

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH

Excise Appeal No. 88068 of 2019

[Arising out of Order-in-Appeal No. PVNS/99-101/APPEALS THANE/TH/2019-20 dated 13.08.2019 passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai.]

M/s. ACC Limited

.....Appellant

**Thane Complex, Teen Haath Naka,
L.B.S. Marg, Thane (West),
Maharashtra – 400 604**

VERSUS

**Commissioner of GST & Central Excise,
Appeals - Thane**

.....Respondent

**12th Floor, Lotus Infocenterm,
Near Parel Station,
Narmawala Estate, Mumbai - 400 012**

WITH

Excise Appeal No. 88070 of 2019

[Arising out of Order-in-Appeal No. PVNS/99-101/APPEALS THANE/TH/2019-20 dated 13.08.2019 passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai.]

M/s. ACC Limited

.....Appellant

**Thane Complex, Teen Haath Naka,
L.B.S. Marg, Thane (West),
Maharashtra – 400 604**

VERSUS

**Commissioner of GST & Central Excise,
Appeals - Thane**

.....Respondent

**12th Floor, Lotus Infocenterm,
Near Parel Station,
Narmawala Estate, Mumbai - 400 012**

AND

Excise Appeal No. 88074 of 2019

[Arising out of Order-in-Appeal No. PVNS/99-101/APPEALS THANE/TH/2019-20 dated 13.08.2019 passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai.]

M/s. ACC Limited

.....Appellant

**Thane Complex, Teen Haath Naka,
L.B.S. Marg, Thane (West),
Maharashtra – 400 604**

VERSUS

**Commissioner of GST & Central Excise,
Appeals - Thane
12th Floor, Lotus Infocenterm,
Near Parel Station,
Narmawala Estate, Mumbai - 400 012**

.....Respondent

APPERANCE:

Shri Jitu Motwani, Advocate with
Ms. Anshu Shah, Advocate for the Appellant

Shri Xavier R. Mascarenhas, Superintendent, Authorised Representative
for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 86366-86368/2023

Date of Hearing: 24.07.2023
Date of Decision: 13.09.2023

Confirmation of demand for recovery of CENVAT Credit from Input Service Distributor (ISD) against credits disputed by it to its manufacturing units alongwith interest and penalty under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11 of the Central Excise Act for three different periods by one common Order-in-Appeal passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai is assailed in these three appeals.

2. Facts of the case, in a nutshell, is that Appellant's Thane Office was registered as ISD during the Service Tax regime for its several manufacturing units located Pan India and it is primarily engaged in

manufacturing of Cement and Clinker. Its manufacturing units were selling cement etc. directly to the Customers or through its sister concern M/s. BCCL in which Appellant is having more than 94% of share while Government of India, Ministry of Industries was having balance share. M/s. BCCL namely Bulk Cement Corporation of India Limited is situated in Karnataka state which had been receiving bulk cement and packing the same as well as supplying those to the Customers as per instruction of the Appellant. Appellant was reimbursing Excise duty and other expenses made by M/s. BCCL EA-2000 Audit was conducted and certain credits totalling Rs.39,48,047/- availed by the Appellant were objected by the Auditors. Appellant had accepted part of its objection and reversed credit to the tune of Rs.20,28,904/- alongwith interest but was served with show-cause cum demand notice dated 28.10.2016 for refund of the entire amount with interest and penalties. Common Order-in-Original dated 18.01.2019 was passed confirming demand, proportionate interest, equal penalty, etc. by the Adjudicating Authority. Appellant's appeal before the Commissioner (Appeals) yielded no fruitful result and the said order of rejection has been assailed in this appeal. Period of dispute is from financial year 2010-11 to 2014-15, April, 2015 to June, 2017 and April, 2015 to March, 2016 in respect of distribution of credit to its manufacturing unit at Karnataka and at Chandipur.

3. During course of hearing of the appeals, learned Counsel for the Appellant Mr. Jitu Motwani, with reference to the decision of

Kansai Nerola Paints Ltd. Vs. Commissioner of GST, Mumbai Central [final order No. A/86095-86096/2018 dated 20.04.2018], Mahindra and Mahindra Ltd. Vs. Commissioner of Service Tax, Mumbai [2017-TIOL-2364-CESTAT-Mumbai-Service Tax], Indian Oil Corporation Ltd. Vs. Commissioner of Central Excise, Delhi-II reported in 2014 (10) TMI 729 – CESTAT, New Delhi and other judgements as well as on the Circular issued by the Board of the CBEC on dated 10.03.2014 vide its letter No. 137/68/2013-ST argued that demand against availment of allegedly irregular credit is not maintainable against an ISD, in view of clear provision contained in Rule 14 that permits recovery only against the “person” who has availed credit and ISD being distributor of input service credit to its respective manufacturing units cannot be demanded against the credits which were being availed and utilised by the manufacturing units even in respect of credits which are not admissible. Further, on the merit of the appeal he submitted that the findings of the Commissioner that CENVAT Credit on advertisement services were not admissible since the advertisements were painted on the Wagons or Bulkheads owned by BCCL. Credits on physical stock verification as well as technical testing, analysis, consultation services and tour operator services on the strength of invoices issued to the Appellant or services availed by BCCL can never be denied for the reason that BCCL is part and parcel of Appellant company, in which nearly 95% of the share is that of the Appellant and it works under the control and supervision of Appellant Company. He has relied upon the decision of this Tribunal passed in the case of *Coca Cola India Pvt. Ltd. Vs. Commissioner of Central*

Excise, Pune-III reported in 2009 (242) ELT 168 (Bom.), *Pr. Commissioner of Central Excise, Kolkata-IV Vs. Himadri Speciality Chemical Ltd.* reported in 2022 (66) GSTL 264 (Cal.), *Mclube Asia Pvt. Ltd. Vs. Commissioner of Central Excise & S.T., Nashik* reported in 2020 (37) GSTL 64 (Tri.-Mumbai), *Commissioner of Central Excise, Raigad Vs. Heidelberg, Cement India Ltd.* reported in 2017 (6) GSTL 473 (Tri.-Mumbai), *BS & B Safety System India Ltd. Vs. CCE, Chennai* reported in 2017 (52) STR 174, *Sai Life Science Vs. CCE, Hyderabad* reported in 2017 (51) STR 55 and *Shivraj Cable Network Vs. Commissioner of Central Excise, Raigad* reported in 2015 (39) STR 670 (Tri.-Mumbai) to support his stand on availment of credits on advertisement, technical testing, analysis and consultancy services while he placed heavy reliance on the judgment of this Tribunal passed in the case of *Principal Commissioner Vs. Essar Oil Ltd.* reported in 2016 (41) STR 389 (Guj.) and *Merino Industries Ltd. Vs. Commissioner of Central Excise, Noida* reported in 2020 (37) GSTL 209 (Tri.- All.) on availment of CENVAT Credit on tour operator services. Further, he argued that duty and interest were paid prior to issue of show-cause notice, except illegal portion of demand which is contested herein, for which imposition of penalty impermissible in law as per provision of the Finance Act and the decision of this Tribunal passed in the case of *Commissioner Vs. Rashtriya Ispat Nigam Ltd.* reported in 2004 (163) ELT A53 (SC) and *CCE Vs. Gaurav Mercantiles Ltd.* reported in 2005 (190) ELT 11, and therefore, the order of the Commissioner (Appeals) confirming the demand, interest and penalty etc. is liable to be set aside.

4. In response to such submissions, learned Authorised Representative for the Respondent-Department Mr. Xavier R. Mascarenhas, while supporting the reasoning and rationality of the order passed by the Commissioner (Appeals), has argued that in view of the decision of this Tribunal in *SKF India Ltd. Vs. CCE, Pune-I reported in 2016 STR 737 (Tri.-Mumbai)* and *Clariant Chemicals (I) Ltd. Vs. CCE, Raigad reported in 2015-TIOL-2510-CESTAT-MUM*, no irregularity is said to have been committed in issuing show-cause notice to the input service distributors since in *SKF India Ltd.*, it was clearly held that ISD and factory having located in one and same place with two different registrations, Rule 14 can be invoked against ISD and in *Clariant Chemicals (I) Ltd.*, it was held that show-cause notice issued to the manufacturing unit or to their Head Office will not really make any difference. He further submitted that on inadmissibility of credits no irregularity could be noticeable in the order passed by the Commissioner (Appeals) as he had meticulously examined the documents and opined that credits availed by the Appellants were inadmissible as in some cases invoices were raised in the name of BCCL and in some other cases, credits were availed on services received by the Appellant which did not fall under the definition of Rule 2(I) of the CENVAT Credit Rules, 2004, for which interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. Perused the case record, written submission and compilation of the case laws cited by both the parties and the relevant circular on

the point. Going by the judgments of *Kansai Nerola Paints Ltd.*, *Mahindra and Mahindra Ltd.* *Indian Oil Corporation Ltd.*, all cited supra there can't be any second opinion that Rule 14 of the CENVAT Credit Rules, 2004 can only be made applicable against the manufacturer/service provider or the person who availed the allegedly inadmissible credit and show-cause notice can't be issued against the Input Service Distributor for recovery of CENVAT Credit. Board Circular dated 10.03.2014 re-affirmed the same position and clarified further that show-cause notice can't be issued against ISD under Rule 14 of the CENVAT Credit Rules, 2004. On the relied upon judgments placed by the learned AR for the Respondent-Department namely *SKF India Ltd.* and *Clariant Chemicals (I) Ltd.*, it can be said that while in *SKF India Ltd.*, legality of such notice sent to the manufacturing unit was questioned by the Appellant therein with a suggestion that it should have been served on the ISD and the opinion formed by the Tribunal on this issue was that since both ISD and manufacturing unit are situated in the same locality under the jurisdiction of the same Commissioner, sending notice to the manufacturing unit was not invalid. But, as could be noticed from the written submission made by the Appellant that the said order was challenged before the Hon'ble High Court of Bombay in an appeal that was allowed by way of remand of the matter to the lower forum and, therefore, precedent value of the said order can be considered as lost. Further, placing reliance on the other judgments namely on *Clariant Chemicals (I) Ltd.*, cited supra is a mis-placed proposition for the reason that taking note of the submissions made

by the learned Counsel in para 5.7 of the said order, learned Authorised Representative had led his argument that it was the findings of the Tribunal while the finding of the Tribunal is just the opposite as on the next para, it had been clearly stated that credits wrongly availed by the manufacturing unit was erroneously asked by the Revenue to be paid by the ISD and ultimately they confirmed that the letter of the Board namely CBEC letter/Circular dated 10.03.2014 is not contrary to any decision of the CESTAT and the same is correct as well as in order. I have, therefore, got no hesitation to say that the entire demand raised against the Input Service Distributor is not sustainable in law, besides the fact that in consideration of facts also, basing on the judgments relied upon by the Appellant as referred above, disputed credits under challenge here are all admissible credits. Therefore, in carrying forward the judicial precedent set by this Tribunal, the following order is passed.

THE ORDER

6. The appeals are allowed and the order passed by the Commissioner of GST & Central Excise (Appeals-Thane), Mumbai *vide* Order-in-Appeal No. PVNS/99-101/APPEALS THANE/TH/2019-20 dated 13.08.2019 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 13.09.2023)

(Dr. Suwendu Kumar Pati)
Member (Judicial)

Prasad