CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85099 of 2018

(Arising out of Order-in-Original No. 28-29/CEX/2017/C/NGP-I dated 13.10.2017 passed by the Commissioner of CGST & CX, Nagpur-I)

M/s Ultra Tech Cement Ltd. **.... Appellant**
Awarpur Cement Work,
Awarpur, Tah. Korpana, Dist. Chandrapur,
Maharashtra-442 917.

Versus

Commissioner of CGST & CX, Nagpur-I **.... Respondent**
GST Bhavan, Telangkhedi Road,
Civil Lines, Nagpur-440 001.

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/85249/2026

Date of Hearing: 16.01.2026

Date of Decision: 16.01.2026

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants are engaged *inter alia*, in the manufacture of Cement and Clinkers, falling under Chapter 25 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants head office located at Mumbai is registered with the service tax department as the Input Service Distributor (ISD) and based on the invoices issued from such office, the other manufacturing units including the appellants herein availed the CENVAT Credit of service tax as indicated in the ISD invoices. Taking of CENVAT Credit by the appellants in the present case, was disputed by the department on the ground that the shipping services (ships taken on hire) were used by the Jaffarabad Unit exclusively for export of goods and that since the appellants' Awarpur unit did not undertake any activity of export and did not utilize the disputed service as per the ISD invoice, the said service cannot be considered as "input service" for the Awarpur Unit under Rule 2(l) of the CENVAT Credit Rules, 2004. The Show Cause Notices (SCNs) dated 03.08.2009 and 03.02.2010 issued by the department were adjudicated vide the impugned order dated 13.10.2017, wherein the original authority has confirmed the adjudged demands as proposed for recovery against the appellants. Feeling aggrieved with the impugned order dated 13.10.2017, the appellants have preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that the head office of the appellants was registered with the service tax department as the ISD and since the CENVAT Credit of service tax was distributed by such office in favour of the appellants' Awarpur Unit, such distribution is in conformity with Rule 3 read with Rule 7 of the CENVAT Credit Rules, 2004. She further submitted that since the disputed services were duly suffered the service tax and were used by the group companies of the appellants, such availment of credit cannot be denied inasmuch as no such provision exist in the CENVAT Statute for doing so. She further submitted that since the period of dispute involved in the present appeal is from August 2008 to September 2009, the case of the appellants squarely falls under un-amended provisions of Rule 7 of the CENVAT Credit Rules, 2004, where there was no restriction being imposed for availment of CENVAT Credit by the manufacturing unit based on the ISD invoices issued by the head office. She has relied upon the judgement of Hon'ble Karnatka High Court in the case of *Commissioner of Central Excise, Bangalore-I Vs. Ecof Industries Pvt. Ltd.* – 2011 (271) E.L.T. 58 (Kar.) to strengthen the case of the appellants that the CENVAT benefit cannot be denied to them.

3. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. It is an admitted fact on record that the service tax paid by the head office of the appellants was distributed to the appellants Awarpur Unit under the cover of the prescribed ISD invoices. Insofar as taking of CENVAT Credit by the manufacturer is concerned, Rule 3 of the Rules of 2004 entitles a manufacturer to avail CENVAT Credit of various duties and taxes paid on the input/input services, for use in the factory of manufacture of the final products. Since ISD invoice is a valid document and reflect the service tax amount paid on the taxable service, availment of the benefit of CENVAT Credit by the manufacturing unit, belonging to the self-same corporate entity, cannot be denied. In this case, the department had initiated proceedings against the recipient unit, without initiation of any proceedings at the ISD level, which in our considered view, is not proper and justified. The Awarpur unit of the appellants being registered with the service tax authorities, are also required to comply with the statutory provisions. If at all there is any deviation or contravention of the statutory provisions at the ISD level, then the department was free to initiate proceedings against them, which admittedly has not been done in the present case. In view of the fact that the ISD had distributed the credit to the manufacturing unit located at Awarpur Unit, availment of CENVAT Credit based on such ISD invoice is proper and the credit taken on the basis of such document cannot be denied on the ground that the disputed service as per the invoice cannot be considered as input service. We find that the case of the appellants was governed under the un-amended provisions of Rule 7 of the CENVAT Credit Rules, 2004 (effective upto 01.04.2012). In the CENVAT statute, in vogue at the material time, no restrictions were imposed that if the services were not used by the manufacturing unit, the CENVAT Credit can be denied to it. Since, the only requirement under the said un-amended rule was to the effect that service shall not be exclusively in the unit engaged in manufacture of exempted goods, which is not the case in the present dispute, inasmuch as the appellants is a manufacturer of excisable goods, the manner of distribution of CENVAT Credit by the head office, as an ISD, is in conformity with the CENVAT statute. We find that the Hon'ble Karnataka High Court in the case of *Ecof Industries Pvt. Ltd.*

(supra) has dealt with an entirely identical fact and decided the appeal in favour of the appellants therein, holding as under:

> ***"8.*** *It is in this context, the definition of input service distributor makes it clear that a manufacturer or a producer of a final product or a provider of output service may have more than one unit and may be distributed in various parts of the country. It is in this background the definition of service distributor is defined as office of the manufacturer or producer of a final product or provider of output service which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be. Therefore, the law mandates that the manufacturer who wants to avail the benefit of this service tax if he has more than one unit he should also get registered himself as a service provider and then, he would be able to collect all the input service tax paid in all its units and accumulate them at its head office and distribute the said credit to its various units. At the time of distribution, the manner of distribution is provided in Rule 7 which reads as under :-*
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> > *"**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 conditions, 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."*
> >
> > *Therefore, only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of service tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services.*
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> ***9.*** *In fact, the Board has issued a circular clarifying in this regard, which is extracted by the tribunal at para 7 which reads as under :-*
>
> *"Para 7. Para 2.3 of the Master Circular referred to by the ld. Advocate reads as under :-*
>
> *"2.3 An 'Input service distributor' is an office or establishment of a manufacturer of excisable goods or provider of taxable service. It receives tax paid invoices/bills of input services procured (on which Cenvat credits can be taken) and distributes such credits to its units providing taxable services or manufacturing excisable goods. The distribution of credit is subject to the conditions that - (a) the credit distributed against an eligible document shall not exceed the amount of service tax paid thereon, and (b) credit of service tax attributable to services used in a unit either exclusively manufacturing exempted goods or exclusively providing exempted services shall not be distributed. An input service distributor is required*

(under Section 69 of the Act, read with Notification No. 26/2005-S.T.) to take a separate registration."

10. *Therefore, these are the only two limitations, which are imposed in Rule 7 preventing the manufacturer from utilizing the CENVAT credit, otherwise, he is entitled to the said credit. Merely because the input service tax is paid at a particular unit and the benefit is sought to be availed at another unit, the same is not prohibited under law. It is in this context, the manufacturer is expected to register himself as a input service distributor and thereafter, he is entitled to distribution of credit of such input in the manner prescribed under law. Therefore, the order passed by the tribunal is legal and valid and does not suffer from any legal infirmity and does not call for any interference and therefore it is dismissed."*

6. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants. 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)

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