

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI

COURT NO.

Appeal No. ST/680/2012-Mum.

(Arising out of Order-in-Appeal No. US/438/RGD/2012 dt.11.07.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

For approval and signature:

Hon'ble Mr. P.S. Pruthi, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether Their Lordships wish to see the fair copy of the Order?
4. Whether Order is to be circulated to the Departmental authorities?

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M/s. Inox Air Products Ltd. Appellant

VS

Commissioner of Central Excise, Raigad Respondent

Appearance

Shri J.C. Patel, Advocate for Appellant

Shri S.V. Nair, Assistant Commissioner (A.R) for respondent

CORAM:

Mr. P.S. Pruthi, Member (Technical)

Date of hearing : 21/11/2014

Date of decision : 21/11/2014

ORDER NO.

The appellants is in appeal against the impugned order in appeal which confirmed the demand of Service Tax of Rs.3,86,656/- under Rule 14 of Cenvat Credit Rules read with Section 11A of the Central Excise Act, appropriate interest under Section 11AB and equivalent penalty under Section 11AC of the Act.

2. The appellant is engaged in the manufacture of natural gases. They have a unit in various places include units at Patalganga unit. The demand of duty was raised for the reason that the invoices under which the credit was availed were either in the name of their head office or in the name of their other unit at Thane. The demand was confirmed on the ground that the appellant should have been registered for ISD registration to enable distribution of credit to their respective units. Deaprtment held that mere payment is not enough to claim the credit but material evidence should be brought on record that the said services are utilized in the Patalganga unit for claiming credit in such manner. The extended time period under Section 11A was invoked.

3. Heard both sides.

4. Ld. Counsel showed as a sample, one invoice issued by the CHA agent in the name of their Head Office in respect of clearing charges for goods imported for their Patalganga Unit. For this invoice, he showed co-relation between the invoice and the Bill of Entry which was in the name of their Patalganga Unit, to prove that the service was indeed received at Patalganga Unit. Further, he stated that in the case of machine repairs, the work is centralized in the Thane Unit for all the units and, therefore, all such invoices are addressed to the Thane Unit. On being asked whether all the services were received in their unit he answered that the question of actual receipt of the services had not arisen either in the show cause notice or at the stage of adjudication order or in the appeal. He cited the judgements of the Tribunal in the case of Modern Petrofils Vs. Commissioner of C. Ex., Vadodara 2010 (20) S.T.R. 627 (Tri.-Ahmd.), Doshion Ltd. Vs. Commissioner of Central Excise, Ahmedabad 2013 (288) E.L.T. 291 (Tri.-Ahmd.) and Demosha Chemicals Pvt. Ltd. Vs. Commissioner of C. Ex. & S.T. Daman 2014 (34) S.T.R. 758 (Tri. Ahmd.). Availment of services

at places different from -the address mentioned in the invoices is only a procedural formality. And also that even if the appellant should have taken ISD registration, the same would not disentitle them from availing credit in different units before 2012 when a change was brought in Rule 7 of the Cenvat Credit Rules to the effect that the Cenvat Credit should be distributed properly amongst all the units.

5. The Ld. A.R. reiterated the findings of the authority. He further stated that it has not been verified whether the services had actually been received in the Patalganga Unit.

6. I have carefully considered the rival contentions. The appellant in this case have nine units where the same product is manufactured. Therefore, the doubt of nexus of input and output products will not arise. Ld. Counsel has also shown a particular invoice issued by a CHA in the name of the Head Office. It is quite natural that the service provided by a CHA would be in the name of the Head Office where clearance of goods through Customs will be centralized. I agree that a doubt has never been raised regarding the actual receipt of the services. The only basis for denying credit has been that invoices are either in the name of another unit of the appellant or in the name of their Head Office. The judgments cited above touch upon the issue at hand in support of the case of the appellant. There being no allegation of the services have not been received, the credit stands to be allowed.

7. In view of the above, the appeal is allowed.

(Pronounced & Dictated in court)

(P. S. Pruthi)

Member (Technical)