08.06.2009 they have distributed CENVAT Credit among various units located at different places at Durgapur. They were not registered as Input Services Distributor (ISD) during the relevant period. A Show Cause Notice dated 05.05.2010 was issued alleging that the Appellants have contravened provisions of Rule 2(m), Rule 3, 7 & 9 of CENVAT Credit Rules, 2004 read with Rule 4A of the Service Tax Rules, 1994. It was also alleged in the Show Cause Notice that non-registration of the Head Office as Input Service Distributor was not disclosed in the monthly returns submitted by the Appellant which tantamount to suppression of facts. The Adjudicating authority disallowed the credit and demanded the same in terms of Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A(2) of the Central Excise Act, 1944 and also imposed a penalty of Rs.2,000/- in terms of Rule 15(3) of CENVAT Credit Rules, 2004. Hence the present Appeal before the Tribunal.

3. Heard the Ld.Authorized Representative for the Department and perused the Appeal records.

4. We find that for availing CENVAT Credit when invoices are raised in favour of the Head Office or circle office and payments for such services were made from the said office and services are claimed to have been used in any units under the Head Office, it is required to get the Head Office registered as 'Input Service Distributor' and issue invoices in favour of its units. The Appellant's Head Office in Kolkata was not registered as input credit distributor during the period under dispute.

5. We find that the issue is no more *res integra* and has been held in numerous decisions that in absence of registration of Head Office as 'Input Service Distributor', it cannot be held to be a justifiable reason for denial of the credit. The substantive benefit, if otherwise available, cannot be denied on the technical and procedural grounds.

6. The Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise v. Dashion Ltd. [2016 (41) S.T.R. 884 (Guj.)] held thus:-

*"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."*

7. We find that Central Board of Excise & Customs, New Delhi vide Circular No.1063/2/2018-CX dated 16.02.2018 had issued a compilation of orders of Supreme Court, High Courts, CESTAT accepted by the Department on which no Review Petitions, SLPs have been filed in order to reduce the litigations. The relevant portion of the Circular is reproduced.

*2.(a) Decision of the Hon'ble High Court of Gujarat dated 8-1-2016 in the matter of Commissioner of Central Excise v. Dashion Ltd. in Tax Appeal No. 415 of 2013 & 662 of 2014 [2016-TIOL-111-HC-AHM-ST = [2016 \(41\) S.T.R. 884](#) (Guj.)]*

*(b) Decision of the Hon'ble High Court of Rajasthan dated 8-2-2016 in the matter of Commissioner Central Excise Commissionerate, Jaipur*

*v. National Engineering Industries Ltd. CEA No. 3/2016 [2016-TIOL-922-HC-RAJ-CX = [2016 \(42\) S.T.R. 945](#) (Raj.)]*.

2.1 Department has accepted the judgments where the Hon'ble High Courts dismissed the Department's appeal *inter alia* holding that substantial benefit cannot be denied because of procedural irregularity.

2.2 In the case of *Dashion Ltd.* the assessee was engaged in manufacture of water treatment plant and other connected items and was availing benefit of CENVAT credit on the duty paid on inputs, capital goods and input services as permissible under CENVAT Credit Rules, 2004. The assessee had five manufacturing units and had its registered office at Vatva, Ahmedabad. The assessee was also providing several taxable services such as erection and commissioning, repairing and maintenance of water treatment plant, etc.

2.3 The revenue authorities, during scrutiny of the records of the assessee, noticed that it was availing the credit of service tax paid for various services by one unit for the purpose of clearance of other unit. After gathering details from the assessee, the adjudicating authority issued show cause notice calling upon the assessee as to why the CENVAT credit of service tax on input service should not be recovered with interest and penalties. In the show cause notice itself, the adjudicating authority had referred to sub-rule (3) of Rule 15 of the Rules of 2004 as basis for such proposal. Two primary objections of the Department were that the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules, 2005 and that the tax credit from one unit was utilized for discharging tax liability of another unit instead of *pro rata* distribution amongst different units. The adjudicating authority confirmed the duty demands with interest and penalties.

2.4 Therefore, the points of law examined were that the assessee had utilized credit from one unit for the purpose of duty liability of its other unit without *pro rata* distribution by the input service distributor and further the assessee had not registered itself under the Service Tax (Registration of Special Category of Persons), Rules, 2005.

2.3 Hon'ble High Court dismissed the department's appeal holding that such view was not sustainable as there was no previous restriction of this nature under Rule 7 of the CENVAT Credit Rules, 2004. 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.

We find that the facts of the present case are squarely covered by the aforesaid decision of the Hon'ble High Court of Gujarat and the same has been accepted by the Department.

8. In view of the settled legal position, the impugned order cannot be sustained and is accordingly set aside. The Appeal filed by the Appellant is allowed with consequential relief, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/  
**(P.K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

Sd/  
**(K. ANPAZHAKAN)**  
**MEMBER (TECHNICAL)**