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

Excise Miscellaneous Application No. 75768 of 2023 (Additional Evidence)
And
Excise Appeal No. 79312 of 2018

(Arising out of the Order-in-Original No. COMMR/BBSR/CE/33/2018 dated 30.03.2018 passed by Commissioner of CGST & Central Excise, Bhubaneswar.)

M/s Brahmani River Pellets Ltd.,
(Kalinga Nagar Industrial Complex, Jajpur Dubri Road,
Danagadi, Dist. Jajpur, Odisha.)

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar.
C. R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

. ...**Respondent(s)**

APPERANCE :
Shri Jananesh Mohanty & Ms. Shreya Mundra, both Advocates for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No……77209/2023

DATE OF HEARING : 26.09.2023
DATE OF DECISION : 26.09.2023

PER K. ANPAZHAKAN :

M/s Brahmani River Pellets Ltd.(The Appellant),Jajpur, have availed and utilized Cenvat Credit amounting to Rs.3,36,16,088/- during the period from April 2012 to March 2017, on the basis of Input Service Distributor (ISD) Invoices issued their by their Corporate Office at Bhubaneshwar, Odisha. The department issued Snow Cause Notice dated 04.05.2017, proposing reversal of the said credit on the ground that the Corporate office has not registered themselves as ISD and distributed the input service credit without having separate registration, as Input Service Distributor. It was also alleged that that the entire input service credit has been distributed by the Bhubaneswar office to the Pellet plant at Jajpur, whereas the credit was required to be distributed to both the plants i.e., the Beneficiation Plant at Barbil and the Pellet Plant at Jajpur, on pro-rata basis, on the basis of turnover of the respective units. The Notice was adjudicated by the Commissioner vide impugned Order-in-Original dated 30.03.2018, wherein he confirmed the demand of Cenvat credit amounting to Rs.3,36,16,088/- wrongly availed and utilized by the Appellant along with interest. Penalty equal to the irregular credit confirmed was also imposed under Rule 15 of CCR, 2004 read with Section 11AC of the Central Excise Act, 1944. Cenvat credit of Rs.2,15,14,305/- reversed by the Appellant was also appropriated against the confirmed demand. Aggrieved against the impugned order, the Appellant has filed the present appeal.

2. In their submissions, the Appellant contended that the Ld. Commissioner vide para 5.9 of the impugned order, relying upon the **CBEC Circular No.1063/2018-CX dt.16.02.2018**, has categorically held that **"Noticee is allowed the input service credit availed in the invoices issued by BRPL-Bhubaneswar"**. However, despite the above categorical findings, he has disallowed the entire amount of credit of Rs.3,36,16,088.00 holding that in terms of Rule 7(d) of the CCR, 2004, the amount of input service credit was required to be distributed to both the units at Barbil and Jajpur, on pro-rata basis.

3. The appellant submits that its Barbil unit is a captive plant manufacturing iron ore concentrate which are exclusively meant for captive use by the Appellant's Jajpur plant, for manufacture of final product i.e., Iron Oxide Pellets, which is cleared on payment of duty to various customers in the domestic market as well as export. Since, the concentrates produced at Barbil plant are not sold to outside customers there is no turnover of the said unit, requiring pro-rata distribution as per Clause (d) of Rule-7 of the CCR, 2004.

4. The Appellant stated that the alleged violation of Rule-7 of Cenvat Credit Rules,2004 was nothing more than a mere procedural lapse. Further, Rule-7 was amended from time to time. For instance, Clause (d) of Rule-7 was incorporated for the first time, vide Notification No.18/2012-CE (NT) dt.17.03.2012. The expression used in the main clause was that the ISD 'may' distribute the Cenvat Credit in respect of service tax paid on the input service to its manufacturing units. Further,

by way of amendment made to Rule-7 by virtue of Notification No.13/2016-CE (NT) dt.01.03.2016, effective from 01.04.2016, the expression 'may' was substituted as 'shall'. Thus, there was no requirement of compulsory distribution of the credit on pro-rata basis prior to 01.04.2016. Thus, they contended that there was no irregularity in the distribution of the credit to one unit.

5. The Appellant further submits that in the present case, there is no dispute about invoices raised by the ISD. Rule-7 of the CCR is only a procedural requirement. In view of the decision of Hon'ble Gujarat High Court in the case of CCE Vs. Dashion Ltd., reported in 2016 (41) STR-884 (Guj) mere procedural lapses cannot be a ground to deny substantial benefit of cenvat credit. Procedural irregularities ought to be ignored where there was no apparent loss to revenue or any apparent benefit to the Appellant. Thus, demand for extended as well as normal period of limitation is not sustainable.

6. The Appellant cited the decision of the Hon'ble Supreme Court in the case of CCE Vs. Dai IchiKarkaria Ltd. reported in 1999 (112) ELT-353 (SC), and contended that Cenvat credit validity taken is indefeasible. Therefore, demand of Cenvat credit amounting to Rs.3,36,16,088/- along with levy of interest and imposition of penalty is completely against the spirit of Cenvat legislation. Accordingly, they prayed for setting aside the demands confirmed in the impugned order and allowing their appeal.

7. The Ld. A.R. submitted that as per Clause (d) of Rule 7 of Cenvat Credit Rules 2004, credit availed by the Head Office has to be distributed on pro-rata basis, on the basis of turnover of the respective units. Accordingly he stated that there is no infirmity in the impugned order, confirming the demands.

8. Heard both sides and perused the appeal records.

9. The issue involved in the present appeal is regarding admissibility of input service credit, received at the Appellant's corporate office and distributed to the pellet plant at Jajpur, for utilization towards payment of central excise duty. In the impugned order, it is alleged that the corporate office of the Appellant has not registered themselves as ISD and distributed the input service credit without having separate

registration, as Input Service Distributor. It was also alleged that that the entire input service credit has been distributed by the Bhubaneswar office to the Pellet plant at Jajpur, whereas the credit was required to be distributed to both the plants i.e., the Beneficiation Plant at Barbil and the Pellet Plant at Jajpur, on pro-rata basis, on the basis of turnover of the respective units.

10. We observe that in the present case, there is no dispute about the eligibility of the credit. The Corporate office has rightly availed the credit. Distribution of credit is only a procedural aspect, which cannot be a ground for denial of the credit. Procedural irregularities ought to be ignored where there was no apparent loss to revenue or any apparent benefit to the Appellant. Accordingly, we hold that the denial of credit on the ground of non registration of the Corporate office as 'ISD' is not sustainable. We observe that this view has been held by the Hon'ble Gujarat High Court in the case of CCE Vs. Dashion Ltd., reported in 2016 (41) STR-884 (Guj), the relevant part of the 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."*

11. Another ground raised in the impugned order for denial of credit is that the corporate office of the Appellant has transferred the entire credit to one unit instead of distributing it proportionately on the basis of turnover of their respective units. We observe that Clause (d) of

Rule-7 mandating distribution on pro rata basis was incorporated for the first time, vide Notification No.18/2012-CE (NT) dt.17.03.2012. The expression used in the main clause was that the ISD 'may' distribute the Cenvat Credit in respect of service tax paid on the input service to its manufacturing units. Further, by way of amendment made to Rule-7 by virtue of Notification No.13/2016-CE (NT) dt.01.03.2016, effective from 01.04.2016, the expression 'may' was substituted as 'shall'. Thus, there was no requirement of compulsory distribution of the credit on pro-rata basis prior to 01.04.2016. Thus, we hold that there was no irregularity in the distribution of the credit by the Corporate office to one unit. This view has been held by the Hon'ble Bombay High Court in the case of Oerlikon Balzers Coating India Pvt. Ltd. Vs Commissioner of C.T, , Pune-I, reported in 2019(336) ELT 624 (Bom). The relevant part of the decision is reproduced below:

> ***"8.*** *It would be appropriate that we reproduce Rule 7 as existing prior to 2012 and post 2012 which is as under :-*
>
> ***Rule 7 as Existing Prior to 2012 :-***
>
> ***RULE 7. Manner of distribution of credit by input service distributor -*** *The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely :*
>
> *(a) The credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon; or*
>
> *(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.*
>
> ***Rule 7 Post 2012 -*** *amendment*
>
> ***RULE 7. Manner of distribution of credit by input service distributor -*** *The input service distributor may distribute the Cenvat credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the following condition, namely :-*
>
> *(a) The credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon; or*
>
> *(b) credit of service tax attributable to service used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;*

> *(c) credit of service tax attributable to service used wholly in a unit shall be distributed to the unit; and*
>
> *(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rate on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.*
>
> ***9.** From reading of the above Rules both pre and post amendment, it would be noticed that both provisions give an option to the assessee concerned whether to distribute input services tax available to it amongst its other manufacturing units which are providing output services. This is evident from the use of word "may distribute the Cenvat credit" is found in Rule 7 both prior and also post 2012. Thus, from the reading of the Rules, the option was available to the assessee whether to distribute the Cenvat credit or not. In fact, our attention is invited to Rule 7 of the Cenvat Credit Rules, 2004 as substituted w.e.f. 1-4-2016 which has made it mandatory for distribution of input services to the various units providing output services. This is evidence by the use of words "shall distribute the Cenvat credit" in the substituted Rule 7 as Cenvat Credit Rules 2004 w.e.f. 1-4-2016. Therefore, on plain reading of Rule 7 as existing both pre and post amendment 2012 covering period involved in these proceedings, the respondent - assessee was entitled to utilize the Cenvat credit available at its Pune unit."*

12. On the basis of the decisions cited above, we hold that the Cenvat credit availed by the Appellant on the basis of the invoices issued by the Corporate office cannot be denied. Accordingly, we hold that the demand confirmed in the impugned order is not sustainable. Since the demand itself is not sustainable, the question of demanding interest and imposing penalty does not arise.

13. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant, with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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

Tushar