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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76265 of 2017

(Arising out of Order-in-Original No. 09/Commr Audit/CEX/RKL/2016-17 dated 30.03.2017 passed by the Commissioner, Central Excise, Customs and Service Tax, Audit Commissionerate, Rajaswa Vihar, Bhubaneswar - 751 007)

M/s. Ultra Tech Cement Limited **: Appellant**
Near Dhutra Railway Station,
P.O.: Arda, District: Jharsuguda,
Odisha – 768 202

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Audit Commissionerate,
Rajaswa Vihar, Bhubaneswar – 751 007

AND

Excise Appeal No. 76146 of 2019

(Arising out of Order-in-Original No. 06/CCE/CEX/RKL/2018-19 dated 31.01.2019 passed by the Principal Commissioner, G.S.T. & C.X. Commissionerate, Rourkela, KK-42, Civil Township, Rourkela – 769 004)

M/s. Ultra Tech Cement Limited **: Appellant**
Near Dhutra Railway Station,
P.O.: Arda, District: Jharsuguda,
Odisha – 768 202

VERSUS

Principal Commissioner, G.S.T. and C.X., **: Respondent**
Rourkela, KK-42, Civil Township,
Rourkela – 769 004

APPEARANCE:

Shri Rahul Tangri, Advocate for the Appellant

Shri S. Dey, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75519-75520 / 2025

DATE OF HEARING / DECISION: 13.02.2025

ORDER: [PER SHRI ASHOK JINDAL]

Both the appeals are having an identical issue and therefore, both are taken up together for disposal.

2. The facts of the case are as under: -

(i) M/s. Ultratech Cement Ltd., Jharsuguda Cement Works ('Appellant') is engaged in the manufacture of cement and clinker. Accordingly, during the underlying period, the Appellant held excise registration and paid the applicable excise duty on clearance of cement in cash and by utilizing eligible CENVAT credit in accordance with the CENVAT Credit Rules, 2004 ('CCR, 2004').

(ii) The appellant-company has a head office, central marketing office and an east zonal marketing office, for which registration as Input Service Distributors ('ISD') was obtained under Rule 2(m) of CCR, 2004. The head office and the central marketing office were common to all units of the Appellant Company located in India, whereas the east zonal marketing unit was directly related to few units located in the eastern zone of India. Being registered as ISDs, all such offices distributed the CENVAT Credit of the common input services (advertisement, legal, event, courier, C&F, audit, rent, telecommunication, repairs, tours, etc.) to the concerned units of the appellant-company in accordance with the applicable rules of CCR, 2004.

(iii) Further, the east zonal marketing office was also registered under the Finance Act, 1994 as a recipient of Goods Transport Agency ('GTA') services, discharging service tax thereon under reverse charge mechanism and distributing the credit thereof through ISD.

(iv) On the basis of EA-2000 audit of the Appellant's records conducted, the Department issued the underlying Show Cause Notices on a periodic basis proposing to deny CENVAT Credit availed by the appellant during the underlying period based on the ISD invoices issued by the ISDs, along with interest and equivalent penalty based on the following allegations:

a. The freight expenses have been incurred for transportation of finished goods from the factory date to customer's premises, which has no relationship with the manufacturing activity and have been received beyond the place of removal i.e., factory gate. Therefore, the GTA services do not qualify as 'input services'.

b. The other services have no nexus with the manufacturing activity since such services were not received by the Appellant, but by the other offices in Kolkata.

c. The Appellant did not disclose the details of the input services wise credit in the ER1 return, thus suppressing the fact of availment of such incorrect CENVAT Credit.

(v) The Appellant filed detailed replies to the underlying SCNs and reiterated such submissions at the time of the personal hearing to substantiate the eligibility of CENVAT Credit of all such services.

(vi) However, without considering such replies, the Ld. Commissioner issued the impugned orders to confirm the proposed demand based on the following findings:

a. The GTA services are availed for transportation of finished goods from the factory gate to customer's premise has no relationship with the manufacturing activity and have been received beyond the place of removal i.e., factory gate. This is because, the goods were transported at the carrier's risk and not at the risk of the Appellant.

b. The Clearing & Forwarding Agents' services are also received beyond the place of removal and hence, do not qualify as 'input services'.

c. The other services are not received at the factory premise of the Appellant, but at the head office of the Appellant Company. Hence, such services lack integral connection with the manufacturing business of the Appellant.

3. Aggrieved by the impugned orders, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that the issue regarding eligibility of CENVAT Credit on GTA services received by an assessee for transportation of goods on FOR basis till the customer's place, is no longer res integra being covered by the decision of the Larger Bench of the Tribunal in the case of *M/s. The Ramco Cements Ltd. v. Commissioner of C.Ex., Puducherry [2023 (12) TMI 1332 – CESTAT, Chennai (LB)]*. He also cited the following decisions in support: -

i. *Bharat Fritz Werner Ltd. & Ors. v. Commr. of Central Tax, Bangalore [2022 (7) TMI 352-Karnataka High Court]*

ii. *Ultratech Cement Ltd. v. CCE, Kutch (Gandhidham) [2019 (2) TMI 1487-CESTAT Ahmedabad] as affirmed in 2020 (3) TMI 1206-Gujarat High Court*

iii. *ACC Ltd. v. Commr. of CGST [2025-TIOL-126-CESTAT-DEL]*

iv. *Hindustan Zinc Ltd. v. CCE, Meerut [2023 (11) TMI 299-CESTAT Allahabad]*

v. *Inox Air Products Pvt. Ltd. v. The Asst. Commr. CE & ST, [2024 (4) TMI 32-Himachal Pradesh High Court]*

4.1. He submits that the CENVAT Credit availed on clearing and forwarding agency service is duly eligible to the appellant. To support this contention, reliance is placed on the following decisions: -

i. *CCE v. Cadila Healthcare Ltd. [2013 (30) STR 3 (Guj.)]*

ii. *Nitco Ltd. v. C.C.E. & S.T. Daman [2022 (7) TMI 12-CESTAT Ahmedabad]*

iii. *Ashirvad Pipes Pvt. Ltd. v. CCE, Bangalore [2013 (31) STR 693 (Tri.-Bang.)]*

4.2. The Ld. Counsel for the appellant further submits that the CENVAT Credit for the remaining input services is also eligible to the appellant irrespective of the location where the said services have been received. It is his submission that such services qualify as 'input services' as defined under Rule 2(l) of the CENVAT Credit Rules, 2004, irrespective of whether they have been received inside or outside the factory. To support this contention, he relied upon the following decisions: -

i. *Deepak Fertilizers & Petrochemicals Corpn. Ltd. v. CCE, Belapur [2013 (32) STR 532 (Bom.)]*

ii. *Orient Paper Mills v. CCE & ST, Raipur [2016 (45) STR 178 (Tri. - Del.)]*

4.2.1.The appellant has also made the following submissions in respect of the remaining input services which are mentioned below: -

Input Service	**Eligibility**
Commission Agency Services	Used for procuring orders from the open market, where the agents promote the Appellant's goods to prospective customers by undertaking the required marketing activities [CCE v. Ambika Overseas, 2012 (25) STR 348 (P&H)]
Advertisement & Sponsorship	Used for maximizing sales, publicity, brand building, etc.. [Greaves Cotton Ltd. v. CCE, 2015 (37) STR 395 (T))
Manpower recruitment	Used for employing staff and workers for the essential positions available with the Appellant [HCL Technologies v. CCE, 2014 (40) STR 1124 (1))

Business Support Services	ABMCPL being a group company, provides support services in the areas of consultancy, human resources, legal, management etc. [Hindalco Industries Ltd. v. CCE, Kolkata-II, 2023 (6) TMI 457-CESTAT Kolkata]
Insurance	Used for arranging and providing the statutorily mandatory insurance for workers and employees. [Reliance Industries Ltd. v. CCE, 2015 (38) STR 217)
Godown & Office rent	Rent of premises used for storing the manufactured cement and also for offices wherein the remaining administrative activities of the Appellant company are carried out. [CCE v. Bellsonica Auto Components India, 2015 (40) STR 41 (P&H)
Tour & Travel Services	Used for booking transportation for employees carrying out marketing activities [CCE v. BHPV Ltd., 2016-TIOL-1034-CESTAT-Hyd]
Event Management	Used for organising various company events and meetings for sales promotion JP Morgan Services Ltd. v. CCE., 2016 (42) STR 196 (T)]
Telephone & Internet	Used in the regular course of business by employees for obtaining orders and carrying out administrative activities [Ace Glass Containers v. CCE, 2010 (250) ELT 110 (T) as affirmed in 2014 (34) SRE 805 (Uttar.)]
Courier	Used for sending documents and correspondences in relation to the daily activities to be carried out by the appellant [JSW Steel Limited v. CCE, 2014 (36) STR 801 (T)]

Management Consultancy	Used in relation to liaising another professional work which are used in relation to the manufacturing activity of the Appellant [KPMG v. CCE, 2014 (33) STR 96 (T))
Repair and Maintenance	Used for carrying out repair and maintenance activities of the generator, photocopying machine godown, etc. [KPMG v. CCE, 2014 (33) STR 96 (T)] Banking Financial Services and used in relation to business activities like collection of sales proceeds, export payments, etc. [Lupin Ltd. v. CCE, 2015 (39) STR 249 (T)]
Hotel Services	Used in business tour of marketing staff for promoting sales of the Appellant [IVY Comptech Pvt. Ltd. v. CCE, 2016 (42) STR 66 (T)]
Chartered Accountant	Used for carrying out audit, accounting, consultation on various matters, certification, etc. [Utopia India Pvt. Ltd. v. CCE, 2011 (23) STR 25 (T)]
Legal Services	Used for arranging legal representatives in relation to legal disputes [CCE v. HCL Technologies, 2015 (37) STR 716 (T))
Railway freight	Used for inward transportation of clinker to factory and clearance of cement from the factory to various depots [Classic Enterprises v. CCE & CGST, Alwar, 2019 (7) TMI 760-CESTAT New Delhi

Accordingly, it is submitted that the appellant is also eligible for CENVAT Credit of the remaining input services distributed by the ISDs.

4.3. Moreover, the Ld. Counsel for the appellant points out that proceedings regarding eligibility of CENVAT Credit ought to have been initiated against the ISD. In the present case, proceedings having not been initiated against the ISD, it is contended that the CENVAT Credit availed by the appellant on distribution by the ISD cannot be denied. To support this contention, he has relied on the following case-law : -

i. *Castrol India Ltd. v. CCE, Kolkata-VI [2024 (6) TMI 761 – CESTAT, Kolkata]*

ii. *Indsil Energy Electrochemicals Ltd. v. CCE & ST, Raipur [2016 (9) TMI 944 – CESTAT, New Delhi]*

5. On the other hand, the Ld. Authorised Representative of the Revenue supported the impugned orders.

6. Heard the parties and considered their submissions.

7. We find that the main issue in this case is whether the appellant is entitled to CENVAT Credit in respect of GTA services and clearing and forwarding agency services in case of FOR destination contracts or not.

7.1. The said issue has been examined by this Tribunal in the case of *M/s. The Ramco Cements Ltd. v. Commissioner of C.Ex., Puducherry [2023 (12) TMI 1332 – CESTAT, Chennai (LB)]* wherein it has been observed as under: -

> *"35. In the result, in a case where clearances of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgments of the Supreme Court in Emco and*

> *Roofit Industries, the decision of the Karnataka High Court in Bharat Fritz Werner, and the Circular dated 08.06.2018 of the Board to determine the admissibility of CENVAT credit on the GTA Service upto the place of removal."*

7.2. Therefore, as the issue is no more res integra, we hold that the appellant is entitled for availment of CENVAT Credit on GTA services and clearing and forwarding agency service in case the good are sold on FOR basis. Accordingly, the CENVAT Credit cannot be denied.

8. We further take note of the fact that the appellant has availed CENVAT Credit on the basis of invoices issued by their ISD and admittedly, no proceedings had been initiated against the ISD. In these circumstances, the CENVAT Credit availed at the end of the appellant cannot be denied, as held by this Tribunal in the case of *Indsil Energy Electrochemicals Ltd. v. Commissioner of C.Ex. and S.Tax, Raipur [2016 (9) TMI 944 – CESTAT, New Delhi] (Final Order No. 53555 of 2016 dated 12.09.2016 in Excise Appeal No. 52453 of 2016 – CESTAT, New Delhi].* The relevant observations made by the Tribunal in the above case are reproduced below: -

> *"5. From the appeal records, I find that the appellant has submitted copies of the ISD invoices on the basis of which they have availed the Cenvat credit on various services. I also find that copies of these invoices were also submitted before the First Appellate Authority. However, I find that no specific findings has been recorded by the Commissioner (Appeals) on this important issue. From the perusal of some of these sample invoices, I find that the credit on various services such as CHA, handling*

charges, insurance etc. have been availed for export of goods at the port of export. The credit for these services stand availed at the hands of the input service distributor. In the decision of the Tribunal in the case of United Phosphorus Ltd. vs. CCE, Surat II (supra) it stands decided that Revenue ought to have initiated proceedings against the input service distributor for availing Cenvat credits which are not covered under the definition of input services and not against the assessee availing the credit on the basis of ISD invoices. I reproduce below the relevant portion of the above decision :-

> *"6. In our considered view, the head office of the appellant, being a registered ISD is eligible to distribute service tax credit to any of their units/factory. On a specific query from the Bench, learned departmental representative informed that there was no proposal or proposition to issue show-cause notice to the input service distributor for wrong availment of Cenvat credit.*
>
> *7. We find that the view or conclusion arrived at by the lower authority in denying the Cenvat credit is incorrect as there is no dispute of receipt of services. Our views also fortified by the decision of this Bench (supra) [2009 (239) E.L.T. 323 (Tri.-Ahmd.)] wherein this Bench had recorded the following findings :*
>
> *"When we look at the functions of the input service distributor and the documents to be issued by him for passing on the credit, it becomes quite clear that the document issued by him for passing on the credit does not contain the nature of service provided and the details of services. It contains the service provider s details, distributor s details and the*

> *amount. Obviously the eligibility or otherwise of the service tax credit has to be examined at the end of input service distributor only. This is further supported by the fact that both Central Excise assessees and Service Tax assessees are under the regime of self-assessment and therefore it is the assessee himself who has to specify that the credit availed by him is admissible. Therefore the input service distributor cannot say that he is not required to prove the eligibility or otherwise of the service tax credit once at the receiver s end which could be a branch or a factory of the distributor, no details would be available regarding the nature of service. Therefore the preliminary objection raised by the ld. Advocate has to be rejected and it has to be held that it is the responsibility of the jurisdictional officer with whom input service distributor has registered to decide the dispute regarding eligibility or otherwise of the service tax credit that the input service distributor has taken and proposes to pass on to others."*
>
> *8. In view of the foregoing and also on the factual matrix on the merits of the case, we find that the impugned order is unsustainable and is liable to be set aside and we do so. Accordingly, the impugned order is set aside and the appeal is allowed"*

6. From the records, I find that no such proceedings is on record against the ISD. The dispute in the present proceedings has been initiated by the Revenue against the appellant for availing Cenvat credit on the basis of ISD invoices, on the allegations that the services for which such credits have been availed are not covered by the definition of input

> *services. The proper assessee against whom such proceedings, if at all, ought to have been initiated against is the input service distributor. The proceedings for disallowing the credit would have to be set aside."*

8.1. Hence, we observe that the CENVAT Credit in respect of the said input services cannot be denied to the appellant.

9. In view of our above observations, we hold that the appellant had correctly taken CENVAT Credit and the denial of CENVAT Credit is therefore not sustainable. Accordingly, no penalty is imposable on the appellant.

10. In these terms, we set aside the impugned orders and allow the appeals with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd