(2023) 08 CESTAT CK 0053

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.424 Of 2012

M/S Jindal (India) Limited APPELLANT

Vs

Commissioner Of Central Excise, Haldia RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 9

Citation : (2023) 08 CESTAT CK 0053

Hon'ble Judges : Ashok Jindal, Member(J);K. Anpazhakan, Member(T)

Bench : Division Bench

Advocate : Tarun Chatterjee, Binita Pandey, J.Chattopadhyay

Final Decision : Allowed

Judgement

Ashok Jindal, Member (J)

1. The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is a manufacturer of excisable goods and having Central Excise registration w.e.f. 7. 03.2005 of Head Office from where centralized billing and payment is made. The appellant has also made an application for registration as Input Service Distributer (ISD) vide application dated 16.10.2007.

2.1 A show-cause notice was issued to the appellant on 01.10.2010 based on Audit Observation that the appellant has taken inadmissible cenvat credit on the input service on the ground that the appellant has taken such credit on the strength of invoices which are issued in the name of the Head Office and the Head Office is not registered as ISD.

2.2 The said show-cause notice was adjudicated. The demand was confirmed by denying cenvat credit to the appellant, which was taken by the appellant on the strength of invoices issued in the name of Head Office on the ground that the Head Office is not registered as ISD.

2.3 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that it is not dispute that the appellant has not received and not used the input service. In fact, the appellant has received the services and the same has been used for manufacture of their final product. He submits that the only issue is that the invoices are issued in the name of their Head Office whereas the service has been received by the appellant in their factory premises. He submits that the cenvat credit sought to be denied only on the ground that the invoices are issued in the name and address of the Head Office, which is not registered as ISD. The said issue has been decided by this Tribunal in the case of M/s Jai Balaji Industries Limited (Unit IV) Vs. Commissioner of Central Excise, Bolpur reported in 2022 (58) GSTL 361 (Tri.-Kolkata). Therefore, the impugned order is to be set aside.

4. Heard both the parties and considered the submissions.

5. In this case, the short issue is that whether the appellant is entitled to take cenvat credit on input services, which was received by the appellant on the strength of invoices. The said invoices were issued in the name of Head Office, which is not registered as ISD. The said issue has been decided by this Tribunal in the case of M/s Jai Balaji Industries Ltd. (supra), wherein this Tribunal has observed as under :

"8. We have carefully gone through the facts of the case and the legal position. We have also perused the various judgments relied upon by the Learned Advocate in support of his submissions. We find that the only allegation levelled in the show cause notice was that bills/photo copies of bills produced were raised in the address of the head office at 5, Bentinck Street, Kolkata-700001 and the said office did not follow the procedure of getting registered as input service distributor as required under Rule 9 of the Cenvat Credit Rules, 2004 for distribution of credit on the documents in the name of the head office. In the first place we may point out that even the show cause notice in opening para stated that M/s. Jai Balaji Industries Ltd. (Unit IV) was earlier known as Shri Ramrupai Balaji Steels Ltd. The appellant in reply to the show cause notice has categorically stated that the present appellant had taken over this unit only w.e.f. 23-7-2007. Upto that point there was only one head office and one manufacturing unit. So there is no justification to deny the Cenvat credit up to the said date. Even subsequent to 23-7-2007 there is neither any allegation in the show cause notice nor any finding in the Order-in-Original that the Cenvat credit on input services was utilized in more than one unit. It is our considered view that if the Revenue was of the opinion that there was any misutilisation of the credit from the head office to the manufacturing unit, the onus was upon them to have proved the said fact with concrete evidence. No such exercise was ever conducted by the Department. Now the question which remained for consideration is that whether the Cenvat credit on input services can be denied to the appellant merely on the ground that the head office was not registered as input service distributor as required under Rule 9 of the Cenvat Credit Rules, 2004 for distribution of credit on the documents in the name of the head office. This question has been answered by the various judgments of High Courts. The first judgment relied upon by the Ld. Advocate is the case of Commissioner of Central Excise v. Dashion Ltd. reported in 2016 (41) S.T.R. 884 (Guj.) wherein the Hon'ble Gujarat High Court has held in clear terms that there is nothing in the statutory rules to disentitle an unregistered input service distributor from availing Cenvat credit. It has further been held that non-registration of the unit as input service distributor is only a procedural irregularity for which the Cenvat credit cannot be denied. It has been held that when the assessee is maintaining full records of credit received and distributed which was duly verified by the department, the credit could not be denied to them. The Learned AR has brought to our notice the C.B.E. & C. Circular No. 1063/2/2018-CX, dated 16-2-2018 at S. No. (2). This judgment of the Hon'ble Gujarat High Court has been accepted by the department. Similarly, the Hon'ble Allahabad High Court in the case of Commissioner of Customs and Central Excise v. Sri Ram Piston & Rings reported in 2019 (369) E.L.T. 631 (All.) has held that the rules relating to "Input Service Distributor" are purely machinery provisions and directory in nature. No prejudice is caused to Revenue if assessee was allowed to make substantial compliance. Apart from holding that the provisions of Notification No. 26/2005-S.T., dated 7-6-2005 are procedural in nature, the High Court has held in para 32 of the judgment that once the utilization had been made by the manufacturing unit either against an invoice or against the letter, it would automatically get reflected in the returns filed thereafter by the assessee and no part of it could be claimed to have escaped the attention or scrutiny of the departmental authorities for reason of transfer of Cenvat credit having been evidenced on a letter and not an invoice or bill or challan. Similar law has been laid down in other judgments relied upon by the Advocate. The sum and substance of these judgments is that Cenvat credit on input services cannot be denied merely because that the duty paying invoices were in the name of the head office whereas the input service credit was utilized in the manufacturing unit. It has also been held that even if the head office is not registered under Rule 9 of the Cenvat Credit Rules, 2004, that itself would not debar the assessee from availing the Cenvat credit when there is no dispute about the eligibility of the credit on the said inputs service to the manufacturer. In respect of availment of credit on bank advices and auxiliary insurance services we have gone through two Chartered Accountant's certificates dated 24-8-2010 and 25-8-2010 along with the enclosed statements containing details of documents on which Cenvat credit had been availed by the appellant. The Chartered Accountant in both the certificates has certified that the said banking and financial services as well as auxiliary insurance services were received and used by the appellant. He has also certified that the Cenvat credit on such services had been availed only once as shown in their records. Despite the fact that the above Chartered Accountant's certificates are on record, the Commissioner has not rebutted or controverted the veracity of the same. Therefore, we hold that the case made out by the Department lacks sufficient reasons to deny the Cenvat credit on input service in respect of banking and financial services and auxiliary insurance services.”

6. Further, the same issue was taken by this Tribunal in the case of Precision Wires India Limited Vs. Commissioner of Central Excise, Vapi reported in 2013 (31) STR 62 (Tri.-Ahmd.), wherein this Tribunal has observed as under :

“6. I find, as correctly pointed out by both sides that the dispute is only regarding availing the Cenvat credit on the invoices issued by appellant’s head office before getting the head office registered under Input Service Distributor. I find that head office of the appellant has obtained the ISD registration on 6-12-2005 while the credit was availed by the appellant on the invoices issued dated 20-9-2005.

7. I find that factually there is no dispute regarding the receipt of input services at the head office. It is also undisputed that the said services can be distributed by the head office to the various factories and the appellant’s factory being one of them. It is also undisputed that the appellant is eligible to avail the Cenvat credit of such services which has been received by the head office and distributed to them. I find strong force in the contentions raised by the learned counsel that the judgment of this tribunal in the case of Jindal Photo Limited (supra) and Samita Conductors Limited - 2012 (278) E.L.T. 492 (Tri.-Ahmd.), will directly cover the issue in the case in hand.

8. As regards the reliance placed by the learned Additional Commissioner (AR) on the Division Bench decision in the case of Hindustan Coca Cola and Beverages Pvt. Limited (supra), I find that the said order of the tribunal is an interim order while disposing the stay petition and it is not a final order. The orders which have been relied upon by the learned counsel as mentioned in hereinabove are the final orders and in respect of an identical issue.

9. In my view, the ratio laid down by this Bench in the case of Jindal Photo Limited will cover the issue in favour of the appellant herein. Accordingly, in view of the foregoing, in the facts and circumstances of this case, I find that the impugned order is liable to be set aside and I do so.”

7. As the issue has already been decided in favour of the appellant that there is no dispute that the appellant has not received the input service and utilized the same in the Head Office, which is not registered as ISD during the impugned period, the cenvat credit cannot be denied.

8. Therefore, we hold that the appellant has correctly taken the cenvat credit on input services and used by the appellant although the invoices are in the name of Head Office, which is not registered as ISD.

9. In view of this, we do not find any merit in the impugned order and the same is set aside.

10. In the result, the appeal is allowed with consequential relief, if any.

