CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40630 of 2017

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-256-2016 dated 22.11.2016 passed by Commissioner of Central Excise and Service Tax (Appeals-I), 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Unique Shell Mould India Pvt. Ltd. Plant II **...Appellant**
No. 89, SIDCO Industrial Estate,
Coimbatore – 641 021.

Versus

Commissioner of GST and Central Excise **...Respondent**
Coimbatore Commissionerate,
No. 6/7, A.T.D. Street,
Race Course Road,
Coimbatore – 641 018.

APPEARANCE:

For the Appellant : Mr. K. Sankaranarayanan, Advocate
For the Respondent : Mr. N. Satyanarayana, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 41171 / 2026

DATE OF HEARING : 22.07.2026
DATE OF DECISION : 04.11.2026

Per Mr. VASA SESHAGIRI RAO

This appeal is directed against Order-in-Appeal No.CMB-CEX-000-APP-256-2016 dated 22.11.2016, whereby the Commissioner (Appeals), Coimbatore rejected the appeal filed by the appellant and upheld the Order-in-Original No 10/2016 dated 23.02.2016 passed by the Deputy Commissioner, Central Excise, Coimbatore-III Division.

2. The appellant is engaged in the manufacture of aluminium rough castings and has three manufacturing units, namely Unit-I, Unit-II and Unit-III, Unit-II also being its registered/head office. During the period 2010-11 to 2013-14, the appellant availed CENVAT credit at Unit-II on various common input services. The Department alleged that, as the services were common to all the three units, the credit attributable to Units-I and III ought to have been distributed through the Input Service Distributor mechanism and that the entire credit could not have been availed at Unit-II. A Show Cause Notice was therefore issued proposing recovery of CENVAT credit of Rs.2,95,206/- along with interest and penalty. The appellant had, however, already reversed Rs.1,08,729/- along with applicable interest in respect of the credit attributable to Units-I and III and had informed the Department of such reversal. The adjudicating authority nevertheless confirmed the demand under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, along with interest and equal penalty under Rule 15(2) read with Section 11AC, invoking the extended period of limitation. The Commissioner (Appeals) upheld the adjudication order, inter alia relying upon *NITCO Ltd. v. CCE, Raigad, 2014 (34) S.T.R. 835 (Tri.-*

Mumbai). Aggrieved by the said order, the appellant is before this Tribunal.

3.1 The Ld. Advocate Shri K. Sankaranarayanan for the appellant, submitted that the impugned order erroneously proceeded on the assumption that credit on common input services could not be availed at Unit-II merely because the appellant had three manufacturing units and Unit-II was not registered as an ISD. The services were genuinely received at the registered/head office, the invoices were in the appellant's name, and there was no allegation of non-receipt of services, non-payment of service tax by the service providers or availment of excess credit. It was contended that the dispute was essentially regarding the manner of distribution of credit and not its substantive eligibility. Reliance was placed upon *Demosha Chemicals Pvt. Ltd. v. CCE & ST, Daman, 2014 (34) S.T.R. 758 (Tri.-Ahmd.), Doshion Ltd. v. CCE, Ahmedabad, 2013 (288) E.L.T. 291 (Tri.-Ahmd.), National Engineering Industries Ltd. v. CCE, Jaipur, CCE v. Samita Conductors Ltd., 2012 (278) E.L.T. 492 (Tri.-Ahmd.),* and *Ecof Industries Pvt. Ltd. v. CCE, 2012 (277) E.L.T. 317 (Kar.),* to submit that absence of ISD registration, in the circumstances, was only a procedural irregularity and that the subsequent requirement of

proportionate distribution under Rule 7 could not be retrospectively applied to the earlier period.

3.2 The Ld. Counsel further submitted that the above principle was also recognised in *CCE v. Pricol Ltd., 2021 (2) TMI 495 (Mad.),* wherein the Hon'ble Madras High Court held that non-registration as an ISD did not automatically disentitle an assessee from credit where the relevant records were available for verification. It was also submitted that the appellant had already reversed Rs.1,08,729/- along with interest, comprising Rs.81,922/- and Rs.26,807/-, in respect of the credit attributable to Units-I and III and had intimated the Department thereof; hence, the same amount could not be demanded again. The appellant therefore contended that the entire demand was unsustainable on merits.

3.3 On limitation, learned Counsel submitted that the extended period was not invocable since the credit was duly reflected in the statutory records and the appellant's records had been subjected to departmental audits in 2011 and 2013. There was no fraud, wilful misstatement, suppression of facts or intention to evade duty. Reliance was placed upon *Collector of Central Excise v. Chemphar Drugs &*

Liniments, 1989 (40) E.L.T. 276 (S.C.), Jaishri Engineering Co. (P) Ltd. v. Collector of Central Excise, 1989 (40) E.L.T. 214 (S.C.), CCE v. H.M.M. Ltd., 1995 (76) E.L.T. 497 (S.C.), Uniworth Textiles Ltd. v. CCE, 2013 (288) E.L.T. 161 (S.C.), Neminath Fabrics Pvt. Ltd., 2010 (256) E.L.T. 369 (Guj.), and *Mutual Industries Ltd. v. CCE, Meerut-I, 2000 (117) E.L.T. 578 (Tri.),* for the proposition that mere failure to disclose or a subsequent departmental disagreement could not, without a positive act of suppression or wilful misstatement, justify invocation of the extended period. The appellant accordingly prayed for setting aside the demand, interest and penalty.

4. *Per Contra*, the Ld. Authorized Representative Shri N. Satyanarayana supported the impugned order and submitted that, the appellant having three separate manufacturing units, the common input-service credit attributable to other units could not be availed at Unit-II without following the prescribed ISD mechanism. Reliance was placed on *NITCO Ltd. v. CCE, Raigad, 2014 (34) S.T.R. 835 (Tri.-Mumbai)* to contend that ISD registration was a substantive requirement. On limitation, it was submitted that the appellant had not disclosed the availment of such common-service credit at Unit-II and that the earlier

departmental audits did not necessarily establish knowledge of the specific irregularity. The Revenue accordingly supported the demand, interest and penalty.

5. From the rival submissions, the appeal records, the statutory provisions governing availment and distribution of CENVAT credit, and the decisions relied upon by both sides, the following two questions arise for our determination: -

i. Whether the appellant was entitled to avail CENVAT credit of Rs.2,95,206/- in respect of the common input services at Unit-II during the period 2010-11 to 2013-14, notwithstanding the fact that Unit-II was not registered as an Input Service Distributor for the relevant period, and, consequently, whether the demand is sustainable after giving credit for the reversal of Rs.1,08,729/- along with interest; and

ii. Whether the extended period of limitation and the penalty imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 are legally sustainable?

6. We shall now consider the two questions sequentially.

Issue No. (i) : Whether the appellant was entitled to avail CENVAT credit of Rs.2,95,206/- in respect of the common input services at Unit-II during the period 2010-11 to 2013-14, notwithstanding the fact that Unit-II was not registered as an Input Service Distributor for the relevant period, and, consequently, whether the demand is sustainable after giving credit for the reversal of Rs.1,08,729/- along with interest

7. The first question is whether the entire CENVAT credit of Rs.2,95,206/- is liable to be denied merely because the appellant had not obtained ISD registration during the relevant period.

8. We are unable to agree with the approach adopted by the lower authorities. The undisputed facts are that the appellant had three units under common ownership and management, with Unit-II functioning as its registered/head office, and that the disputed credit pertained to common business services. There is no finding that the services were not actually received, that the service tax had not been discharged by the service providers, or that the appellant had availed credit in excess of the tax paid on such services. The dispute, therefore, essentially concerns the

manner of accounting for and distribution of credit relating to common input services amongst the three units, rather than the substantive receipt or eligibility of the underlying services.

9. The distinction between substantive eligibility and procedural distribution assumes importance.

In *Doshion Ltd. v. CCE, Ahmedabad, 2013 (288) E.L.T. 291 (Tri.-Ahmd.),* relied upon by the learned Counsel for the appellant, the Tribunal considered the availment of service tax credit at one unit without proportionate distribution to the other units through an ISD. It held that, during the relevant period, there was no restriction on such utilisation without proportionate allocation, and that failure to obtain ISD registration could at best be treated as a procedural irregularity. The Tribunal further found that no extra benefit had accrued to the appellant and that the arrangement was revenue neutral, with no loss to the Revenue. The demand was accordingly set aside.

10. The decision in *Demosha Chemicals Pvt. Ltd. v. CCE & ST, Daman, 2014 (34) S.T.R. 758 (Tri.-Ahmd.),* also relied upon by the learned Counsel for the appellant, is relevant to the present case. In that case, the invoices for

input services were issued in the name of the registered/head office, which was not registered as an ISD, and the credit was availed at one of the appellant's units. The Tribunal noted that the services had actually been rendered, the credit availed was exactly equal to the service tax charged by the providers and there was no allegation of excess availment. Following Doshion Ltd. and Modern Petrofils, the Tribunal held that, during the relevant period, there was no provision requiring proportionate distribution of such credit among the units and that the omission to obtain ISD registration was a procedural irregularity. The impugned demand was accordingly set aside.

11. The position is further supported by the judgment of the Hon'ble Madras High Court in *CCE v. Pricol Ltd., 2021 (2) TMI 495 (Mad.),* also relied upon by the learned Counsel for the appellant. The ratio of the decision is that mere absence of registration as an Input Service Distributor does not, by itself, automatically disentitle an assessee from availing CENVAT credit. Where the relevant records are maintained and the Revenue is in a position to verify the correctness of the credit, the lapse in registration is procedural and cannot result in denial of the substantive credit. The High Court, following CCE v. Dashion Ltd., further

noted that this position had been accepted by the CBEC by Circular dated 16.02.2018 and answered the relevant substantial questions of law against the Revenue and in favour of the assessee. Being a decision of the jurisdictional High Court, this ratio is binding and of direct relevance to the present appeal.

12. We have also considered the decisions relied upon by the Revenue. In *NITCO Ltd. v. CCE, Raigad, 2014 (34) S.T.R. 835 (Tri.-Mumbai),* affirmed by the Hon'ble Bombay High Court in 2014 (35) S.T.R. 475 (Bom.), the Tribunal held that the ISD scheme is a special statutory scheme and that, where an assessee seeks to avail credit through such mechanism, the prescribed terms and conditions are required to be complied with. The decision, however, concerned with CENVAT credit distributed by the Head Office without ISD registration and turned on the statutory scheme applicable to those facts. In *Market Creators Ltd. v. CCE & ST, Vadodara, 2014 (36) S.T.R. 386 (Tri.-Ahmd.),* the Tribunal held that where service tax was not paid by the rented premises described as the Head Office for all branches and the premises were not registered as an ISD, credit could not be taken on documents issued in respect of such premises. The ratio of these decisions cannot

be applied mechanically to the present case, where the services were actually received, the credit is supported by the underlying documents, there is no allegation that the credit exceeded the service tax paid or that any double benefit was obtained, and the dispute essentially concerns with the procedural requirement of ISD registration and distribution. Accordingly, these decisions do not warrant denial of the substantive credit in the facts before us.

13. The subsequent decision of the Tribunal in *Pricol Ltd. v. CCE, 2023 (3) TMI 230 - CESTAT Chennai*, also relied upon by the learned Counsel for the appellant, is relevant. The Tribunal examined the provisions of Rule 7 of the CENVAT Credit Rules, 2004 as they stood during the relevant period and held that there was no restriction on the quantum of credit that could be distributed, subject to the conditions then prescribed under the Rule. It further noted that the restriction for proportionate distribution was introduced only subsequently by Notification No.18/2012-CE (NT) dated 17.03.2012 and held that, during the disputed period, there was no such restriction. The ratio of the decision is that the eligibility and manner of utilisation or distribution of credit must be examined with reference to the Rule as it stood during the relevant period and a subsequent restriction

cannot be applied retrospectively to deny credit for the earlier period.

14. The decision in *Pricol Ltd. (Plant-I) v. Commissioner of G.S.T. & Central Excise, Coimbatore Commissionerate, 2019 (2) TMI 25 - CESTAT Chennai; 2019 (25) G.S.T.L. 215 (Tri.-Chennai),* also relied upon by the learned Counsel for the appellant, is relevant in this context. The Tribunal held that where reversal of CENVAT credit merely restored the status quo, without any enlargement of the credit availed or financial injury to the exchequer, the exercise was procedural and revenue neutral; consequently, the demand and penalties could not be sustained. The ratio is that a procedural irregularity, which neither results in excess availment nor causes any loss to the Revenue, cannot by itself justify denial of the substantive credit. In the present case also, the appellant had reversed Rs.1,08,729/- along with interest during 2014, without prejudice to its legal contention. While such reversal cannot be treated as an admission of liability, it is a relevant circumstance in examining whether the transaction resulted in any excess credit or prejudice to the Revenue.

15. The Revenue has not demonstrated that the appellant enjoyed any additional CENVAT benefit merely because the credit was initially taken at Unit-II. The entire credit was within the same legal entity and the dispute is regarding its allocation amongst its own manufacturing units. The absence of ISD registration, in these circumstances, cannot convert otherwise genuine and admissible credit into wholly inadmissible credit.

16. We also note that the appellant had reversed an amount of Rs.1,08,729/- together with applicable interest during 2014 and had intimated the jurisdictional authorities thereof. The Commissioner (Appeals) has himself recorded the appellant's contention and the production of documentary evidence regarding such reversal. The reversal was made without prejudice to the appellant's contention regarding the admissibility of the credit and cannot therefore be treated as an admission that the disputed credit was otherwise inadmissible. This circumstance, however, reinforces the appellant's contention that there was no intention to avail any excess or undue credit and that the dispute essentially concerns the manner of distribution of credit amongst the appellant's units rather than any wrongful availment of credit unsupported by the underlying services.

17. We therefore answer Issue No. (i) in favour of the appellant. In view of the foregoing discussion, the demand of Rs.2,95,206/- confirmed by the lower authorities cannot be sustained and is liable to be set aside.

Issue No. (ii) - Limitation and Penalty

18. Since we have already held, on merits, that the demand of Rs.2,95,206/- is unsustainable, the question of limitation is largely academic. Nevertheless, as the demand has also been sustained by invoking the extended period and penalty has been imposed, we consider it appropriate to examine the issue. The Show Cause Notice dated 05.05.2015 covers the period 2010-11 to 2013-14, ending on 31.03.2014. Thus, even reckoning 31.03.2014 as the latest possible date of availment, the entire demand falls beyond the normal period of one year prescribed under Section 11A of the Central Excise Act, 1944, and can survive only if the extended period is validly invoked.

19. The extended period has been invoked on the allegation that the appellant failed to disclose the availment at Unit-II of common input-service credit pertaining to the other units. However, the credit was reflected in the

appellant's records and supported by invoices. The appellant had also specifically stated that its accounts had been audited by the Department in 2011 and 2013, without any objection being raised on the disputed credit. This contention was recorded in the proceedings before the lower authorities.

20. We accept that an audit, by itself, may not establish that every individual entry was examined by the Department. Nevertheless, where the relevant records were available to the Department, the Revenue must establish the particular material fact which was deliberately withheld or suppressed. In the present case, there is no allegation of fabricated invoices, parallel records, concealment of receipt of services or any other positive act indicating deliberate suppression or wilful misstatement.

21. We also note that, during 2014, the appellant reversed Rs.1,08,729/- along with interest of Rs.37,360/- and intimated the Department by letters dated 23.06.2014, 01.07.2014, 02.07.2014 and 20.09.2014. The appellant made the reversal without prejudice to its legal contention regarding admissibility of the credit. We therefore do not treat the reversal as an admission of liability; it is relevant only as a circumstance showing that the matter had been

brought to the Department's notice before issuance of the Show Cause Notice.

22. The settled principle laid down in *Collector of Central Excise v. Chemphar Drugs & Liniments, 1989 (40) E.L.T. 276 (S.C.), Jaishri Engineering Co. (P) Ltd. v. Collector of Central Excise, 1989 (40) E.L.T. 214 (S.C.), CCE v. H.M.M. Ltd., 1995 (76) E.L.T. 497 (S.C.)* and *Uniworth Textiles Ltd. v. CCE, 2013 (288) E.L.T. 161 (S.C.)* is that mere omission or wrong availment does not, by itself, amount to suppression; the requisite deliberate withholding of material facts has to be established. Applying these principles, we find no material establishing deliberate suppression, wilful misstatement or intent to evade payment of duty.

23. We therefore hold, in the alternative, that the extended period of limitation was not invocable. Since the disputed period ended on 31.03.2014 and the Show Cause Notice was issued only on 05.05.2015, the entire demand of Rs.2,95,206/- is consequently barred by limitation. The consequential interest and the penalty imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944, therefore, cannot be sustained.

24. For the reasons discussed above, we hold that the impugned Order-in-Appeal cannot be sustained. The denial of Rs.2,95,206/- is unsustainable on merits, as the absence of ISD registration, in the facts and circumstances of the present case, cannot by itself justify denial of the substantive credit, particularly when the services were received, the credit was supported by the relevant documents and no excess or double availment has been established. The entire demand is, in any event, barred by limitation, the extended period not being invocable in the absence of suppression, wilful misstatement or intent to evade payment of duty. Consequently, the demand along with consequential interest and the penalty imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944, are set aside. The reversal of Rs.1,08,729/-, having been made without prejudice to the appellant's legal contention, does not affect this conclusion.

25. The appeal filed by M/s. Unique Shell Mould (India) Pvt. Ltd., Plant-II is allowed. The impugned Order-in-Appeal No. A.No.42/2016-CEX dated 22.11.2016 and the Order-in-Original No 10/2016 dated 23.02.2016 are set

aside. The demand of CENVAT credit of Rs.2,95,206/-, along with interest and penalty, is set aside. The appellant shall be entitled to consequential relief, if any, in accordance with law.

(Order pronounced in open court on 04.11.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK