

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 85225 OF 2020

[Arising out of Order-in-Appeal No: GOA-EXCUS-APP-037-2019-20 dated 25th October 2019 passed by the Commissioner of GST & Customs (Appeals), Goa.]

Hindustan Coca-Cola Beverages Pvt Ltd
M-2 to M-11, Verna Industrial Estate, Verna, Goa *... Appellant*

versus

Commissioner of CGST & Customs
GST Bhawan, EDC Complex, Patto Panaji, Goa *...Respondent*

WITH

EXCISE APPEAL NO: 85039 OF 2021

[Arising out of Order-in-Appeal No: GOA-EXCUS-APP-038-2019-20 dated 25th October 2019 passed by the Commissioner of GST & Customs (Appeals), Goa.]

Hindustan Coca-Cola Beverages Pvt Ltd
M-2 to M-11, Verna Industrial Estate, Verna, Goa *... Appellant*

versus

Commissioner of CGST & Customs
GST Bhawan, EDC Complex, Patto Panaji, Goa *...Respondent*

APPEARANCE:

Shri Jitu Motwani, Advocate for the appellant
Shri PK Acharya, Superintendent (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85250-85251/2025

DATE OF HEARING:	06/02/2025
DATE OF DECISION:	24/02/2025

M/s Hindustan Coca-Cola Beverages Pvt Ltd, who had been proceeded against for recovery of ₹ 24,12,150 and ₹ 11,56,666 under rule 14 of CENVAT Credit Rules, 2004, along with interest thereon, for having utilized credit that did not conform to definition of ‘input service’ in section 2(l) of CENVATA Credit Rules, 2004 and confirmation by the original authority, having been upheld by Commissioner of GST & Customs (Appeals)¹, Goa except to the extent of ₹ 19,159 for the period from June 2015 to March 2017 and ₹ 2,03,804 for April 2017 for the period to June 2017, is before the Tribunal with the plea that the demand could not have been fastened on them as they were merely the recipients of distributed credit.

2. M/s Hindustan Coca-Cola Beverages Pvt Ltd, Raigarh, is registered as ‘input service distributor (ISD)’ and had taken the disputed credit for being passed on, under the authority of rule 7 of CENVAT Credit Rules, 2004, to several undertakings of theirs among which the appellant herein was one.

3. It is the contention of Learned Counsel for appellant that the

¹ [order-in-appeal no. GOA-EXCUS-APP-037 & 38-2019-20 dated 25th October 2019]

demand cannot survive as they had merely topped up their accumulated credit from that assigned to them from the pool of the ‘input service distributor’ which they, then, utilized to discharge duties of central excise on goods manufactured by them. It was his contention that the incorrectness in availment, if any, could not be fastened on them as, in terms of rule 3 of CENVAT Credit Rules, 2004, they had not taken credit. He further contended that both the discharge of tax liability by the ‘provider of service’ and availment by the ‘input service distributor (ISD)’ was not in question and that the challenge was primarily linked to an aspect, viz., nexus between the service so procured and the activity undertaken by them, which was not within the ambit of rule 7 of CENVAT Credit Rules, 2004. This, according to him, traversed beyond the scope of CENVAT Credit Rules, 2004 which stood settled by the several decisions of the Tribunal. According to him, the decision of the Tribunal in *Nalco Water India Ltd v. Commissioner of CGST & Excise, Howrah*, in final order² disposing off appeal against order³ of Commissioner (Appeals) CGST, Noida and in *Castrol India Ltd v. Commissioner of Central Excise, Vapi* [2013 (291) ELT 469 (Tri.-Ahmd.)], have, in identical circumstances, held that inadmissibility of CENVAT credit can only be challenged in the hands of the ‘input service distributor’ and ‘intermediary invoices’ used for such distribution is not covered

² [no. 75477-75484/2024 dated 8th March 2024]

³ [order-in-appeal no.NOI-EXCUS-001-APP-1355-19-20 dated 24th January 2020]

by the provisions of rule 3 of CENVAT Credit Rules, 2004. He further submitted that the legal framework, as well as jurisdictional limitation, had been examined by the Tribunal in *Metro Shoes Pvt Ltd v. Commissioner of Central Excise, Mumbai – I* in final order⁴ disposing off appeal⁵ against order⁶ of Commissioner of Central Excise, Mumbai – I, and final order⁷ in *Hindustan Coca-Cola Beverages Pvt Ltd v. Principal Commissioner of CGST, Noida* disposing off appeal⁸ against order⁹ of Principal Commissioner of CGST, Noida in near identical situation pertaining to the manufacturing unit at Ghaziabad.

4. Learned Authorised Representative submitted that the proceedings had been initiated under rule 14 of CENVAT Credit Rules, 2004 against the appellant herein owing to incorrect utilization of credit and, consequently, correctly invoked against the appellant herein. He submitted that ‘input service distributor (ISD)’ system is merely a transit which does not cast any obligation that the distributor alone was to be tested for conformity with ‘input service’ as defined in rule 2(l) of CENVAT Credit Rules, 2004. According to him, the credit has to be accounted for only by the manufacturing unit or service providing unit which a ‘distributor’ is not. He relied upon the

⁴ [no. A/86844-86848/2019 dated 13th September 2019]

⁵ [excise appeal no. 1081 of 2008]

⁶ [order-in-original no. 14/M-I/2008 dated ‘nil’ July 2008]

⁷ [no. 70575 of 2024 dated 31st July 2024]

⁸ [excise appeal no. 70590 of 2019]

⁹ [order-in-original no. 01/Pr Commissioner/Noida/2019-20 dated 29th May 2019]

decision of the Tribunal in *Clariant Chemicals (I) Ltd v. Commissioner of Central Excise, Raigad* [2015-TIOL-2510-CESTAT-MUM], and final order¹⁰ in *Kansai Nerolac Paints Ltd v. Commissioner of GST, Mumbai Central*, disposing off appeal¹¹ against order¹² of Commissioner of Central Excise & CGST (Appeals-II), Mumbai.

5. The scheme of CENVAT credit envisages availment of duty paid on ‘inputs’, ‘capital goods’ and tax paid on ‘input services’ to be utilized as set off of duties/taxes due on goods under Central Excise Act, 1944 or on services under Finance Act, 1994. The scheme itself draws sustenance from the authority provided under the empowerment of Central Government to determine the manner in which duty liability was to be discharged. The scheme itself operates, not for, or under provisions in either statute but under the ‘rule-making’ power vested with the Central Government in both statutes and the taking of credit is set out in the framework of rule 3 of CENVAT Credit Rules, 2004 therein as also the utilization. Such credit has to be taken only by a manufacturer or provider of service to the extent that the inputs/input services so procured are in conformity with conditions set out in rule 4 of CENVAT Credit Rules, 2004. By a special provision, viz., rule 7 of CENVAT Credit Rules, 2004 distribution of credit of service tax paid on input services by ‘input service distributor’, neither a manufacturer of

¹⁰ [no. A/86095-86096/2018 dated 20th April 2018]

¹¹ [ST/87792, 87798/2017]

¹² [order-in-appeal no. PK/2&3/MC/2017 dated 31st July 2017]

excisable goods nor a provider of output service, is permitted and, therefore, from not being in a position to utilize the credit so taken. From this, it is apparent that the mechanism provided in rule 7 of CENVAT Credit Rules, 2004, governing the distribution of such credit, deems the credit so distributed to be eligible credit for the purpose of utilization. A harmonious reading of rule 3 and rule 4 of CENVAT Credit Rules, 2004 and the conditions prescribed in rule 7 alone would determine the extent of validity of the credit so distributed within the scheme of CENVAT Credit Rules, 2004. The whole of it operates on presumption that the objective of the scheme, viz., restricting the tax liability at each stage in the chain only to the taxable event as set out in section 3 of Central Excise Act, 1944 and section 66/66B of Finance Act, 1994, will be adequately achieved by such distribution.

6. The decision of the Tribunal, in *re Clariant Chemicals India Ltd*, was rendered on the limited issue of applicability of rule 6 in relation to ‘exempted services’ and owing to which, the Tribunal, finding absence of mechanism for recovery, fell back upon a singularity of the undertakings operated by that particular legal entity. The issue therein was not about the eligibility to take the credit under rule 3 of CENVAT Credit Rules, 2004 but the propriety of retention of the credit in terms of rule 6 of CENVAT Credit Rules, 2004. The decision, in *re Kansai Nerolac Paints Ltd*, examined rule 14 of CENVAT Credit Rules, 2004 insofar as it applied to ‘input service distributor (ISD)’ and jurisdiction

to recover. There is no dispute in the present instance that the recovery was not fastened on the ‘input service distributor (ISD)’ though the recovery was sought to be justified with lack of eligibility under rule 3 of CENVAT Credit Rules, 2004 insofar as the receipt of assigned credit was concerned. The jurisdiction to dispute credit taken by ‘input service distributor (ISD)’ under CENVAT Credit Rules, 2004 does not lie with the respondent-Commissioner in the present instance. It is this particular cross-connection that had led the Tribunal to consider the claim of CENVAT credit in context of the mechanism therein and, in particular, recovery to conclude that

‘14. The dispute is about the propriety of recovering credit from the person who, while, undoubtedly, entitled to utilize the distributed credit, was statutorily enabled to take the credit without having to ascertain the eligibility except in terms of validity of documentation which is legally silent on the provenance. We have already made clear the want of precedent value in the decisions that fastened the liability on the person who utilized such credit. In these circumstances, the nature and purpose of CENVAT credit offer perspectives of the context.

15. In our view, CENVAT credit is the bridge that reconciles the charging provision and the valuation provision of the taxing statute. In interpreting the various aspects – real, normal and transaction – of value that were subjected to duties before and after 1975 or after 2000, the Hon’ble Supreme Court has held that valuation, being only a measure of the levy, is not controlled by the charging provision and that legislative competence to prescribe the time and extent

may accommodate administrative convenience. The decisions in Union of India & others v. Bombay Tyres Ltd [1984 SCR (1) 347] and Commissioner of Central Excise, Indore v. Grasim Industries Ltd [order dated 11th May 2018 in civil appeal no. 3159 of 2004] are seminal enough to warrant, for our purpose, mere reference without alluding to the significant portions. Propriety notwithstanding, and tempting though it may even be to the executive branch of government, the cascading effect of such measure on business, and the ultimate consumer, compelled the incorporation of some neutralizing mechanism. This was the inevitable consequence of expansion of the tax base from itemized, and limited, enumeration of goods with the insertion of a residuary tariff item and the subsequent adoption of the even more comprehensive Central Excise Tariff. The scheme of CENVAT credit restricts the actual collection to the value of contribution to the product emanating or service offering from the assessed entity which is the unambiguous intent of the charging provision. From the one-on-one correspondence of pro forma credit to the general pooling of CENVAT credit, the thread of continuity lies in this bridging intent.

16. *Among the various perspectives of CENVAT credit, the two which predominate, and have coloured, the disputes are, in the eyes of the tax advisors, that it is a mirror of, and substitute for, the account current and, from the standpoint of the tax administrator, that it is an exemption scheme. In our opinion, such constricted appreciation is akin to describing the Taj Mahal as a spiffy looking tomb; not only is such perspective flawed in capturing the spirit of neutralization but also fails the test of statutory calibration. Even if the accumulated credit is acknowledged as an instrument for discharge of duty liability, it lacks the flexibility of the account current as a pool of money. The scheme is notified*

under the general rule making powers conferred by the taxing statute on the Central Government and not by recourse to the specific power of exemption in the respective statutes. Hence, the literal interpretation mandated by the Hon'ble Supreme Court in Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company [2018 (361) ELT 577 (SC)] does not find application in resolving this dispute which turns on the lack of clarity in pinpointing a recovery mechanism for distributed credit.

17. *Notwithstanding the inapplicability of the decision in re Dilip Kumar & Company, the distillation of landmark decisions therein does provide us with enlightenment in guiding us on our present path. CENVAT Credit Rules, 2004 fails the prescriptions laid down by the Hon'ble Supreme Court in Govind Saran Ganga Saran v. Commissioner of Sales Tax [1985 Supp (SCC) 205] to qualify as a taxing statute. It is a framework for, as we have premised supra, neutralizing the surplus that would have accrued to the exchequer at the cost of business and the ultimate consumer. Guiding, as it does, the availment of credit, any deficit of legitimacy in availment thereof can be remedied only through machinery provisions of the respective taxing statute that an assessee is subject to. It is here that we arrive at the crux.*

18. *The assessee-appellant is statutorily acknowledged as a manufacturer covered by Central Excise Act, 1944 and any recovery can be effected only under section 11A of that Act. More so, the duty liability intended to be recovered must have been short-paid or not paid; no such allegation has been made in the notice or held to be so by the lower authorities. The corporate enterprise that has established this manufacturing facility is not acknowledged by Central Excise Act, 1944 and dereliction on their part, if any, cannot be*

brought within the purview of this Act unless it be in relation to manufacture. Even if such recovery is ordered with reference to rule 14 of CENVAT Credit Rules, 2004, wrongful availment must be established. In the scheme of input service distribution, the assessee-appellant is not required, by the framework Rules, to ascertain eligibility or be cognizant of the source of credit. It is a well-settled principle of natural justice that an assessee must not only be made aware of the reasons for proposed detriment but also be capable of defending its actions. The scheme of CENVAT credit precludes such defence by the appellant-assessee. The appellant-assessee is a recipient of credit that is assigned by the distributor who, undisputedly, has borne the incidence of tax on procured services. It is the distributor who can be charged with awareness of exempted output/output service, if any, and who is empowered by the statute to take the credit. And it is only such availment by the distributor that can be put to notice for ineligibility as espoused in the decisions that fulfill the criteria of precedent.

19. *There is evident confusion arising from the evident dichotomy in the availment of ineligible credit and the utilization of pooled, distributed credit for discharge of tax liability which may, thereby, be correctly described as short-paid. The impugned proceedings have failed to take note of this gap and to apply itself to filling that gap. The consequence of short-payment, if any, is not enforceable in the light of this unfilled gap.*

20. *Tax administrators, understandably, incline towards maximizing revenue collection through the account current and are likely to take recourse to rule 14 of CENVAT Credit Rules, 2004 without much encouragement. The existence of such a provision is no authority to deny credit without the*

pre-requisite of procedure established by law. Nor is there a presumption of ineligibility in the Rules that warrants the evidencing of claim for credit beyond the threshold stipulation in rule 3, conditional stipulation in rule 4 and documentary stipulation in rule 9 of CENVAT Credit Rules, 2004.

21. Even if the 'input service distributor' was unable to establish its claim to avail the credit of tax paid on the different services and, thereby, to deprive the utilization of such, the entity to be subject to recovery proceedings remains unidentified in the Rules. It would be a grave travesty to leave such identification to the adjudicating authority. Indeed, the different decisions highlight the inability of the several adjudicating authorities to arrive at a consensus. In this circumstance, there may have been no need to fill the gap. That many of the 'input services' so distributed, while amenable to arithmetical disaggregation, may actually have to be utilized to the entire extent even if 'exempt services' were not an activity is also to be reckoned with. An atomic scrutiny may carry with it the burden of administrative inconvenience and, hence, may have been deliberately obliterated. Notwithstanding all this, the wavering arrow of adjudicatory confirmation to fill the gap will have to be dislodged for that very reason.'

in re Metro Shoes Pvt Ltd. Approaching the issue from another angle, the Tribunal in *re Hindustan Coca Cola Beverages Pvt Ltd* examined other decisions and held thus

'4.3 From the facts of the case we are very clear in our mind that the Appellant have availed Cenvat credit on the basis of the invoices distributed the credit by their ISD Registered

unit. That being so the admissibility of credit could not have been questioned in respect of individual services which might be referred in any annexure as an end of recipient unit. If any investigation/enquiry was required need to be made at the end of ISD. This view has been held by the Tribunal in various of decisions relevant paragraphs are reproduced below:-

- a. *Godfrey Philips India Ltd. [2009 (239) E.L.T. 323 (Tri.-Ahmd.)].*

“4.1 Input service distributor has been defined in sub-rule (m) of Rule 2 and reads as under :- (m) “input service distributor” means an office of the manufacturer or producer of final products 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; 4.2 The definition of the input service distributor clearly says that he is not merely a dealer. The input service distributor has to be a office of the manufacturer or producer of final products or provider of output service who will distribute the credit to his manufacturing units or service providing units as the case may be. The dealer buys the manufactured goods on which duties have been paid and passes on the actual duty paid by issue of an invoice. He does not take any responsibility as regards eligibility of Cenvat credit by his buyers. He may not even be aware as to whether buyer avails the Cenvat credit or not. He does not produce any input services which he is required to distribute among others. Whereas an input service distributor independently receives invoice and in fact he could be compared to a buyer of goods or service from the manufacturer or a output service provider. The concept of input service distributor has been introduced in view of the fact that definition of input service includes “includes services 7 Excise Appeal No.70590 of 2019 used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal”. The

definition shows that many of services could be performed in places other than where the manufacturer or receiver of the service might have been located and quite often a single manufacturer may be having several branches and services can be received in several places.

4.3 According to Rule 4A(2) of Service Tax Rules, 1994 every input services distributor distributing credit of taxable services is required to indicate the following details in the documents issued by him for distributing the credit viz.

- (i) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1);*
- (ii) the name and address of the said input services distributor;*
- (iii) the name and address of the recipient of the credit distributed;*
- (iv) the amount of the credit distributed.*

5. When we look at the functions of the input service distributor and the documents to be issued by him for passing on the credit, it becomes quite clear that the document issued by him for passing on the credit does not contain the nature of service provided and the details of services. It contains the service provider's details, distributor's details and the amount. Obviously the eligibility or otherwise of the service tax credit has to be examined at the end of input service distributor only. This is further supported by the fact that both Central Excise assesseees and Service Tax assesseees are under the regime of self-assessment and therefore it is the assessee himself who has to specify that the credit availed by him is admissible. Therefore the input service distributor cannot say that he is not required to prove the eligibility or otherwise of the service tax credit since at the receiver's end which could be a branch or a factory of the distributor, no details would be available regarding the nature of service. Therefore the preliminary objection raised by the Id. Advocate has to be rejected and it has to be held that it is the responsibility of the jurisdictional officer with whom input service distributor has registered to decide the dispute regarding eligibility or otherwise of the service tax credit that the input service distributor has taken and proposes to pass on to others."

b. Castrol India Ltd. [2013 (291) E.L.T. 469 (Tri.Ahmd.)].

"3. Learned counsel submitted that assessee had availed Service Tax credit based on invoices issued by the ISD and not on the basis of invoices of service providers. Since the credit has been availed on the basis of ISD invoices,

demand, if any, regarding admissibility of credit as such, should have been raised at the end of ISD and not at the unit level.

4. According to Rule 2(m) of Cenvat Credit Rules, input service distributor means, an office of the manufacturer or purchaser of final products or provider of output service which receives invoices issued under Rule 4(A) of the Service Tax Rules, 1994 towards purchase of input services and issue invoice, bill or, as the case may be, challans for the purpose of distributing the credit of service tax paid on said services to such manufacturer or purchaser or provider as the case may be. According to Rule 7 of Cenvat Credit Rules, input service distributor may distribute the credit to its manufacturing units providing output service subject to following conditions, namely; the credit distributed against the documents referred to in Rule 9 does not exceed an amount of service tax paid thereof or; credit of service tax applicable to service used for unit exclusively engaged in the manufacture of exempted goods or providing of exempted services shall not be distributed.

5. Based on the definition given above and Rule 7 of the Cenvat Credit Rules, learned advocate submitted that the grounds taken in the show cause notice for denial of service tax are not at all valid since what was required to be seen by the Revenue in the unit which is receiving invoices from the ISD is whether, two conditions in the Rule 7 of Cenvat Credit Rules, 2004 have been fulfilled or not. In the absence of any allegation in the show cause notice indicating non-fulfilment of these conditions, no case can be said to have been made out.

6. We find considerable force in the arguments advanced by the learned counsel. It has not been alleged in the show cause notice nor there is finding that the credit distributed against the documents is more than the amount of service tax paid and in any case, this can be verified only at the end of ISD. It is also not the case of the department that credit has been received by the assessee in respect of services/goods which are totally exempted. ... ”

4.4 We observe that the present proceedings have arisen out of a statement of demand issued in continuation to the various show cause notice and statement of demands issued to the appellant on the same issue. The show cause notice and some of the statements of demands have been finally adjudged in the favour of appellant without appeal being preferred by the revenue. This being a statement of demand no new ground has been stated in the statement of demand. Thus when

revenue accepts the earlier decisions dropping the show cause notice and statement of demands for the past period on the same issue, judicial precedent needs to be followed.

4.5 Impugned order has no merits and needs to be set aside following the judicial pronouncements in the appellant's own case on the same issue.'

7. The impugned order has confirmed the recovery of credit taken, and distributed under rule 7 of CNEVAT Credit Rules, 2004, by the 'input service distributor (ISD)' by subjecting it to scrutiny for eligibility thereof by reference to the activities undertaken by the appellant herein. The appellant herein has merely utilized the credit and, to the extent that rule 3(4) of CENVAT Credit Rules, 2004 has not been shown to have been breached, is not concerned with the source of the credit. The obligation under rule 3(1) of CENVAT Credit Rules, 2004 cannot be transferred to the recipient of credit under rule 7 of CENVAT Credit Rules, 2004.

8. In view of the legally settled boundary for recovery, as set out *supra*, the impugned orders are without authority of law and are consequently set aside to allow the appeals.

((Order pronounced in the open court on 24/02/2025))

(C J MATHEW)
Member (Technical)