CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89077 of 2018

(Arising out of Order-in-Appeal No. NGP-II/APPL/152/17-18 dated 29.06.2018 passed by the Commissioner of CGST & Central Excise, Nagpur-II)

The India Cements Ltd. **.... Appellant**
Parli Grinding Unit, Sy No. 100 to 109,
Parli-Dharmapuri Road, P.O. Rarli Vaijnath,
District Beed – 431 515.

Versus

Commissioner of CGST & Central Excise, Aurangabad **.... Respondent**
N-5, Town Centre, CIDCO,
Aurangabad – 431 030.

APPEARANCE:

Ms. Payal Nahar, Advocate for the Appellant

Shri Xavier Mascarenhas, 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/85250/2026

Date of Hearing: 16.01.2026
Date of Decision: 16.01.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged *inter alia*, in the manufacture of Cement, falling under Chapter 25 of First Schedule to the Central Excise Tariff Act, 1985. The appellants company during the disputed period, had operated their manufacturing activities through nine factories situated in various places, including Parli Griding Unit in Maharashtra. The appellants' corporate office and the regional office were duly registered with the service tax department as the Input Service Distributors (ISDs). Based on the invoices issued by the ISDs, the appellants griding unit avail CENVAT Credit of service tax paid and reflected in the said invoices. During the disputed period, availment of CENVAT Credit based on the

ISD invoices were disputed by the department on the ground that the appellant's manufacturing unit was not specifically mentioned as a recipient of service in the ISD registration certificate issued to the corporate and regional offices. The adjudged demands confirmed in the original order dated 23.11.2016 were upheld by the learned Commissioner (Appeals), Nagpur vide the impugned order dated 29.06.2018. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3. Appellants have assailed the impugned order on the ground that the name of the manufacturing unit at Parli was subsequently incorporated in the registration certificate issued in favour of the ISDs and in such circumstances, the CENVAT Credit availed based on the ISD invoices cannot be denied. It is not the case of Revenue that the input service was not distributed by the ISDs as per the provisions contained in Rule 7 of the CENVAT Credit Rules, 2004. Further, the input service distributed by the corporate/regional offices were used by the appellants' manufacturing unit for the intended purpose. It is no doubt a fact that at the time of distribution of the CENVAT Credit, the name of the manufacturing unit was not inserted in the registration certificate issued by the jurisdictional service tax authorities. The name and address of the manufacturing unit was subsequently incorporated and due intimation to that effect was also submitted by the appellants before the jurisdictional authorities. Since, the basic requirement of payment of service tax and usage of the input services in the manufacturing unit were not in dispute, subsequent amendment of the registration certificate by way of incorporation of the name of the manufacturing unit may be considered as procedural in nature and the substantive right to avail the CENVAT Credit cannot be whittled down under such circumstances.

4. We find that the issue arising out of the present dispute has been dealt with by the Hon'ble Gujarat High Court in the case of *Commissioner of Central Excise Vs. Dashion Ltd.* – 2016 (41) S.T.R. 884 (Guj.). The relevant paragraph recorded in the said judgement is quoted herein below:

> ***"7.*** *The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make*

> *application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed. However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No. 1 therefore shall have to be answered in favour of the respondent and against the assessee".*

5. Further, we also find that the said judgment of the Hon'ble Gujarat High Court was also accepted by Revenue and no appeal was filed there against. This fact has also been clarified in the Circular dated 16.02.2018 issued by the Central Board of Excise & Customs. Since, on the identical issue, no appeal was filed by Revenue against the judgement of the Hon'ble Gujarat High Court, the department cannot change the stand in agitating the matter arising out of the present dispute, for a contra decision.

6. In view of the fact that the issue arising out the present dispute is no more open for any debate, in view of the judgement (supra) and subsequent acceptance of such judgment by the department, we are of the view that impugned order passed against the appellant cannot be sustained on merits. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM