CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85472 of 2016

(Arising out of Order-in-Original No. 15/COMMR/M-III/SR/2015-16 dated 30.11.2015 passed by the Principal Commissioner Central Excise, Mumbai-III)

Voltas Ltd. **.... Appellant**
Voltas Ltd., 2nd Pokhran Road,
Thane- 400 601.

Versus

Commissioner of Central Excise, Mumbai-III **.... Respondent**
4th Floor, Vardaan Trade Center, MIDC,
Wagle Estate, Thane (W)- 400 604.

Appearance:

Shri S.S. Gupta, Chartered Accountant for the Appellant

Shri Mahesh Patil, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87123/2024

Date of Hearing: 26.11.2024

Date of Decision: 26.11.2024

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. The appellants herein are engaged in the manufacture of excisable goods, falling under Chapter 84 of the Central Excise Tariff Act, 1985. The manufacturing activities were used to be undertaken in the three factories belonging to them. The factories are located at Thane, Silvasa and Pant Nagar, Uttarakhand. The appellant's Head Office is located in Mumbai. The services availed in the head office and the service tax paid on such services were distributed by the appellant among the three units (supra) on the basis of the Input Service Distributor(ISD) invoices issued by them. The department had interpreted that the distribution of credit by the head office

among the manufacturing units is not proper inasmuch as the Pant Nagar unit located at Uttarakhand was exclusively manufacturing the exempted goods. On the basis of such understanding, the department had initiated the show cause proceedings against the appellants, which were culminated into the adjudication order dated 30.03.2010, wherein the Cenvat demand was confirmed on the appellants. Feeling aggrieved with the said adjudication order, the appellants had preferred appeal before the Tribunal, which was disposed of vide Final Order No. A/579/14/EB/C-II dated 24.07.2014 by way of remand to the original authority, for the limited purpose of verification of the invoices, through which the input services were distributed by the appellants. On the remand proceedings, the original authority had allowed the Cenvat credit pertaining to Chartered Accountant Services and General Insurance Services and disallowed cenvat credit amounting to Rs.2,06,35,197/- in respect of other disputed services in the present impugned order dated 30.11.2015 passed by him. The appellants have assailed the said impugned order before the Tribunal, on the ground that the Pant Nagar unit located at Uttarakhand was setup only in the month of May 2006 and as such, the Cenvat demand confirmed prior to such period cannot be sustained. The appellants have contended that Cenvat demand for the period after May 2006 can be confirmed on the appellants. To quantify such demand, the appellants have submitted the practicing Chartered Accountant certificate, which was also submitted before the original authority during the course of *de novo* adjudication proceedings. The appellants have stated that only 2% of the adjudged demands can be confirmed on the appellants inasmuch as that much percentage of input services were actually transferred by the head office of the appellants under the cover of ISD invoices to Pant Nagar Unit, Uttarakhand.

3. We find substance in the submissions of the appellants that in respect of Cenvat Credit distributed to Pant Nagar, Uttrarkhand alone, the Cenvat demand can be confirmed. We also find that the original authority at paragraph 13 in the impugned order dated 30.11.2015 has recorded that the appellant had submitted the certificate issued by the practicing chartered accountant, certifying the value of goods actually distributed to the exempted unit i.e., at Pant Nagar, Uttarakhand during the financial year 2006-07. Since,

such factual aspects of verification of records together with the certificate issued by the chartered accountant is required to be examined in the original stage, we are of the view, that the matter should go back to the original authority for the limited purpose of verification of the documents/chartered accountant certificate for a subjective satisfaction that only the credit distributed by the appellants to Pant Nagar Unit at Uttarakhand for the period after May 2006 to February 2007 shall be confirmed against the appellants. For quantifying such demand, the original authority should verify the books of accounts/certificates to be submitted by the appellants at the time of personal hearing of the matter.

4. In the view of above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for deciding the issue afresh in line with our above observation. Needless to say, that opportunity of personal hearing should be granted to the appellants before deciding the issue afresh.

5. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM