CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 86321 of 2022

[Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-045(VNT)-2021-22 dated 22.11.2021 passed by the Commissioner of CGST & Customs (Appeals), Goa.]

M/s Guala Closures (I) Pvt. Ltd. ....Appellant
D-1, Sesa Ghor, Patto Plaza,
Panji, Goa – 403 001

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Goa ....Respondent
GST Bhawan, EDC Complex,
Patto Plaza, Panji, Goa – 403 001

<u>WITH</u>

Excise Appeal No. 86324 of 2022

[Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-043(VNT)-2021-22 dated 22.11.2021 passed by the Commissioner of CGST & Customs (Appeals), Goa.]

M/s Guala Closures (I) Pvt. Ltd. ....Appellant
D-1, Sesa Ghor, Patto Plaza,
Panji, Goa – 403 001

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Goa ....Respondent
GST Bhawan, EDC Complex,
Patto Plaza, Panji, Goa – 403 001

<u>APPERANCE:</u>

Shri C.S. Biradar, Advocate for the Appellant
Shri Ranjan Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 85556-85557/2026

Date of Hearing: 11.03.2026
Date of Decision: 16.04.2026

Confirmation of recovery of CENVAT Credit of ₹24,74,511/- and ₹7,24,447/- respectively against allegedly inadmissible credit by the Commissioner (Appeals) passed under Rule 14 of the CENVAT Credit Rules, 2004 in respect of both Input Service Distributors (ISD) as well as manufacturer of goods have given raise to these two appeals, in which both orders are assailed by the Appellant ISD as well as the manufacturer. Legality of invocation of extended period in confirming equal penalty alongwith interest on both is also questioned in these two appeals.

2. Learned Counsel for the Appellants Mr. C.S. Biradar submitted that Rule 14 recovery notice can only be sent to the manufacturer and not to the ISD unit as has been settled through several decisions, including those reported in *2014 (35) STR 411 (Tri. - Del.)* in the case of *Indian Oil Corporation Ltd. Vs. Commissioner of Central Excise, Delhi-II* and reported in *MANU/CM/0260/2017* in the case of *Mahindra & Mahindra Ltd. Vs. Commissioner of Service Tax, Mumbai* and also clarified by the CBEC Board through clarificatory letter dated 10.03.2014 that states that there is no provision in the CENVAT Credit Rules, 2004 for issuing show-cause notice's to the ISD (Para 3). Further, he questioned the authenticity of issuing show-cause notice on the Appellants by the Audit Commissioner as Master Circular No. 1053/2/2017-CX dated 10.03.2017 issued by the CBEC clearly stipulates under para 12.1 that such jurisdiction to issue a show-cause notice for demand of duty or recovery rests only on the Executive Commissioner. On invocation of extended period of limitation, in citing decisions of this Tribunal reported in *2020 (41) GSTL 520 (Tri. – Bang.)* in the case of *Tally Solutions Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore* and *Final Order No. A/87941/2018 dated 20.11.2018 i*n the case of *Thyssenkrupp Industries India Pvt. Ltd. Vs.*

CCE & ST, Pune-I, he further submitted that when show-cause notice is based on the audit of records maintained by the Appellants, suppression of fact can't be alleged, for which extended period was not invocable and the purpose of EA-2000 Audit or CERA Audit being tendering advised to the Assessee to follow correct procedure so that no amount chargeable as duty under Central Excise law escapes from being taxed, as noted in the *Thyssenkrupp Industries India Pvt. Ltd.* decision, *cited supra*, invocation of extended period in such a scenario is contrary to the law.

3. Learned Authorised Representative Mr. Ranjan Kumar objects to such submissions. He mainly placed his reliance on the decision of this Tribunal passed in the case of Clariant Chemicals (i) Ltd. Vs. Commissioner of Central Excise, Raigad, as reported in 2015-TIOL-2510-CESTAT-MUM, in which at para 5 there was a clear findings that it was unnecessary to bifurcate ISD office and manufacturing unit as two different distinct legal entities as both are integrally connected and both of them are required to resolve the issue with the Department. He also argued that Audit Officer are equally empowered to issue show-cause notices on the Assessee for recovery of tax dues but failed to produce any circular authorising the Audit unit to issue such notice of show-cause.

4. I have gone through the appeal paper book and submissions made in writing by the adversaries alongwith other relevant provisions of law and case laws. At the outset, it is to be said that issue concerning raising of demand of alleged inadmissible credit against the ISD has been settled long back by this Tribunal which is consistent in its decision that ISD is not a manufacturer or provider of output service against whom demand under CENVAT Credit Rules, 2004 or Finance Act, 1994 or Central Excise Act, 1944 can be raised and three of those decisions have been relied upon by learned Counsel for the Appellant, as referred above. On this point, there cannot be any departure from the judicial precedent which is set after proper interpretation of the

provision of law governing duty demand /recoveries of credits etc. But in the instant case a contrary decision in the case of Clariant Chemicals (I) Ltd. is placed on record by learned Authorised Representative that was decided in 2015. However, going by the said decision it can be said that controversy relating to that decision was that manufacturer itself was noticed for recovery but it challenged the said notice on the ground that ISD was not noticed instead, which was nullified in para 5 of the said order, as discussed above. Further, going by the judgment cited by the Appellant namely *Indian Oil Corporation Ltd.* and *Mahindra & Mahindra Ltd. cited supra*, it can be said that *Mahindra & Mahindra Ltd.* decision was primarily based on the decision of *Indian Oil Corporation Ltd.* that was decided on 11.03.2014 giving a clear finding that demand for recovery can't be raised against Input Service Provider under Rule 14 of the CENVAT Credit Rules, 2004, which is also in conformity to the Board's Clarificatory Circular letter dated 10.03.2014 but the ratio of this judgment was not taken into consideration while deciding *Clariant Chemicals (I) Ltd.*, apparently for the reason that it was not argued before the Bench. Apart from the above distinction, it is also to be placed on record that neither the Board Circular nor provision of Rule 14 of CENVAT Credit Rules, 2004 were taken into consideration in making an observation in *Clariant Chemicals (I) Ltd.* decision that they should not be considered as two different distinct legal entities but such an observation that went to the mind of Hon'ble Members had not prompted them to say with definite terms as to who should be noticed for such recovery, since the ultimate conclusion was that both of them should unitedly resolve the issue with the Department. Therefore, such an observation can't even be considered as an *obiter dicta* since ratio decidendi of *Indian Oil Corporation Ltd.* decision is followed consistently after its pronouncement that recovery notice can't be sent to the ISD for realisation of allegedly inadmissible CENVAT Credit and therefore, the said notice is a nullity. Further, when no authority is produced by the Respondent-Department to the effect that Audit Commissioners are entitled to issue notice for recovery and Board Master Circular No.

1053/2/2017-CX that compiled previous circulars on the issue has clearly authorised the Executive Commissioner namely the Jurisdictional Commissioner to issue such show-cause notice for recovery, the notice sent by the Audit Commissioner to the manufacturing unit can't be treated at par with recovery notice under Section 73 of the Finance Act, 1994, since it was sent without the authority of law. The argument led by learned Counsel for the Appellant concerning invocation of extended period as not maintainable, as discussed in the preceding para, also carries force. Hence the order.

THE ORDER

5. The appeals are allowed and the order passed by the Commissioner of CGST & Customs (Appeals), Goa *vide* Order-in-Appeal Nos. GOA-EXCUS-000-APP-045(VNT)-2021-22 dated 22.11.2021 and GOA-EXCUS-000-APP-043(VNT)-2021-22 dated 22.11.2021 are hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 16.04.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad