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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75477 of 2016

(Arising out of Order-in-Original No. 39/Commr/ST-II/Kol/2015-16 dated 25.01.2016 passed by the Commissioner of Service Tax Service Tax-II Commissionerate Kendriya Utpad Shulk Bhawan 180, Rajdanga Main Road, Shantipally Kolkata 700107)

M/s. Exide Industries Ltd. **: Appellant**
59E, Exide House, Lajputrai Sarani,
Kolkata-700020

VERSUS

Commissioner of Service Tax, Kolkata-II **: Respondent**
Kendriya Utpad Shulk Bhawan 180,
Rajdanga Main Road, Shantipally Kolkata 700107

APPEARANCE:

Shri Deepro Sen, Advocate
Shri Shovit Batel, Advocate for the Appellant

Shri D. Sue, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.77033/2025

DATE OF HEARING / DECISION: 23.07.2025

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 39/Commr/ST-II/Kol/2015-16 dated 25.01.2016 passed by the Commissioner of Service Tax Service Tax-II Commissionerate Kendriya Utpad Shulk Bhawan 180, Rajdanga Main Road, Shantipally Kolkata**,** wherein the Ld. Commissioner has confirmed the demand of duty of Rs. 4,71,91,255/- along with interest. Penalty of Rs. 4,77,50,041/- has also been imposed.

2. The facts of the case are that M/s. Exide Industries Ltd.(herein after referred as the

appellant) is the head office of the Company, and registered with the department as an Input Service Distributor (ISD) for the purpose of distributing CENVAT credit.

2.1. During the course of audit of the records of the Appellant, the following discrepancies were noticed:

Sl. No.	**Issue**	**Amount in Dispute (Rs.)**
1.	Short payment of service tax due to incorrect deduction of R&D Cess from taxable value	5,58,786
2.	Short payment of service tax under RCM on GTA for the period 2010-11 and 2011-12	33,419
3.	CENVAT credit on ineligible invoice [Appellant Company had total 5 ISD registrations. Each registration accumulated and distributed credit region wise. HO located in Eastern region distributed the credit on the invoices addressed to ISD registrations located in other than east zone]	4,71,71,118
	TOTAL	**4,77,63,323**

2.2. After being pointed out, the Appellant rectified the following mistakes:

- Service tax of Rs. 5,58,786/- short paid was paid on 30-07-2014 along with appropriate interest,
- Out of alleged Rs. 33,419/- proposed by the department, an amount of Rs. 771/- on GTA services pertaining to the period FY 10-11 was accepted and paid on 07-07-2014 along with appropriate interest.

2.3. Subsequently a SCN dated 20-10-2014 was issued demanding entire Rs.4,77,63,323/- on all the three issues raised in the audit.

3. In respect of the demand of Rs.4,71,71,118/-confirmed in the impugned order, the appellant submits that they have correctly distributed the credit as ISD and there is no contravention of Rule 7 of the Cenvat Credit Rules, 2004. They had 5 ISD registrations in the country. One at the Head Office ('HO') and rest are located across 4 regional offices of the Appellant in 4 zones/regions of the country, South, East, West and North. Such ISD registrations primarily function region wise for ease of operations. For example: ISD located in Northern region primarily used to accumulate CENVAT credit on invoices raised on it by various suppliers in such region and distributed such credit to manufacturing units PAN India.

3.1. The finding of the adjudicating authority for denial of credit in the present case is that the Head Office is located in the Eastern Zone has availed and distributed CENVAT Credit on invoices not addressed to it but addressed to other ISD registrations of the Appellant. In this regard, the appellant submits that the disputed credit pertains to Advertising and

Publicity (85%), Computer Networking (6%), quality control and training (2%) and misc. services (3%). In order to have effective control over the major expenses of the Company like advertising and publicity, computer networking etc., the Appellant Company had internal policy to process these bills for payment directly from the HO. Accordingly, the disputed invoices in original were made available at the HO and payment was made. Further, the services are common input services for all the manufacturing unit of the Appellant being advertising and publicity, computer networking, quality control training having pan-India implication and thus there was no bar for distribution of credit by the Appellant.

3.2. The appellant submits that Section 2(m) of the CENVAT Credit Rules, 2004 defines the term ISD as an office of the manufacturer or producer of final products which receives invoices towards purchase of input service and issue challan to distribute service tax paid on such services to the manufacturer or producer of output service. Rule 7 of the CENVAT Credit Rules, 2004 provides the manner for distribution of credit by an ISD. The impugned order has denied the credit already distributed by the Appellant on the ground that the invoices do not pertain to the jurisdiction of the East Zone. In this regard, the Appellant submits that there is no territorial restriction placed upon the Appellant by the law. Therefore, availment and distribution of credit by an ISD is not limited to a territorial jurisdiction. In any case, the HO ISD had no jurisdictional limitation of regarding availment of credit only on invoices pertaining to East Zone. For East Zone, there was a separate ISD registration. Therefore, the understanding of the department regarding the practice of the Appellant for distribution of credit is not correct. Therefore, the basis of confirmation of demand is erroneous.

3.3. The appellant further submits that after making payment of the invoices from the HO, if such invoices were sent to the respective ISD registrations to whom the invoices are addressed to, then the disputed credit would have been distributed from the other ISD registrations in the same manner to the same locations as has been presently done. Therefore, the entire exercise is revenue neutral. Reliance is placed on the following rulings wherein it has been held that when situation is revenue neutral demand is not sustainable:

- *Hindalco Industries Ltd. vs. Commissioner of Central Excise, Bhubaneswar-II – 2023 (5) TMI 720 – CESTAT Kolkata,*
- *Commissioner, Central Tax, Pune-I Commissionerate vs. M/s. Oerlikon Balzers Coating India P. Ltd., 2019 (366) E.L.T. 624 (Bom.)*

3.4. In the instant case, there is no allegation against the Appellant that there has been double distribution of credit i.e., same credit has been taken twice (by HO ISD as well as concerned ISD to whom invoice is addressed). In such circumstances, the instant demand has no legs to stand since there is no allegation that the credit has been incorrectly distributed in contravention of rule 7 of the credit rules.

3.5. The appellant submitted that availment of CENVAT credit based on invoices addressed to other ISD registration of the Company is a mere procedural infirmity on which substantive benefit of CENVAT credit cannot be denied.

3.6. The appellant further submitted that as per Rule 9(2) of the CENVAT Credit Rules, 2004, address of the recipient of goods/services is not a mandatory requirement, hence CENVAT credit cannot be denied on this ground alone. In this regard, reliance is placed on the following rulings:

- *Novozymes South Asia Pvt Ltd vs. Commissioner of C. Ex., Bangalore, 2015 (38) STR 204 (Tri-Bang.*
- *M/s. National Engineering Industries Limited vs. Commissioner of CGST & Central Excise, Jaipur, 2024 (8) TMI 1100 – CESTAT New Delhi*

3.7. Therefore, the appellant submits that infarction, if any, is at the best a procedural infarction and the substantive right cannot be rejected on this ground.

3.8. When receipt and use of input service is not denied, CENVAT credit should not be denied. It has not been alleged by the department that the Appellant HO had violated Rule 7 of the CENVAT Credit Rules, 2004 while distributing the credit. It is submitted that the only restriction imposed on ISD for distribution of CENVAT credit is Rule 7 of the CENVAT Credit Rules, 2004. Reliance in this regard is placed on the following rulings:

- *CCE, Bangalore-I vs. Ecof Industries Pvt Ltd, 2012 (26) S.T.R. 100 (Kar.)*
- *M/s Nalco Water India Limited Versus Commissioner of CGST & Excise, Howrah, 2024 (3) TMI 751 - CESTAT KOLKATA,*

- *Balkrishna Industries Ltd. Versus Commissioner of C. Ex., Jaipur, 2015 (39) S.T.R. 861 (Tri. - Del.)*

3.9. Further, receipt and use of the input services by the units of the Appellant is also not disputed. It is also to be noted that payment of the input service invoices have been made by the Appellant HO which has never been disputed. It is submitted that when the receipt and utilization is not in dispute, CENVAT Credit cannot be denied merely on procedural grounds. Reliance in this regard is placed on the following rulings:

- *M/s. Ripley & Co. Limited Versus Commissioner of Central Excise, Kolkata, 2024 (11) TMI 1131 - CESTAT KOLKATA*
- *CCE, Ahmedabad, vs. Dashion Ltd., 2016 (41) S.T.R. 884 (Guj.),*

3.10. In light of the above, it is submitted that denial of CENVAT credit of Rs. 4,71,71,118 /- cannot be sustained.

4. In respect of the demand of service tax of Rs. 32,648/- confirmed on GTA service, the appellant submitted that there is no short payment since demand has been raised on the basis ledger, which is maintained on accrual basis, but service tax is discharged on payment basis. It was also submitted that the actual difference would be Rs. 13,281/- which was discharged in the subsequent years when actual payment was made. This claim of the appellant was supported by CA certificate. In light of the above and basis the certification submitted by the Appellant, the instant demand of Rs. 20,137/- cannot be sustained. Reliance is placed on *Hero Motocorp Ltd. vs. Commissioner of Customs (Import*

& General), 2014 (302) E.L.T. 501 (Del.) wherein it has been held that CA certification cannot be brushed aside without any contrary evidence.

5. In respect of the admitted demand of Service tax of Rs. 5,58,786/- on R&D Cess and service tax of Rs. 771/- on GTA, the appellant submitted that the said amount has been paid along with appropriate interest prior to issuance of the Show Cause Notice. Hence, the appellant submitted that no penalty imposable as per section 73(3) of the Finance Act, 1994.

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

7. Heard both sides and perused the appeal documents.

8. Regarding the demand of Rs. 4,71,71,118/- confirmed in the impugned order, we observe that the appellant had 5 ISD registrations in the country. One at the Head Office and rest are located across 4 regional offices of the Appellant in 4 zones/regions of the country, South, East, West and North. The impugned order has denied the credit already distributed by the Appellant on the ground that the invoices do not pertain to the jurisdiction of the East Zone. In this regard, we observe that there is no territorial restriction placed upon the Appellant by the law. Therefore, availment and distribution of credit by an ISD is not limited to a territorial jurisdiction. In any case, the HO ISD had no jurisdictional limitation of regarding availment of credit only on invoices pertaining to East Zone. We observe that for East Zone, there was a separate ISD registration, which can distribute the ISD credit. Therefore, we find that the understanding of the

department regarding the practice of the Appellant for distribution of credit is not correct.

8.1. We observe that after making payment of the invoices from the HO, if such invoices were sent to the respective ISD registrations to whom the invoices are addressed to, then the disputed credit would have been distributed from the other ISD registrations in the same manner to the same locations as has been presently done. Therefore, the entire exercise is revenue neutral. In support of this view, we rely on the decision in the case of *Commissioner, Central Tax, Pune-I Commissionerate vs. M/s. Oerlikon Balzers Coating India P. Ltd., 2019 (366) E.L.T. 624 (Bom.),* wherein it has been held that when situation is revenue neutral demand is not sustainable. The relevant part of the said decision is reproduced below:

> *"……………….10. In any event, the Tribunal, on facts found that the entire exercise would be revenue neutral. This is so as the distribution of Cenvat credit to the various units would result lesser service tax being paid by cash on their activity of coating as they would have utilized the Cenvat credit available for distribution.*
>
> *11. In this view of the matter, the question of law as proposed does not give rise to any substantial question of law as the entire exercise would be revenue neutral. Thus, making the entire exercise academic. Therefore, the question is not entertained………"*

8.2. We further observe that availment of CENVAT credit based on invoices addressed to other ISD registration of the Company is a mere procedural infirmity on which substantive benefit of CENVAT credit cannot be denied. We also observe that as per Rule 9(2) of the CENVAT Credit Rules, 2004, address of the recipient of goods/services is not a mandatory requirement, hence CENVAT credit cannot be denied on this procedural ground alone. This view has been held in the case of *Novozymes South Asia Pvt Ltd vs. Commissioner of C. Ex., Bangalore, 2015 (38) STR 204 (Tri-Bang).* The relevant part of the said decision is reproduced below:

> *"6. According to Rule 9(2) of Cenvat Credit Rules, the requirement of name and address of the person receiving taxable service is not a mandatory requirement. I reproduce the relevant portion of the Rule 9(2) to make this clear.*
>
> *"Provided that the said document does not contain all the particulars but contains details of duty or Service Tax payable, description of the goods or taxable service, assessable value, central excise or Service Tax Registration No. of the person issuing the invoices as the case may be, the name and address of the factory or warehouse or premises of first or second stage dealers or provider of taxable service……"*
>
> *From the above, it becomes clear that the name and address of the person receiving the taxable service is not a mandatory requirement."*

8.3. We further observe that when receipt and use of input service are not in dispute CENVAT credit should not be denied. In this case, we find that payment of the input service invoices have been made by the Appellant HO which has never been disputed. Thus, we observe that the receipt and utilisation of the input services by the appellant are not in dispute. Thus, we hold that demand of Rs. 4,71,71,118/-confirmed in the impugned order is legally not sustainable and hence we set aside the same. As the demand is not sustained, the question of demanding interest or imposing penalty does not arise. Accordingly, we set aside the demands of interest and penalty imposed in the impugned order on this count.

9. Regarding the demand of service tax of Rs. 32,648/- confirmed on GTA service, we observe that the demand has been raised on the basis ledger, which is maintained on accrual basis, but service tax is discharged on payment basis. The appellant submitted that the actual difference would be Rs. 13,281/- which was discharged in the subsequent years when actual payment was made. This claim of the appellant was supported by CA certificate. In light of the above and basis the certification submitted by the Appellant, we hold that the demand of Rs. 20,137/- cannot be sustained. In support of this view, we place our reliance in the case of *Hero Motocorp Ltd. vs. Commissioner of Customs (Import & General), 2014 (302) E.L.T. 501 (Del.)* wherein it has been held that CA certification cannot be brushed aside without any contrary evidence. In view of the above findings, we hold that the demand of service tax along with interest and penalty

confirmed on this count is not sustainable and hence we set aside the same.

10. In respect of the admitted demand of Service tax of Rs. 5,58,786/- on R&D Cess and service tax of Rs. 771/- on GTA, we observe that the said amount has been paid along with appropriate interest prior to issuance of the Show Cause Notice. Hence, we hold that no penalty imposable on this amount, as per section 73(3) of the Finance Act, 1994. Accordingly, we set aside the penalty imposed in the impugned order on this count.

11. In view of the above findings, we pass the following order:

(i) We set aside the demand of Rs. 4,71,71,118/- confirmed in the impugned order. We also set aside the demands of interest and penalty imposed in the impugned order on this count.

(ii) We set aside the demand of service tax of Rs. 32,648/- confirmed on GTA service, along with interest and penalty imposed.

(iii) In respect of the admitted demand of Service tax of Rs. 5,58,786/- on R&D Cess and service tax of Rs. 771/- on GTA, we set aside the penalties imposed on this count.

(iv) The appeal filed by the appellant is disposed on these terms.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp