IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Excise Appeal No.75573 of 2017

[Arising out of Order-in-Original No.DGR/EXCUS/000/Com/018/2016-17 dated 27.12.2016 passed by Commissioner of Customs,Central Excise & Service Tax, Durgapur]

Commissioner of CGST & Central Excise, Durgapur
(Satyajit Roy Sarani, City Centre,Durgapur,Dist.-Burdwan,Pin-713216)

Appellant

VERSUS

M/s Durgapur Steel Plant
(Durgapur, Dist.-Burdwan, Pin-713203)

Respondent

WITH

Excise Appeal No.76344 of 2017

[Arising out of Order-in-Original No.DGR/EXCUS/000/Com/033/2016-17 dated 23.03.2017 passed by Commissioner of Customs,Central Excise & Service Tax, Durgapur]

Commissioner of CGST & Central Excise, Durgapur
(Satyajit Roy Sarani, City Centre,Durgapur,Dist.-Burdwan,Pin-713216)

Appellant

VERSUS

M/s Durgapur Steel Plant
(Durgapur, Dist.-Burdwan, Pin-713203)

Respondent

APPERANCE :
Shri P.Das, Authorized Representative for the Appellant
Dr.Samir Chakraborty, Sr.Advocate & Shri Abhijit Biswas, Advocate for the Respondent

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

FINAL ORDER NO.75625-75626/2025

DATE OF HEARING : 27 FEBRUARY 2025
DATE OF DECISION : 27 FEBRUARY 2025

Per Ashok Jindal :

Both the appeals are having a common issue, therefore, both are disposed off by a common order.

2.1 The facts of the case are that Durgapur Steel Plant, an unit of Steel Authority of India Ltd., is an integrated steel plant, having Central Excise Registration Certificate bearing No. AAAC57062FXM018/019/020, for manufacture of various iron, steel and allied products falling under Chapter 72, 73, 74, 86 and 27, etc ofthe Central Excise Tariff Act, 1985. Apart from registration under central excise, SAIL DSP is also a registered assessee under service taxprovisions for payment of service tax on various services.

2.2 Apart from the various steel plants and captive mines, the company has extensive marketing network known as Central Marketing Organisation (CMO), spread across the length and breadth of the country. CMO through its Branch Sales Offices and stockyards sells the iron and steel products manufactured from steel plants.

2.3 The company is having its Transport & Shipping Offices (T&S) under CMO. T&S Offices are engaged in the assignment of export of iron and steel products and import of goods like coal and other plants and machineries.

2.4 The company has individual centers handling Research & Development, Engineering & Technology, Environment Management, Coal Supply, Management etc. as well as different Offices situated across the country.

2.5 All these offices are rendering services, which are related to manufacture, sale and distribution of iron &steel products. For example –

(i) CMO is doing the marketing of Iron & steel products for all the steel plants

(ii) Transport & Shipping is importing coal for all the steel plants

(iii) Environment Division is looking after the pollution control norms for all the plants. Without clearance from Pollution Control Board the units cannot even manufacture 1 kg of iron and steel.

(iv) Research & Development is the sense of any manufacturing process.

(v) Management training is also integrally related to manufacturing activity as human resources is the main asset of the organisation, who convert the input materials to marketable products with the help of machines.

2.6 The aforesaid various offices under company avail input services and pay service tax as per the law as applicable. The various offices distribute the credit of service tax portion to steel plants through Service Tax Input Service Distributor's invoices as per Rule 4A of the Service Tax Rule, 1994. The steel plants, including SAIL-DSP avail the cenvat credit on the strength of the Service Tax Input Service Distributors invoices and utilize the cenvat credit towards payment of excise duty.

2.7 The following show cause notices were issued by the jurisdictional Central Excise authorities, which cover the two impugned adjudication orders: -

3.7.1 **First impugned order**

Sl. No.	SCN No. & Date	Period	Service Tax	Edu. Cess	S&H Ed. Cess	Total (in Rs.)
1	55/Commr/ST/Bol/13 dated 29.08.2013	September '12 to March '13	9,14,63,792	18,31,474	9,15,671	9,42,10,937
2	10/Commr/ST/Bol/14 dated 13.02.2014	April '13 to October '13	10,39,26,394	20,78,373	10,51,852	10,70,56,619
3	72/Commr/ST/Bol/14 dated 22.09.2014	November '13 to May '14	10,96,01,541	21,92,011	10,96,041	11,28,89,593
4	26/Commr/DSP/15, dated 28.05.2015	June '14 to February '15	16,16,61,382	32,33,229	16,16,583	16,65,11,194
5	01/Commr/CE/DGP/16-17, dated 01.04.2016	March '15 to December '15	16,83,61,176	17,55,382	8,77,648	17,09,94,206
Total			63,50,14,285	1,10,90,469	55,57,795	**65,16,62,549**

3.7.2 **Second impugned order**

SCN No. & Date	Period	Cenvat duty	Ed. Cess	S&H Ed. Cess	Total
26/Commr/ST/Bol/08 dated 18.06.2008	September 2004 to December, 2007	5,39,44,302	11,39,853	44,151	5,51,28,306
51/Commr/ST/Bol/08 dated 30.12.2008	January 2004 to September, 2007	2,48,59,301	4,97,269	2,68,128	2,56,24,698
31/Commr/ST/Bol/09 dated 09.09.2009	October 2008 to June, 2009	4,46,47,552	8,92,951	4,46,476	4,59,86,979
35/Commr/Bol/10 dated 27.07.2010	July 2009 to May, 2010	6,57,22,909	17,31,940	2,44,705	6,76,99,554
34/Commr/Bol/11 dated 04.05.2011	June 2010 to March, 2011	4,21,02,440	8,35,520	4,17,291	4,33,55,251
11/Commr/Bol/12 dated 07.03.2012	April 2011 to December, 2011	3,78,18,942	7,54,874	3,77,437	3,89,51,253
69/Commr/ST/Bol/12 dated 06.01.2013	January 2012 to August, 2012 corrected by Corrigendum to SCN	1,80,41,203	3,60,523	1,80,142	1,85,81,868
Total		28,71,36,649	62,12,930	19,78,330	**29,53,27,909**

2.8 It was alleged in all the SCNs that SAIL - DSP had contravened the provisions of Rules 2, 3, 4, 7, 9 of the Cenvat Credit Rules and Rule 4A of the Service Tax Rules during the specified periods from April 2004 to December 2015 by irregularly availing cenvat credit,amounting to a total of Rs. 94,69,90,458/-, of the service tax paid on various services like Telephone Service, GTA service, Port service, repair and Maintenance service, service provided by Air Travel Agent, Security service, insurance Service, Consulting Service, Cargo handling, Technical testing and analysis, Advertisement Services etc: received by different offices of SAIL and Bolani Iron Ore Mines and credit which were passed on to SAIL-DSP by the said offices of SAIL and Bolani Ore Mines through ISD invoices issued under Rule 4A of the Service Tax Rules. The Show Cause Notices required SAIL-DSP to show cause to the Commissioner of Central Excise & Service Tax, Bolpur as to why the credits availed should not be disallowed and recovered under Rule 14 of the Cenvat Credit Rules read with Section 11A of the Central Excise Act, 1944, along with appropriate interest under Rule 14 of the Cenvat Credit Rules read with Section 11AB of the C. E. Act. The show cause notices also proposed imposition of penalty under Rule 15 of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act.

2.9 The respondent duly filed its replies to the show cause notices. Thereafter personal hearings were held by the Commissioner in respect of proceedings in respect of 5 show cause notices covering the 1st adjudication order and 7 show cause notices covering the 2nd adjudication order on May 23, 2016 and March 17, 2017 respectively. During the course of such hearings and thereafter, as per requisition of the Commissioner, the respondent submitted further written submissions/ documents, including chartered accountant certificates and clarifications as sought for during the course of personal hearing.

2.10 Upon due consideration of the replies, further replies, written submissions, documents and clarifications submitted by the respondent as stated above, the Commissioner thereafter passed the impugned orders.

2.11 Being aggrieved with the above two review orders, the Revenue has filed the instant appeals.

3. The ld.Sr.Counsel for the respondents, submits that the present issue has already been decided by this Tribunal in the case of Tata Steel Limited Vs. Commissioner of CGST & Central Excise, Jamshedpur reported in 2024 (10) TMI 50-CESTAT-Kolkata. Therefore, the impugned orders are not sustainable.

4. On the other hand, the ld.A.R. for the Revenue, supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the short issue involved in the matter is whether the cenvat credit availed by the respondent, which has been distributed by the input service distributor as an ISD and the availment of cenvat credit by the respondent, which has been disputed at the end of ISD, where the cenvat credit is available to the respondent or not ?

7. The identical issue has been dealt with by this Tribunal in the case of Tata Steel Limited (supra), wherein this Tribunal has observed as under :

"8. We find that the short issue involved in the matter is whether the CENVAT Credit availed by the appellant on intellectual property service can be denied, when the Input Service Distributor (ISD) i.e., TSL, Kolkata has availed CENVAT Credit and distributed the credit to the appellant as an ISD and the availment of CENVAT Credit at the end of TSL, Kolkata has not been disputed by the Revenue, or not.

9. We find that the said issue was dealt with by this Tribunal in the case of M/s. Nalco Water India Ltd. (supra) wherein this Tribunal has held as under: -

"10. Further, we find that all the services in question, on which the Head Office has availed cenvat credit and distributed to the appellants in proportionate in terms of Rule 7 of the Cenvat Credit Rules, 2004, the cenvat credit cannot be denied to the appellant as held by this Tribunal in the case of Balkrishna Industries Limited (supra), wherein this Tribunal has held as under :

"4. From the facts, it emerges that appellant is having its office in Mumbai and as per definition of 'input services' distributor as per Rule 2(m) which is reproduced herein as under : "(m) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be."

5. From the above provision, it is coming out that the inputs service distributor is the office of manufacturer or producer of final product. Therefore, it cannot be said that input service distributor is not the manufacturer. It merely means office of the manufacturer and as per Rule 7 of the Cenvat Credit Rules which provides manner of distribution of Cenvat credit which is reproduced hereunder as :

"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 conditions, 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." Therefore, only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of service tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services."

6. There is no allegation against the appellant that the provisions of Rule 7 has been violated. Further, I find that issue came up before this Tribunal in the case of ECOF Industries Pvt. Ltd. [2010 (17) S.T.R. 515 (Tri.-Bang.)] wherein this Tribunal relied on paras 5 and 8 which is reproduced hereunder :

5. After hearing both sides, we find that the Rule 3 merely says that a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit of any input services received by the manufacturer of such final product or provider of output services. The availability of credit therefore is related to the manufacturer of goods or provider of output services as a whole and not restricted to any particular unit of the manufacturer/service provider.

8. The combined reading of the Rule 7 and the clarificatory Circular dated 23-8-2007 clearly shows that there are only two restrictions regarding the distribution of the credit. The first restriction is that the credit should not exceed the amount of

Service Tax paid. The second restriction is that the credit should not be attributable to services used in manufacture of exempted goods or providing of exempted services. There are no other restrictions under the rules. The restrictions sought to be applied by the Department in this case in limiting the distribution of the Service Tax credit made in respect of the Malur Unit on the ground that the services were used in respect of the Cuttack Unit finds no mention in the relevant rules. As such, restricting the distribution of Service Tax credit in a manner as has been done by the impugned order of the lower appellate authority (original authority had approved of such distribution) cannot be upheld. In case the Department wants to place such restriction as is sought to be placed in the case, the rule is required to be amended.

Said order was challenged by the Revenue before the Hon'ble High Court of Karnataka as reported in [2011 (271) E.L.T. 58 (Kar.)] wherein the Hon'ble High Court has observed as under :

8. It is in this context, the definition of input service distributor makes it clear that a manufacturer or a producer of a final product or a provider of output service may have more than one unit and may be distributed in various parts of the country. It is in this background the definition of service distributor is defined as office of the manufacturer or producer of a final product or provider of output service which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. Therefore, the law mandates that the manufacturer who wants to avail the benefit of this service tax if he has more than one unit he should also get registered himself as a service provider and then, he would be able to collect all the input service tax *paid in all its units and accumulate them at its head office and distribute the said credit to its various units. At the time of distribution, the manner of distribution is provided in Rule 7 which reads as under : -*

"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 conditions, 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." Therefore, only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of service tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services."

7. As the services has been availed at the head office and same is a part of the appellant itself as a manufacturer. Therefore, I hold that appellant has availed the input service credit correctly. Consequently, the impugned order is set aside. Appeal is allowed with consequential relief, if any."

11. Further, in the case of Nestle India Limited (supra), this Tribunal again has examined the issue and has observed as under :

"4. I have carefully considered the submissions made by both the sides, I find that the fact is not under dispute that though input service on which the credit was disputed was not used in the factory of the appellant but it is related to the product Nescafe and Maggie Noodles which are manufactured in the

appellant company's different factory. As regards the provision for distribution of the credit, there is no condition of one-to-one correlation between the credit distributed and the quantum of service received and used by a particular factory. Though the service is related to the product which is manufactured in the appellant's company in other factories. But all the factories belonging to one company and in the absence of any provision of one-toone correlation the credit can be distributed to any factory of one company. This issue has been considered by the Hon'ble Karnataka High Court in the case of Ecof Industries Pvt. Ltd. (supra) wherein it was held as under :

4. The assessee had availed the Service Tax credit based on the invoices issued by the Chennai office indicating that the Service Tax are taken by their unit at Malur. That the Service Tax paid by the Chennai unit pertains to advertisement of their product 'Sabena Dish Wash Bar' which was manufactured by their Cuttack Unit and not by the unit at Malur. Therefore, the assessee was dealing with the very same product. Rule 7 of the Cenvat Credit Rules governs procedure/manner of distribution of credit by input service distributor by imposing two conditions therein, which are as follows :

"a. Credit distributed under the invoice of ISD does not exceed the amount of Service Tax paid.

b. Credit of service exclusively used for exempted goods or exempt service is not distributed."

5. Therefore, the assessee is entitled to distribute the Cenvat credit on the input services on its manufacturing unit or other units providing the output services. The view taken in the order-in-appeal that the distribution of credit is for the advertisement of the product, which is not at all manufactured at Malur unit, therefore, cannot be accepted. The finding recorded by the Appellate Authority that the assessee is entitled to take credit only in the unit where the product is *manufactured, is therefore not the mandate of Rule 7 of the Cenvat Credit Rules.*

6. Under these circumstances, we confirm the view taken by the Tribunal. We do not see any substantial question of law that arises for consideration in this appeal. Accordingly, the appeal, being devoid of merits, is dismissed.

In view of the above judgment even though the service is not used in the appellant factory, but received and used in different factory of the same company, credit cannot be denied. Following the ratio of the above decision and the discussion made hereinabove, I am of the considered view that the appellant is legally entitled for the Cenvat credit. The impugned order is set aside, the appeal is allowed."

12. In view of the above discussions, as it has not been questioned that ISD has taken inadmissible cenvat credit, in that circumstances, the cenvat credit cannot be recovered from the appellants holding that the appellant has availed inadmissible cenvat credit. In fact, the appellant has availed cenvat credit on the invoices issued by ISD under Rule 7 of the Cenvat Credit Rules, 2004, which is eligible to avail the cenvat credit under Rule 9 of the Cenvat Credit Rules, 2004.

13. Therefore, we do not find any merit in the impugned orders and the same are set aside.

14. In the result, the appeals are allowed with consequential relief, if any."

9.1. As it is an admitted fact that the availment of CENVAT Credit on intellectual property service was not disputed at the end of the ISD/TSL, Kolkata, the CENVAT Credit cannot be declared as inadmissible CENVAT Credit to the appellant who has taken the CENVAT Credit on the strength of the invoices issued by the ISD. In these circumstances, we hold that the appellant is entitled to take CENVAT Credit and accordingly, there is no requirement of reversal of CENVAT Credit by the appellant.

9.2. Therefore, the impugned order deserves no merit and thus, the same is set aside."

8. In view of the above, we find that as the distribution of cenvat credit to the respondent has not been disputed by the Revenue at the end of the Input Service Distributor, in that circumstances, it cannot be disputed at the end of the availment of cenvat credit by the respondent.

9. In view of this, we do not find any infirmity with the impugned orders and any merits in the appeals filed by the Revenue, accordingly, the same are dismissed.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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