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

COURT No. 2

Excise Appeal No. 78873 of 2018

(Arising out of Order-in-Appeal No.66/KOL-III/2018 dated 16.05.2018 passed by Commissioner of CGST & CX (Appeal-I), Kolkata.)

M/s. Exide Industries Ltd.
(Mr Gourab Ghosh, Head-Accountants
91, New Chord Road, Athpur-743128, North 24 Pgs, W. B.)

Appellant

VERSUS

Commissioner of CGST, CX Kolkata
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Shri Somnath Chakraborty, CA for the Appellant
Shri S. K. Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO. 75232/2026

Date of Hearing : 12th February 2026
Date of Decision: 12th February 2026

PER R. MURALIDHAR

The appellant has taken Cenvat Credit on the imported consignments based on the additional duty of Customs shown in the Bills of Entry. The credits were taken during the period 2007-08 to 2009-10. When audit was taken up subsequently, objections were raised on the ground that in respect of two Bills of Entry, the same were taken based on the photocopy of the manual Bill of Entry. In respect of the three more Bills of Entry, they were not in electronic form and hence the CVD portion shown was very doubted. A Show Cause Notice came to be issued on 18/06/2012 demanding duty of Rs. 31,81,808/-. The Adjudicating Authority after going through the factual details and documentary evidence placed before him, has set aside the demand. Being aggrieved, the Revenue filed their appeal before the

Commissioner (Appeals). The Commissioner (Appeals) has set aside the impugned order and has remanded the matter to the Adjudicating Authority for Denovo Adjudication for fresh verification. Being aggrieved, the appellant has filed the present appeal before the Tribunal.

2. The Ld. Chartered Accountant appearing on behalf of the appellant submits that the verification of the cenvat credit taken on the the Bills of Entry was taken up by the Range Superintendent. After which, he has addressed his letter to the Assistant Commissioner stating that in respect of two Bills of Entry, the assessing officer has clearly remarked that due to system technical problem, manual proceeding was allowed. In respect of three Bills of entry, he has verified the data with the original Bill of Entry and found all the facts to be correct. The Ld. Chartered Accountant submits a copy of this Report to the Range Superintendent. Based on these submissions, he prays that the appeal may be allowed.

3. The Ld. AR reiterates the findings of the Commissioner (Appeals) and submits that matter is required to be remanded to the Adjudicating Authority for proper verification.

4. Heard both sides.

5. The Copy of this Range Supdt’s verification Report is reproduced below:-

... OF THE SUPERINTENDENT OF CENTRAL EXCISE
...NGE-III, BARRACKPORE DIVISION, AT NICCO CORPORATION LTD
...PUR, SHYAMANGAR, 24, PGS(N), PIN -743128

... NO-5/ExciseAudit/R-III/BKP/2003/ Dated

To
The Assistant Commissioner, Central Excise,
Barrackpore Division,
4, Babourne Road, Kol-1.

Sir,

Sub – Co-Ordinated Audit of MLU - DAR No.113/IAD/Gr.-E/ Kol-III/09-10 in respect of M/S. Exide Industries Ltd, Shyamnagar, 24 Pgs.(N) – Decision of the MCM - reg.

Kindly refer to this Office C. even No.526 dated 13/10/10 and No.529 dated 18/10/10 and 736 dated 21/02/2011 and 811 dated 06/04/2011 and 817 dated 12/04/11 regarding ...ification report of the above DAR. The report .in connection with the M.C. Meetting held on 10/05/2011 is given below.

Para-1. The objection is that during the period 2007-08 to 2009-10 (upto January, 2010) the assessee has taken Cenvat Credit on imported raw materials,viz,1) Antimonial Lead,2) Lead(99.59%). 3) Parts of accumulators and 4) Separators based on 5(five) Xerox copies of Bill of Entrie and the amount involved in availment of Cenvat Credit is Rs.31,81,808/- (Basic + Addl duty + Edu. Cess + HES). Now as per Rule 9 of Cenvat Credit Rules,2004 these documents are not admissible for availment of Cenvat Credit.

The verification particulars of the disputed 5 Nos. Bill of Entries are given below.

Bill of Entry No.	Description	CVD	Addl duty	E.Cess	HEC.	Result of verification
1. 359626 Dt.17/08/07	Antimonial Lead	5,86,379/-	1,71688/-	11,728/-	5864/-	Found a Bill of Entry duly attested By the A.O. Custom House, Kolkata with A remark on the bod "Due to system Problem manual Processing may be Allowed"
2. 360220 Dt. 21/08/07	Lead(99.97%)	15,39,100/-	4,50,638/-	30,782/-	15,391/-	Found a Bill of Entry duly attested by the A.O.,Customs House And duly stamped by the Customs Authority with a

TRUE COPY ATTESTED

REKHA TEWARI
NOTARY
C.M.M's Court
Kolkata - 700 001

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						Remark on the Body of the B/ "connection Failed, manual Processing may Allowed.
3. 499855 Dt. 06/05/08	Parts of Accumulators.	77,033/-	25,338/-	1540/-	770/-	Verified with the original copy of Bill of Entry and Found O.K.
4. 411656 Dt.07/05/08	Separators.	72,464/-	23,809/-	1449/-	725	Verified with the original copy of Bill of Entry an Found O.K.
5. 466330 Dt. 21/04/09	- Do-	1,06,227/-	57,697/-	2124/-	1062/-	- Do -

However, from the records it is noticed they have deposited the duty amount in respect of all the Bill of Entries mentioned above to the bank. The total amount of Rs.31,81,808/- in respect of all the Bill of Entries above is found to be correct.

Para - 2 The objection is that H.O./R.O. of the assesee availed Cenvat Credit on Input services (Service Tax),viz, Inward and out ward freight and the said Cenvat Credit on Inward and out ward frieght was availed by their Shyamnagar unit to the tune of Rs.2,80,33,409/- during the period from 2006-07 to 2008-09. The break ups of amount of such credit are as follows.

2006-07 : Rs.98,14,154/-
2007-08 : Rs.98,24,363/-
2008-09 : Rs.83,94,892/-

Total : Rs.2,80,33,409/-

On scrutiny, it is seen that the assessee availed Cenvat Credit of duty on Input Service, viz, Inward and outward freight distributed by their H.O. and four Regional offices. Now, as per Rule 2(m) of Cenvat Credit Rules,204 they are entitled to avail the Credit since their H.O. and Regional offices who duly are registered as ISD as per Rule 4 of Service Tax Rules,1994 and issue invoices as per Rule 4A(2) of Service Tax Rules.1994.The nature of Services are mainly :-

1) Goods Transport Agency.
2) Clearing and Forwarding including Commission Agent

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3) Consultant Engineer
4) Market Research Agency Service
5) Management Consultant.
6) Business Auxiliary Service.
7) Technical Testing & Analysis
8) Intellectual Property Services.

Recently, the Commissioner (Appeal-I), Kolkata under his Order-in-Appeal bearing No. 72/Kol-III/11 dated 01/03/2011 has set aside the Order-in-Original bearing No.26/Addl Commr/CE/Kol-III/09-10 dated 06/05/2009 which confirmed a demand of Rs.15,93,522/-taken by M/S. Exide Industries Ltd, Shyamnagar on Input service, viz. " **Intellectual Property Service"** and **"Management and Consultancy Service"** received from foreign agencies not having Office on India and their H.O. discharged Service charge liability under Sec.66A of Finance Act,1994.The Commnr.(Appeal-I) has opined that tax collected from the recipient in terms of Sec.66A of FA'94 is also Tax chargeable under Sec.66 of FA'94. The CBEC in its Circular No.354/148/2009-TRU dated 16/07/2009 has clarified that the provisions under Sec.66A state in case service is provided from abroad and received in India, such taxable Service shall be treated ad if the recipient had himself provided the service in India. The charging Sec remains Sec.66 even for the Service imported. In other words, the tax collected from the recipient in terms of Sec.66A is also tax chargeable under sec.66 of FA'94

Further, C.B.E.C under it's Circular No.97/8/2007-S.T. dated 23-8-2007 clarified that in case of inward transportation of inputs or capital goods, goods transport service(being specially mentioned under the definition of input service) would qualify to be called as "input service" and thus the service tax paid on it would be eligible as credit to the receiver if he is either a manufacturer of excisable goods or a provider of taxable service

The above position is seen in some of the ST-3 Returns submitted by their H.O. Since the assessee have not submitted other documents apportioning the impugned amount in spite of several letters issued so far and since the verification of the documents relating to the past three years are voluminous, this range is facing problem to go through every datails of the Invoices issued by H.O. and four R.Os. with the meagre manpower. On the other hand, the issue relating to the period 2006-07 will get time barred on 09/05/2011.

In this connection, it is mentioned that on similar issue, one Show Cause Notice for Rs.8,34,459/- (Basic) + Rs.16,688/- (E. Cess) was issued by the Joint Commissioner, Central Excise, Kol-III Comm'te vide SCN bearing C. No.V(15) 63-CE/Adjn/JC/Kol-III/2009/8709 dated 23/09/2009 and the same was dropped by the J.C., C.Ex. Kol-III since the H.O. of the assessee are entitled to issue invoices as the ISD as per Rule 2(m) of Cenvat Credit Rules,2004, vide O-I-O No.16/Joint Commr./CE/Kol-III/09-10 dt. 17/03/2010.

30/5/11

Superintendent of Central Excise
Range-III, Barrackpore Division.

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6. After going through the Range Superintendent's Verification Report sent to the Assistant Commissioner, I find that there would be no necessity to remand the matter to the Adjudicating Authority. Vide this letter dated 30/05/2011, the Range Superintendent has clearly given his detailed report showing the result of his verification. As per this report, the CVD portion is found to tally with Rs. 31,81,808/-, which is the credit taken by the appellant. There is nothing to indicate that the

Assistant Commissioner, Barrackpur Division has doubted this verification Report. Considering the above evidence brought in before me, I set aside the impugned order and allow the appeal.

7. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja