

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

REGIONAL BENCH - COURT NO. I

Service Tax Early Hearing Application No. 85595 of 2024

In

Service Tax Appeal No. 86317 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-844/2017-18 dated 07.12.2017 passed by the Commissioner (Appeals-I), Central Tax, Pune)

**Commissioner of CGST & Cental Excise,
Pune-I**

41-A, ICE House, Sasson Road,
Opp Wadia College, Pune- 411 001.

.... Appellant

Versus

Oerlikon Balzars Coating India Pvt. Ltd.

EL-22, J Block, MIDC, Bhosari,
Pune- 411 026.

.... Respondent

APPEARANCE:

Shri S.B.P. Sinha, Authorized Representative for the Appellant

Ms Neha Chakraborty, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86844/2024

Date of Hearing: 22.10.2024

Date of Decision: 22.10.2024

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Applicant-respondent has filed the miscellaneous application, seeking early hearing of appeal on the ground that the issue arising out of the present dispute for the earlier period was resolved by the Tribunal vide Final Order No. A/86758/17/STB dated 29.03.2017,

passed in the case of the respondent herein. It has further been stated that appeal filed by Revenue against such order dated 29.03.2017 was dismissed by the Hon'ble Bombay High Court vide judgment dated 19.12.2018. In view of the fact that the issue arising out of the present dispute has already been dealt with by the Tribunal on earlier occasion, the application filed for out-of-turn hearing by the applicant-respondent is allowed and with the consent of both sides, the appeal is taken up for hearing and disposal today, since the issue lies in a narrow compass.

3. The respondent is, *inter alia*, engaged in providing Contract Coating Services. The respondent provides such services through its branches located at Pune, Gurgaon, Bangalore, Jamshedpur, Chennai and Ahmedabad. The respondent has its head/registered office at Pune, which is registered with the service tax department as a service provider. The respondent discharges appropriate service tax liability on provision of such service. During the disputed period, the respondent had entered into agreement with the foreign principal. In terms of the said agreement, the foreign principal supplies technical know-how, technical information and knowledge etc., for undertaking the coating activity. The respondent pays royalty and technical know-how fees to the foreign principal and being a recipient of service in India, it had paid the service tax for credit into the Central Government account in terms of Section 68(2) of the Finance Act, 1994 read with Rule 2 (1)(d)(iv) of the Service Tax Rules, 1994 under the reversed charge mechanism. The service tax so paid as a recipient of the taxable service, was availed a cenvat credit by the respondent. During the course of audit of books of account, the department had alleged that the respondent was not entitled to avail cenvat credit at Pune unit inasmuch as the input service in question,

was used by all coating centers located at different places. Thus, the department had concluded that since a portion of the input service had been used by the Pune unit, the respondent is not entitled or eligible to avail the entire cenvat credit in terms of Rule 2(I) of the Cenvat Credit Rules, 2004. The show cause notice issued in this regard was adjudicated vide the order-in-original dated 16.03.2017 by the learned Joint Commissioner of Central Excise, Pune-II, in confirming the service tax demand against the respondent. The said order has also imposed penalty on the respondent under various provisions contained in the Finance Act, 1994. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 07.12.2017 has allowed the appeal in favour of the respondent. Feeling aggrieved with the impugned order, Revenue has preferred this appeal before the Tribunal.

4. The period of dispute involved in the present appeal is from April 2014 to January 2015. For the earlier period i.e., from October 2009 to March 2014, the demands confirmed by the department against the respondent itself, on identical set of facts, was appealed against by the respondent before this Tribunal and vide order dated 29.03.2017, the Tribunal has set aside the demand and allowed the appeal in favour of the respondent. We find that appeal filed by Revenue against the said order dated 29.03.2017 of the Tribunal was also dismissed by the Hon'ble Bombay High Court vide judgment dated 19.12.2018. The relevant paragraphs recorded in the said judgement are extracted herein below:

"8. It would be appropriate that we reproduce Rule 7 as existing prior to 2012 and post 2012 which is as under:-

Rule 7 as Existing Prior to 2012:-

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 condition, 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 use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed.

Rule 7 Post 2012- amendment

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 condition, namely :-

(a) The credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon; or

credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed;

(c) credit of service tax attributable to service used wholly in a unit shall be distributed to the unit; and

(d) credit of service tax attributable to service used in more than one unit shall be distributed pro rate on the basis of the turnover during the relevant period of the concerned unit to the sum total of the turnover of all the units to which the service relates during the same period.

9. From reading of the above Rules both pre and post amendment, it would be noticed that both provisions give an option to the assessee concerned whether to distribute input services tax available to it amongst its other manufacturing units which are providing output services. This is evident from the use of word "may distribute the CENVAT credit" is found in Rule 7 both prior and also post 2012. Thus, from the reading of the Rules, the option was available to the assessee whether to distribute the CENVAT credit or not. In fact, our attention is invited to Rule 7 of the CENVAT credit Rules, 2004 as substituted w.e.f. 1.4.2016 which has made it mandatory for distribution of input services to the various units providing output services. This is evidence by the use of words "shall distribute the Cenvat Credit" in the substituted Rule 7 as Cenvat Credit Rules 2004 w.e.f. 1.4.2016. Therefore, on plain reading of Rule 7 as existing both pre and post

amendment 2012 covering period involved in these proceedings, the respondent – assessee was entitled to utilize the CENVAT credit available at its Pune unit.

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.

12. Accordingly, the Appeal is dismissed.”

5. In view of the settled position of law, as discussed above by the Hon’ble High Court, the issue arising out of the present dispute is no more open for any debate. Therefore, we do not find any merits in the appeal filed by Revenue and accordingly, the same is dismissed.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)