

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

Excise Appeal No. 102 of 2012

(Arising out of the Order-in-Original No. 27/Commr./CE/Kol-II/Adjn/2010-11 dated 31.03.2011 passed by Commissioner of Central Excise, Kolkata-II.)

M/s Berger Paints India Ltd.,

14 & 15 Swarnamoyee Road, P.O.- Botanical Garden, Howrah-711103.

...Appellant (s)

VERSUS

Commissioner of Central Excise, Kolkata-II.

15/1, Strand Road, (M.S. Building), Kolkata-700001.

...Respondent(s)

APPEARANCE :

Shri Gopal Agarwal & Ms. Pritha Sarkar, both Chartered Accounts for the Appellant

Shri P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No. 76491/2023

DATE OF HEARING: 24.08.2023

DATE OF DECISION : 24.08.2023

PER K. ANPAZHAKAN :

The present appeal has been filed against Order-in-Original dated 31.03.2011, passed by Commissioner of Central Excise, Kolkata-II. In the impugned order, the Commissioner has denied the credit Rs. 6,98,90,799 availed by the Appellant and demanded interest and equal amount of duty as penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the CENVAT Credit Rules, 2004. The Cenvat credit in dispute in this case was with respect to the credit distributed by various depots of the Appellant spread across the country, on the ground that the said depots were either not having the Service Tax registrations at all, or the credit has been distributed prior to obtaining the registration. Aggrieved against the impugned order, the Appellant has filed the present appeal.

2. In their submissions, the Appellant stated that it is a settled position that registration of the depots is not a pre-requisite for availment of

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CENVAT credit. They stated that Depots are the 'place of removal' of their finished goods, and hence all the expenditure incurred upto the place of removal has already been included in the assessable value on which duty has been paid. Hence, they are eligible for Cenvat credit of all input services used upto the depots.

3. In support of their contention they relied on the Hon'ble Madras High Court in the case of *Commissioner of Central Excise, Coimbatore Versus Pricol Ltd. [2021 (48) G.S.T.L. 235 (Mad.)]*, wherein credit distributed was allowed prior to taking of registration by the Input Service Distributor.

4. The Appellant also relied on the decision of the Hon'ble Gujarat High Court in the case of *Commissioner of Central Excise vs Dashion Ltd [2016 (41) S.T.R. 884 (Guj.)]*, wherein it has been held that an Input Service Distributor would not be disentitled from availing cenvat credit on the ground of non-registration, since such requirements are curable.

5. The Appellant relied upon the decision of the Tribunal, Kolkata in the case of *Jai Balaji Industries Ltd. (Unit IV) vs. CCE, Bolpur [2022 (58) GSTL 361 (Tri)]*, wherein it has been held that Cenvat credit on input services cannot be denied to the appellant merely on the ground that the head office was not registered as input service distributor as required under Rule 9 of the Cenvat Credit Rules, 2004 for distribution of credit on the documents which are in the name of the Head Office.

6. The Appellant cited the **Circular No. 1063/2/2018-CX dated 16.02.2018 issued by** Central Board of Excise and Customs , wherein the various decisions of the High Court have been accepted by the department with an objective to reduce litigation and dispose of the cases on similar questions of law or identical case on facts pending with the department. In the said circular, the Board has accepted the decision of **Hon'ble High Court of Gujarat in the matter of Commissioner of Central Excise vs Dashion Ltd [2016 (41) S.T.R. 884 (Guj.)]**, wherein the Hon'ble High Court dismissed the department's appeal holding that 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.

7. The Appellant contended that *substantial benefit cannot be denied merely on account of procedural infractions. In support of this argument, they relied on the decision of the Tribunal in the case of **Mardia Chemicals Ltd. vs. CCE [2003 (158) ELT 378 (T)]**, **Deepthi Insulated Cables Ltd vs. CCE [2000 (123) ELT 933(T)]**, **Krishna Cold Roller Section vs. Commissioner [1996 (88) ELT 98 (T)]** and **Shriji Chemicals vs. Collector [1998 (98) ELT 375 (T)]**, where it has been held that mere procedural infractions, technicalities and documentary infirmities cannot be the ground for denial of credit when there is substantial compliance of the procedure laid down by the statute. The said principle shall also apply to service tax as the conditions for availing CENVAT credit are same. Accordingly, they prayed for setting aside the impugned order and allow the credit.*

8. The Ld. A.R. reiterated the findings in the impugned order.

9. Heard both sides and perused the appeal records.

10. We observe that dispute in this case is with respect to the credit distributed by various depots of the Appellant spread across the country. The credit availed by the Appellant was denied in the impugned order on the ground that the said depots were either not having the Service Tax registrations at all, or the credit has been distributed prior to obtaining the registration. Thus, the issue to be decided in the present appeal is whether the Appellant is eligible to avail the credit passed on by their depots without registration.

11. It is an undisputed fact that services received by the depots are eligible input service to the Appellant, as the depots are their place of removal and all the expenditure incurred upto the place of removal has already been included in the assessable value on which duty has been paid. It is also not in dispute that the said input services have been received by the depots and appropriate service tax has been paid. Under such circumstances, denial of CENVAT credit merely on the ground of non-registration/delay in registration of the depots is not sustainable. We observe that this view has been held in various judicial pronouncements.

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12. In the case of *Commissioner of Central Excise, Coimbatore Versus Pricol Ltd. [2021 (48) G.S.T.L. 235 (Mad.)]* , it has been held as under:

Non-registration as Input Service Distributor - Effect of - Nothing in statutory Rules to disentitle an unregistered input service distributor from availing Cenvat credit –Not taking registration only a procedural but curable irregularity - Credit availed and distributed by respondent prior to getting registered as an input service distributor not deniable - Penalty not imposable - Rules 3 and 15(4) of Cenvat Credit Rules, 2004.

13. In the case of *Commissioner of Central Excise vs Dashion Ltd [2016 (41) S.T.R. 884 (Guj.)]*, the Hon'ble Gujarat High Court has held as under:

"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....."

14. In the case of *Lona Industries Ltd -vs- Commissioner of Central Excise, Raigad, [2016 (42) S.T.R. 362 (Tri. - Mumbai)]* , the Tribunal has held as under:

".... The Cenvat Credit Rules do not prohibit availment of Cenvat credit in respect of inputs/input services which have been received prior to registration. The Cenvat Credit Rules contain no express restriction on distribution of credit earned prior to taking the registration by the ISD also. Hence, the ISD can avail credit of service tax paid on input services received prior to registration...."

15. In the case of *Jai Balaji Industries Ltd. (Unit IV) vs. CCE, Bolpur* [2022 (58) GSTL 361 (Tri. – Kolkata)], this Tribunal has held as under:

"... Now the question which remained for consideration is that whether the Cenvat credit on input services can be denied to the appellant merely on the ground that the head office was not registered as input service distributor as required under Rule 9 of the Cenvat Credit Rules, 2004 for distribution of credit on the documents in the name of the head office. This question has been answered by the various judgments of High Courts. The first judgment relied upon by the Ld. Advocate is the case of *Commissioner of Central Excise v. Dashion Ltd.* reported in [2016 \(41\) S.T.R. 884](#) (Guj.) wherein the Hon'ble Gujarat High Court has held in clear terms that there is nothing in the statutory rules to disentitle an unregistered input service distributor from availing Cenvat credit. It has further been held that non-registration of the unit as input service distributor is only a procedural irregularity for which the Cenvat credit cannot be denied. It has been held that when the assessee is maintaining full records of credit received and distributed which was duly verified by the department, the credit could not be denied to them. The Learned AR has brought to our notice the C.B.E. & C. Circular No. 1063/2/2018-CX, dated 16-2-2018 at S. No. (2). This judgment of the Hon'ble Gujarat High Court has been accepted by the department. Similarly, the Hon'ble Allahabad High Court in the case of *Commissioner of Customs and Central Excise v. Sri Ram Piston & Rings* reported in [2019 \(369\) E.L.T. 631](#) (All.) has held that the rules relating to "Input Service Distributor" are purely machinery provisions and directory in nature.

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16. We observe that Central Board of Excise and Customs has issued *Circular No. 1063/2/2018-CX dated 16.02.2018*, wherein the various decisions of the High Court have been accepted with an objective to reduce litigation and dispose of the cases on similar questions of law or identical case on facts pending with the department. In the said circular, the Board has accepted the decision of *Hon'ble High Court of Gujarat in the matter of Commissioner of Central Excise vs Dashion Ltd [2016 (41) S.T.R. 884 (Guj.)]*, wherein the Hon'ble High Court dismissed the department's appeal holding that 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.

17. We agree with the contention of the Appellant that *substantial benefit cannot be denied merely on account of procedural infractions. The following decisions cited by the Appellant, supports their case.*

(i) *Mardia Chemicals Ltd. vs. CCE [2003 (158) ELT 378 (T)]*

(ii) *Deepthi Insulated Cables Ltd vs. CCE [2000 (123) ELT 933(T)].*

(iii) *Krishna Cold Roller Section vs. Commissioner [1996 (88) ELT 98 (T)]*

(iv) *Shriji Chemicals vs. Collector [1998 (98) ELT 375 (T)]*

18. *In the decisions relied upon by the Appellant cited above, it has been held that mere procedural infractions, technicalities and documentary infirmities cannot be the ground for denial of credit when there is substantial compliance of the procedure laid down by the statute. The said principle shall also apply to service tax as the conditions for availing CENVAT credit are same. It is an undisputed fact that service is an eligible input service and the same has been distributed by the depots by following the procedure of input service distributor as provided in the statute. Thus, denial of CENVAT credit merely on the ground of non-registration/delay registration as ISD is bad in law and not sustainable.*

19. In view of the above discussion and by following the decisions cited above, we hold that the credit availed by the Appellant cannot be denied in this case. Substantial benefit cannot be denied on the ground

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of procedural infractions. Since, credit is held to be admissible the question of demanding interest and imposing penalty does not arise. Accordingly, we hold that the impugned order is not sustainable and we set aside the same.

20. In view of the above discussion, we allow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar