आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलेफैक्स07926305136

DIN : 20221164SW000021212F

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/CEXP/721/2021 /4629-33

ख अपील आदेश संख्या Order-In-Appeal Nos.AHM-EXCUS-001-APP-062/2022-23
दिनाँक Date : 19-10-2022 जारी करने की तारीख Date of Issue 10.11.2022

आयुक्त (अपील) द्वारापारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of OIO No. 20/CGST/Ahmd-South/JC/RK/2021 दिनाँक: 07.04.2021 passed by Joint Commissioner, CGST, Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

1. M/s Kruppa Paints Pvt Ltd
   86, GVMM Ind. Estate,
   Odhav, Ahmedabad - 382415

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार मे हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(क) भारत के बाहर किसी राष्ट्र या प्रदेश मे निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए--8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतरमूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/–फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन , असरवा , गिरधरनागर, अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor,Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5.Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आंकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(39) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(c) amount determined under Section 11 D;
(ci) amount of erroneous Cenvat Credit taken;
(cii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Kruppa Paints Pvt. Ltd., 86, GVMM Industrial Estate, Odhav, Ahmedabad (hereinafter referred to as the appellant) against Order in Original No. 20/CGST/Ahmd-South/JC/RK/2021 dated 07.04.2021 [hereinafter referred to as "*impugned order*"] passed by the Joint Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Central Excise Registration No. AACCK8845JEM002 and engaged in the manufacture of Paints and Putty classifiable under CETH 32141000 of the First Schedule to the Central Excise Tariff Act, 1985. During scrutiny of the ER-1 returns for the period from August, 2016 to November, 2016, it was noticed that the appellant had availed Input Service credit amounting to Rs.66,93,717/- on the basis of ISD invoices issued by M/s.PPG Asian Paints Pvt. Ltd., Mumbai. The appellant had reversed input service credit amounting to Rs.7,78,073/- along with interest on 08.03.2017.

2.1 It was observed that the ISD credit amounting to Rs.33,17,143/- appeared to be abnormal as compared to the appellant's earlier returns. Therefore, vide letter dated 26.09.2016 and 27.10.2016, the appellant was asked to clarify and to get the required information from the ISD i.e. M/s.PPG Asian Paints Pvt. Ltd. The appellant furnished the details called for vide letter dated 08.11.2016. The appellant were also asked for further details in respect of the ISD credit amounting to Rs.13,46,711/- and Rs.12,01,567/- availed during September, 2016 and October, 2016 respectively. The appellant vide letter dated 16.06.2017 submitted that they were doing Toll manufacturing (outsourced manufacturing) on account of M/s.PPG Asian Paints Pvt. Ltd. and submitted a copy of agreement. They informed that they had correctly availed and utilized cenvat credit which was transferred by PPG Asian Paints Pvt. Ltd. under Input Service Distributor (ISD) invoices. It was further informed that PPG

Asian Paints were unable to amend their ISD registration to include their name in time due to some technical issues faced by them in ACES.

2.2 Certain inconsistencies were observed by the jurisdictional officers in the reply of the appellant and the same were communicated to them vide letter dated 23.06.2017. The appellant were informed that Stamp Paper was purchased on 18.04.2015 while the agreement states that the same was made on 28.04.2014. Further, credit was availed on the service tax paid on Business Support Service, Maintenance & Repair Service, Erection, Commissioning and Installation, Work Contract Service, Renting of Immovable Property service etc. However, there was nothing on record to establish as to how services like Works Contract, Erection, Commissioning and Installation etc. availed elsewhere in India were eligible as Common Service in relation to the manufacturing activity. Further, though it was stated by the appellant that the ISD had not transferred any input credit available in balance as on 31.03.2016, the date submitted by the appellant indicated that credit amounting to Rs.6,65,887/- pertained to services availed in 2014 and credit amounting to Rs.51,80,882/- pertained to the services availed in 2015. It was also observed from the correspondences of the ISD that they had applied for amendment for the first time through ACES portal on 05.05.2017. Therefore, till this date the appellant was not included in the service tax registration of PPG Asian Paints Pvt. Ltd.

2.3 In view of the above, it appeared that the appellant had wrongly availed input service credit amounting to Rs.59,15,644/- during August, 2016 to November, 2016. The appellant was, therefore, issued Show Cause Notice No. STC-04-14/Kruppa/2018-19 dated 19.07.2018 wherein :

a) Reversal of the input tax credit amounting to Rs.59,15,644/- was proposed under the provisions of Section 11A(1) of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.

b) Interest was also proposed to be recovered under Section 11AA of the Central Excise Act, 1944 read with Rule 14 of the Cenvat Credit Rules, 2004.

c) Penalty was also proposed to be imposed under Rule 15 (1) of the Cenvat Credit Rules, 2004.

3. The SCN was adjudicated vide the impugned order wherein the cenvat credit amounting to Rs.59,15,644/- was disallowed and ordered to be recovered along with interest. Penalty amounting to Rs.5,91,564/- was imposed under Section 11AC(1) (a) of the Central Excise Act, 1944 read with Rule 15 (1) of the Cenvat Credit Rules, 2004.

4. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

i. The adjudicating authority has erred on facts and in law by considering the expenses passed on by PPG Asian Paints as not having direct nexus with their business.

ii. The adjudicating authority has erred in not considering the submissions provided by them on 16.06.2017. He has also erred in not looking in to the actual eligibility of input services as per the CCR, 2004.

iii. The adjudicating authority has not discussed all the expenses which were passed over by the ISD invoices. Only credit amounting to Rs.42,33,986/- has been discussed but total credit of Rs.59,15,644/- has been disallowed.

iv. The adjudicating authority has also erred on facts by considering the marketing expense as repair and maintenance of motor vehicle.

v. When the allocation is made pro rata on the basis of turnover, there is no need for a direct nexus to be present.

vi. The adjudicating authority has also erred in disallowing Input Tax credit passed on by PPG Asian Paints on the grounds that they were not added as additional place of business. He has erred in not perusing Explanation 4 where the input tax distribution is allowed even to the manufacturer who manufactures goods on behalf of the ISD.

vii. The adjudicating authority has not considered the technical issues faced by PPG Asian Paints in applying for additional place of registration.

viii. There are various judicial precedent where it was held that even if a unit was not registered under centralized registration, cenvat credit is available of input services received by such unit.

5. Personal Hearing in the case was held on 07.10.2022. Shri Pradip R. Shah and Shri Yogesh Gaba, Chartered Accountants, appeared on behalf of appellant for the hearing. They reiterated the submissions made in appeal memorandum. They submitted a written submissions during the hearing and reiterated the submissions made therein.

6. In the additional written submissions filed by the appellant in the course of the personal hearing, it was submitted, inter alia, that :

- From the definition of ISD as per Rule 2(m) of the CCR, 2004, it is clear that only credit towards input services can be distributed. Therefore, whether a service amounts to input service has to be determined at ISD's end and not manufacturing unit to whom the credit is distributed.
- Rule 7 of the CCR, 2004 stipulates that the provisions of Rule 6 shall apply only to the manufacturing units or output service providers and not to the ISD. This clause was inserted w.e.f. 01.04.2012 pursuant to the judiciary concluding that eligibility of cenvat credit is to be seen at ISD's end. They rely upon the decision in the case of CST Vs. Godfrey Philips India Limited – 2009 (239) ELT 323 (Tri.-Ahmd) and Ericsson India Private Limited Vs. CCE & ST – 2011 (24) STR 346 (Tri.-Bang.).
- The government consciously amended Rule 7 to stipulate adherence to Rule 6 at the unit's end and not at ISD's end. This clearly shows that the Government did not make this condition for any other rule under CCR, 2004. Thus, as a result, it can be construed that the

conditions of eligibility of credit except reversal under Rule 6, has to be determined at ISD's end and not manufacturing unit's end.

- They rely upon the decision in the case of Surfa Coats Limited Vs. CCE – 2016 (46) STR 354 (Tri.-Bang.); JK Cement Works Vs. CCE & ST – 2017 (49) STR 549 (Tri.-Del.); United Phosphorus Limited Vs. CCE – 2013 (30) STR 509 (Tri.-Ahmd.); Castrol India Limited Vs. CCE – 2013 (30) STR 214 (Tri.-Ahmd.) and SKF India Limited – Appeal No. 20723-20724/2014 dated 07.05.2014 – Tribunal Bangalore.
- The decision of the Tribunal, especially Ahmedabad, is binding and if it is decided against the same, a proper reasoning may be given to that they can contest accordingly.
- Rule 7 of the CCR, 2004 nowhere provides that nexus be established between the services availed at ISD's end and its receipt at unit's end.
- There are various services which cannot be traced physically to a particular unit e.g. accounting, audit, ERP, marketing, advertisement, legal etc.
- They rely upon the decision in the case of Nestle India Limited Vs. CC & CE – 2017 (5) GSTL 294 (Tri.-Mum.); CCE Vs. Ecof Industries Private Limited – 2012 (277) ELT 317 (Kar.); CCE Vs. Dashion Limited – 2016 (41) STR 884 (Guj.); Raymond Limited Vs. CCE – 2017 (47) STR 142 (Tri.-Del.); Greaves Cotton Ltd. Vs. CCE – 2015 (37) STR 395 (Tri.-Chennai) and Piramal Glass Private Limited Vs. CCE – 2021 (55) GSTL 22 (Tri.-Ahmd).
- Rule 7 of the CCR, 2004 nowhere provides that registration is a pre-condition to distribute the credit. Reliance is placed upon Explanation 4 to Rule 7 of the CCR, 2004 from which it can be construed that what is important is that outsourced manufacturing unit is manufacturing goods under a contract.
- They rely upon the decision in the case of CCE Vs. Dashion Limited – 2016 (41) STR 884 (Guj.); Reliance Industries Limited Vs. CCE & ST (LTU) – 2019 (28) GSTL 309; Tech Mahindra Limited Vs. CCE – 2014 (36) STR 332 (Tri.-Mum.) which was affirmed by Bombay High

Court – 2014 (36) STR 241; HICAL Technologies Pvt. Ltd. Vs. CCE – 2021 (44) GSTL 101 (Tri.-Bang.); Hinduja Global Solutions Ltd. Vs. CCE – 2016 (42) STR 932 (Tri.-Bang.).

- It is now a settled principle that ISD registration is not mandatory for distribution of credit. Similarly, if ISD registration is not mandatory for distribution of credit, then merely amending ISD registration to add one unit should not be regarded as a mandatory pre-condition to distribute the credit. Even if it is a mandatory pre-condition, it has to be done at the ISD's end.
- Since the nexus between credit distributed and credit availed is not required, they submit that the service on which credit distributed was eligible input service. They submit a table showing the nature of services and the amount of credit availed.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions as well as those made in the course of the personal hearing and the material available on records. The issues before me for decision are :

A) Whether the appellant is eligible for input service credit passed on by the ISD prior to their inclusion in the ISD registration ?

B) Whether appellant are eligible to credit of service tax passed on by the ISD in respect of Business Support Service, Maintenance & Repair Service, Erection, Commissioning and Installation, Work Contract Service, Renting of Immovable Property service etc. ?

The demand pertains to the period August, 2016 to November, 2016.

8. It is observed that Input Service Distributor has been defined in Rule 2 (m) of the CCR, 2004, as amended w.e.f 01.04.2016, which is reproduced below :

> " " input service distributor" means an office of the manufacturer or produced 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 produced or provider or an outsourced manufacturing unit, as the case may be;"

8.1 The words 'or an outsourced manufacturing unit' was inserted vide the CENVAT Credit (Third Amendment) Rules, 2016, w.e.f. 01.04.2016. Therefore, prior to 01.04.2016, distribution of credit of service tax paid on the services by an ISD to 'an outsourced manufacturing unit' was not permitted. The disputed cenvat credit in the present appeal pertains to the period August, 2016 to November, 2016 and, therefore, the provisions of the amended rules apply.

8.2 It has been alleged by the department that the appellant had availed credit on the basis of the documents issued by the ISD prior to the inclusion of the appellant in the registration of the ISD. The adjudicating authority has recorded at Para 20 of the impugned order that the ISD had applied for amendment to include the name of the appellant only on 08.05.2017. Therefore, ITC could not be distributed to a premises which was not added in the distribution channel or as a Unit which could receive ISD invoices and avail ITC before 08.05.2017.

8.3 It is observed from the records that the appellant had entered into an agreement with PPG Asian Paints – the ISD- sometime during 2014/2015. There is some dispute on the actual date, as mentioned at Para 6 (i) of the impugned order. However, be it 2014 or 2015, it is clear that the appellant had entered into an agreement with the ISD prior to 01.04.2016 and from 01.04.2016 distribution of ITC by an ISD to an outsourced manufacturing unit was allowed. Therefore, as on 01.04.2016 the appellant, as an outsourced manufacturing unit of the ISD, was entitled to avail the ITC credit distributed by the ISD during the period August, 2016 to November, 2016.

8.4 As regards the issue as to whether the appellant is eligible to avail credit distributed by the ISD prior to the inclusion of their name in the registration of the ISD, I find that the issue is no more *res integra* in view of the various judicial pronouncements. The appellant have relied upon

some of the judgments by various appellate authorities. I find that in the case of Commissioner of Central Excise Vs. Dashion Ltd. – 2016 (44) STR 884 (Guj.), the Hon'ble High Court of Gujarat had held that :

> "7. The second objection of the Revenue as noted was with respect of non-registration of the unit as input service distributor. It is true that the Government had framed Rules of 2005 for registration of input service distributors, who would have to make application to the jurisdictional Superintendent of Central Excise in terms of Rule 3 thereof. Sub-rule (2) of Rule 3 further required any provider of taxable service whose aggregate value of taxable service exceeds certain limit to make an application for registration within the time prescribed. However, there is nothing in the said Rules of 2005 or in the Rules of 2004 which would automatically and without any additional reasons disentitle an input service distributor from availing Cenvat credit unless and until such registration was applied and granted. It was in this background that the Tribunal viewed the requirement as curable. Particularly when it was found that full records were maintained and the irregularity, if at all, was procedural and when it was further found that the records were available for the Revenue to verify the correctness, the Tribunal, in our opinion, rightly did not disentitle the assessee from the entire Cenvat credit availed for payment of duty. Question No. 1 therefore shall have to be answered in favour of the respondent and against the assessee."

8.5 The above judgment was followed and a similar view was taken by the appellate authorities in the following cases :

i. Commissioner of C.Ex., S.T. & Cus., Bengaluru Vs. Hinduja Global Solutions Ltd. – 2022 (61) GSTL 417 (Kar.).
ii. Commissioner of Central Excise, Coimbatore Vs. Pricol Ltd. – 2021 (48) GSTL 235 (Mad.)
iii. Biotor Industries Ltd. Vs. Commr. (Appeals), C.Ex., Cus. & S.T., Vadodara-I – 2018 (10) GSTL 34 (Tri.-Ahmd.)
iv. Adani Gas P. Ltd. Vs. Commissioner of C.Ex., & S.T., Ahmedabad – 2017 (349) ELT 349 (Tri.-Ahmd.)

8.6 Applying the ratio of the above judgments, I am of the considered view that the cenvat credit cannot be denied to the appellant merely on the grounds that the credit was availed prior to their inclusion in the registration of the ISD. Therefore, I hold that the impugned order disallowing cenvat credit to the appellant on the grounds of their non inclusion in the registration of the ISD is not legal and proper.

9. As regards the issue of eligibility of the appellant to credit of service tax passed on by the ISD in respect of Business Support Service, Maintenance & Repair Service, Erection, Commissioning and Installation, Work Contract Service, Renting of Immovable Property service etc., I find that distribution of credit by the ISD is governed by the provisions of Rule

7 of the CCR, 2004. The relevant text of the said Rule 7 is reproduced below :

> "7. The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service to any outsourced manufacturing units, as defined in Explanation 4, subject to the following conditions, namely :-
>
> (a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon;
>
> (b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit;
>
> (c) the credit of service tax attributable as input service to more than one unit but not to all units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be pro rata on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period;
>
> (d) the credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;
>
> (e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;
>
> (f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units.
>
> Provided that the turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such manufacturing unit for the input service distributor."

9.1 From the above provisions, it is clear that an ISD can distribute credit, which is not more than the amount of service tax paid; only the credit attributable as input service to a particular unit shall be distributed to that unit; credit attributable to more than one unit shall be distributed on pro rata basis.

9.2 In the instant case, I find that the adjudicating authority has recorded his finding at Para 17 of the impugned order that it is not evident that the services like erection, commissioning, installation and work contract have been used in the manufacture of goods cleared by the appellant. It has also been recorded that no one-to-one co-relation has been established between the ITC availed and its utilization towards the

clearance of excisable goods by the appellant and that no nexus of the input services received and manufacture and clearance of finished goods has been established. The adjudicating authority has further recorded at Para 18 of the impugned order that the appellant have not provided appropriate and proper documents to prove that they had indeed used the input services, received through the invoice of the ISD, in the manufacture of excisable goods manufactured and cleared by them.

9.3 In this regard, I find that the provisions of Rule 7 of the CCR, 2004 does not mandate one-to-one co-relation between the ITC and its utilization towards clearance of excisable goods. Therefore, the finding of the adjudicating authority on this count is erroneous and not legal. The appellant have contended that Rule 7 does not provide for a nexus to be established between the services availed at the ISD's end and its receipt at the unit's end. Admittedly, the provisions of Rule 7 of the CCR, 2004 do not require that nexus is to be established between the services availed at the ISD's end and its receipt at the unit's end. However, in terms of Rule 7 (b) of the CCR, 2004, the credit of input service attributable to a particular unit shall be distributed to that unit only. As per Rule 7 (c) and (d) of the CCR, 2004, credit of input service attributable to more than one unit or all units shall be distributed on pro rata basis based on the turnover. Further, Rule 7(e) of the CCR, 2004 stipulates that separate accounts are to be maintained by the outsourced manufacturing unit in respect of the credit received from each of the ISDs and that the credit shall be used only for payment of duty on the goods manufactured by the unit for the concerned ISD. From these provisions under Rule 7, it is clear that only credit of the input service attributable to a unit can be distributed by the ISD to that unit. In the instant case, the appellant have not furnished, before the adjudicating authority or in their appeal memorandum, any details or documents of the input services in respect of which credit was availed by them, on the basis of the invoices issued by the ISD, which indicate that the credit distributed by the ISD to the appellant relates to or is attributable to the products manufactured by them on behalf of the ISD.

9.4 The appellant have in their additional written submissions contended that the credit availed by them was in respect of 18 different input services. They have also contended, in their appeal memorandum, that the adjudicating authority has discussed regarding credit amounting to Rs.42,33,986/- but disallowed the credit amounting to Rs.59,15,644/-. I find merit in this contention of the appellant. It is observed that the adjudicating authority has at Para 17 of the impugned order dealt with only the input services of Erection, Commissioning and Installation and Works Contract. From the details submitted by the appellant, it is seen that substantial part of the credit pertains to Marketing Services and Sales Commission, while the credit on Erection, Commissioning and Installation as well as Works Contract services form a miniscule part of the total disputed credit availed by the appellant. Apparently, the adjudicating authority was handicapped by the non submission of the relevant documents by the appellant. However, when multiple input services are involved, denial of credit by generalizing the findings in respect of a few services is neither legal nor proper. Since the appellant have not submitted any documents along with their appeal memorandum, pertaining to the input services in respect of which credit has been availed by them, it is not possible for this authority to determine whether these input services are those which are attributable to the appellant either wholly or in part. Therefore, it would be in the fitness of things to remand the matter back to the adjudicating authority to examine whether the input services on which credit has been availed, on the strength of ISD invoices, are attributable to the appellant and thereafter decide the matter afresh. The appellant are directed to submit before the adjudicating authority all the documents in support of their claim for cenvat credit distributed by the ISD. Needless to state, the principles of natural justice are to be followed while deciding the matter in the remand proceedings.

10. The appellant have relied upon decisions of various High Courts and Tribunals in support of their contentions that whether a service amounts to input service has to be determined at the ISD's end; eligibility has to be seen at the ISD's end and not at the manufacturing units end; and no

nexus is required to be established between the services availed at the ISD's end and its receipt at the unit's end. I have gone through the judgments in the cases cited by the appellant and find that the same have been pronounced in the context of Rule 7 of the CCR, 2004 as it stood prior to 01.04.2016. Consequent to its amendment vide the CENVAT Credit (Third Amendment) Rules, 2016, Rule 7 of the CCR, 2004 has undergone substantial change. Therefore, the judgments pronounced in the context of the erstwhile Rule 7 of the CCR, 2004, as it stood prior to its amendment from 01.04.2016, are not applicable to the facts of the present appeal where the dispute pertains to the credit, availed on ISD's invoices, during August, 2016 to November, 2016.

11. In view of the facts discussed herein above, I am of the considered view that the matter is required to be remanded back to the adjudicating authority for adjudication afresh, in light of the findings contained in Para 9.3 and 9.4 above, after considering the documents and submissions of the appellant. The appellant are directed to produce before the adjudicating authority all the necessary documents in support of their contentions within 15 days of the receipt of this order. Accordingly, the impugned order is set aside and remanded back to the adjudicating authority. The appeal filed by the appellant is allowed by way of remand.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

19th October, 20

(Akhilesh Kumar)
Commissioner (Appeals)
Date: .10.2022.

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

M/s. Kruppa Paints Pvt. Ltd.,
86, GVMM Industrial Estate,

Appellant

Odhav, Ahmedabad

The Joint Commissioner, Respondent
CGST,
Commissionerate : Ahmedabad South.

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
4. Guard File.
5. P.A. File.