CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 55150 of 2014

[Arising out of Order-in-Original No. 74-76/SA/CCE/2014 dated 30.06.2014 passed by the Commissioner of Central Excise, Delhi-III at Gurgaon]

Kansai Nerolac Paints Ltd **……Appellant**
Plot No. 36, Sector 7, HSIDC Growth Centre,
Bawal, Rewari, Haryana 123501

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Faridabad **……Respondent**
GST Bhawan, New CGO Complex,
NH 4, Faridabad, Haryana 121001

WITH

Excise Appeal No. 55151 of 2014

[Arising out of Order-in-Original No. 74-76/SA/CCE/2014 dated 30.06.2014 passed by the Commissioner of Central Excise, Delhi-III at Gurgaon]

Kansai Nerolac Paints Ltd **……Appellant**
Plot No. 36, Sector 7, HSIDC Growth Centre,
Bawal, Rewari, Haryana 123501

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Faridabad **……Respondent**
GST Bhawan, New CGO Complex,
NH 4, Faridabad, Haryana 121001

AND

Excise Appeal No. 55152 of 2014

[Arising out of Order-in-Original No. 74-76/SA/CCE/2014 dated 30.06.2014 passed by the Commissioner of Central Excise, Delhi-III at Gurgaon]

Kansai Nerolac Paints Ltd **……Appellant**
Plot No. 36, Sector 7, HSIDC Growth Centre,
Bawal, Rewari, Haryana 123501

VERSUS

Commissioner of Central Excise, Goods & Service Tax, Faridabad **……Respondent**
GST Bhawan, New CGO Complex,
NH 4, Faridabad, Haryana 121001

APPEARANCE:

Mr. Mehul Jivani, C.A. for the Appellant
Mr. Goverdhan Dass Bansal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60114-60116/2026

DATE OF HEARING: 02.02.2026
DATE OF DECISION: 02.02.2026

P. ANJANI KUMAR :

These three appeals, i.e. E/55150/2014, E/55151/2014 & E/55152/2014, are filed by the Appellants assailing the impugned Order-in-Original dated 30.06.2014. Since, the issue involved in these appeals is identical, therefore, all three appeals are taken up together for the purpose of discussion and decision.

2. Briefly stated facts of the case are that the Appellants are engaged in manufacture of Paints, Emulsions and Varnishes and are registered with Central Excise Department. During the course of audit of the records of the Appellants by the Accountant General Chandigarh, Haryana, it was noticed that the Appellants have availed CENVAT Credit on input services on account of 'advertisement agency services' as distributed by their head-office; however, the Appellants have not booked any expenditure in the books of account of the branch, but have booked in the books of account of the head-office; accordingly, the SCNs dated 21.08.2009, 31.12.2012 & 08.11.2013 covering the period April 2006 to March 2009, December 2011 to

August 2012 and October 2012 to September 2013 respectively were issued to the Appellants alleging that the Appellants have violated the Rule 7 of the CENVAT Credit Rules, 2004 and other rules and have wrongly availed CENVAT Credit of Rs.3,07,83,328/-. The proposals in the SCNs were confirmed by the impugned Order-in-Original dated 30.06.2014 vide which demand of allegedly wrongfully availed CENVAT Credit was confirmed along with interest and equal penalty. Hence, the present appeals.

3. Mr. Mehul Jivani, the learned Consultant for the Appellant submits that there is no condition either under Rule 7 or Rule 2(m) or Rule 2(l) that the expenses should be booked in the books of account of the factory. He submits that the CBEC vide Press Note dated 16.08.2004 has clarified as under:

> *"(iv) Full credit of service tax on services (such as telephone, security, construction, advertising service, market research etc.) which are received in relation to the offices pertaining to a manufacturer or service provider would also be allowed.*
>
> *(v) In many cases, it so happens that the bill/invoice is raised in the name of head office/regional office etc. This may be the case for services which are actually received in the factory (or factories) or premises of service provider.* ***In addition, the bill for services which are not specific for any factory/premises, such as advertising, market research, management consultancy etc. would also be received only in these offices.*** *The issue is as to what would be the mechanism for passing of the credit of tax in such situations.* ***It would be left to the assessee to decide as to how he distributes the credit only ensuring that the total credit allowed does not exceed the eligible credit amount****. Such offices who distribute the credit would have to obtain service tax registration."*

He further submits that it has further been clarified by the CBEC vide Circular No. 97/8/2007 dated 23.08.2007 that:

"8.4 Input service distributor is an office or premises of the manufacturer or taxable service provider which receives bills/invoices etc, of input services. The input service distributor can distribute the eligible credit to any unit of the manufacturer or any premises/office of taxable service provider."

3.1 The learned Consultant also submits that it has been held by the Tribunal in various decisions that eligibility of credit should have been checked at ISD level and not at the level of manufacturing unit and therefore, SCNs have been issued without jurisdiction. He also submits that Chennai Bench of the Tribunal in the case of Appellants themselves, vide **Final Order No. 40865-40867/2019 dated 03.06.2019**, has held that credit cannot be denied in the hands of the recipient who has only consumed the services. He also relies on the following decisions:

- **CCE, CHANDIGARH-I VS. BRILLION CONSUMER PRODUCTS PVT LTD. - 2024 (10) TMI 6 CESTAT CHANDIGARH**
- **M/S TULSYAN NEC LTD - 2025 (11) TMI 1092 CESTAT CHENNAI**
- **HINDUSTAN COCA-COLA BEVERAGES PVT LTD - 2025 (3) TMI 675-CESTAT MUMBAI**
- **HINDUSTAN COCA-COLA BEVERAGES PVT LTD - 2025 (2) TMI 949-CESTAT MUMBAI**
- **CCE, DURGAPUR VS. M/S DURGAPUR STEEL PLANT - 2025 (3) TMI 428 CESTAT KOLKATA**
- **M/S G.P. PETROLEUM LTD. - 2019 (3) TMI 33 CESTAT MUMBAI**
- **ERICSSON INDIA PVT LTD - 2019 (1) TMI 722 CESTAT HYDERABAD**
- **HENKEL ANAND INDIA PVT LTD - 2020 (1) TMI 369 CESTAT CHANDIGARH**
- **JK TYPE & INDUSTRIES LIMITED - 2020 (1) TMI 583 CESTAT NEW DELHI**
- **SHRIRAM RAYONS LIMITED - 2020 (1) TMI 758 CESTAT NEW DELHI**
- **METRO SHOES PVT LTD VS. COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I - 2019 (9) TMI 1532 CESTAT MUMBAI**

- **M/S GODFREY PHILIPS INDIA PVT. LTD. - 2009 TIOL 269**
- **M/S ERICSON (INDIA) PVT. LTD. - 2011 24 STR 346**

3.2 The learned Consultant submits in addition that the issue is entirely revenue neutral as credit denied to Bawal unit will be available as credit to other units. In this regard, he relies on the following decisions:

- **GREAVES COTTON LTD - 2015 (37) STR 395 (TRI. CHENNAI)**
- **RAYMOND LTD - 2017 (47) STR 142 (TRI. DEL.)**
- **OERLIKON BALZERS COATING INDIA P LTD - 2018 (12) TMI 1300 BOMBAY HIGH COURT**

3.3 The learned Consultant submits further that though the provisions of Rule 7 have been amended w.e.f. 01.04.2012, the SCNs dated 31.12.2012 and 08.11.2013 continued to discuss the old provisions. He submits that the Principal Bench of the Tribunal in the case of **Federation of Indian Chambers of Commerce & Industry [2014-TIOL-701]** has held that demand under SCN should be based on the amended provisions of the Finance Act.

3.4 The learned Consultant submits that the SCNs have been issued on the basis of an audit and no *mens rea* can be attributed to the Appellants; moreover, no case of suppression, mis-statement, fraud etc has been alleged/proved by the Department. For this, he relies on the following decisions:

- **NIRLON LTD - 2015 (320) ELT 22 (SC)**
- **TENNECO RC INDIA PVT LTD - 2015 (323) ELT 299 (MAD.)**

4. On the other hand, Mr. Goverdhan Dass Bansal, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order.

5. Heard both the parties and perused the records of the case.

6. We find that as rightly pointed out by the learned Consultant for the Appellants, the Rule 7 does not provide that the CENVAT Credit availed by the branch should be booked for in their books of account. We find that no provision which is not provided in the rules, can be brought/read into the impugned issue. We find that Rule 7 of the CENVAT Credit Rules, 2004, during the period prior to 01.04.2012, though applied by the Revenue for subsequent period, reads as follows:

> *"**Rule 7. Manner of distribution of credit by input service distributor.** — The input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, 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, or*
>
> *(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."*

7. We further find that the issue is no longer *res integra* and has been settled by this Tribunal in the case of **CCE, Chandigarh-I vs. M/s Brillion Consumer Products Pvt Ltd** (supra) wherein the Tribunal has held in para 7, 8 & 9, as under:

> "**7.** We note that proviso to Rule 3(4) limiting such credit availment does not apply where the credit is availed based on the invoices issued by ISD. In this regard, we may refer to the decision of the Tribunal in the case of *Godrej Consumer Products*

Ltd (cited supra), wherein the proviso to Rule 3(4) has been examined and the Tribunal has observed as under:

> ***"****6. For better appreciation, proviso to Rule 3(4) is reproduced as under :-*
>
> *"Provided further that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the following notifications of Government of India in the Ministry of Finance (Department of Revenue):-*
>
> *(i) No. 32/99-Central Excise, dated the 8th July, 1999 [GSR 508(E), dated 8th July 1999];*
>
> *(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [GSR 509(E), dated 8th July 1999];*
>
> *(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [GSR 565(E), dated the 31st July, 2001];*
>
> *(iv) No.56/2002-Central Excise, dated the 14th November, 2002 [GSR 764(E), dated the 14thNovember, 2002];*
>
> *(v) No.57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002];*
>
> *(vi) No.56/2003-Central Excise, dated the 25th June, 2003 [GSR 513(E), dated the 25th June, 2003];*
>
> *(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [GSR 717(E), dated the 9th September, 2003];*
>
> *shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of."*
>
> *The above proviso clearly shows that the units who avail credit of duty or service tax if availing the area based exemptions shall utilize the credit only for payment of duty on final products in respect of which exemption under the respective notifications has been availed. It is an undisputed fact that various services were availed in the name of Head Office of the company which were used commonly by all manufacturing units including the units availing area based exemption. The department is of the view only the proportionate credit attributable to such area based exemption units should be utilized for discharge of duty on final products cleared on availing the exemption as per the*

notification. The department lays stress on the word "shall be utilized only" and has raised the demand alleging that the credit on input services which have been availed by all the units cannot be distributed by the head office on the premise that the area based exemption units have to utilize the credit only for payment of duty of final products to which the area based exemption applies. Interestingly, the show cause notice is not issued to such units who have availed area based exemptions. The appellant situated in Puducherry has availed credit on the ISD invoices issued by their Head Office. Prior to 1-4-2012 there was no restriction as to how much credit can be distributed to each unit. During the relevant period, Rule 7 did not lay down any manner of distribution based on pro rata basis. The said proviso under Rule 7, during the disputed period read as under:-

"RULE 7. Manner of distribution of credit by input service distributor. *- 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 units providing output service, 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; or

(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."

6.1 Only with effect from 1-4-2012, Rule 7 has been amended to include that the distribution of credit shall be on pro rata basis. The decision in the case of ECOF Industries P. Ltd. (supra) also has laid down that there are no restriction under the said Rules limiting the distribution of service tax credit. In the present case, the appellant has availed the credit on ISD invoices distributed by their Head Office. To such availment or utilization of credit by appellant, the proviso to Rule 3(4) does not apply at all. We therefore are of the view that the demand raised alleging that the appellant has violated provisions of Rule 2(1) r/w proviso to Rule 3(4) cannot sustain and requires to be set aside, which we hereby do.

6.2 The demand of Rs. 1,86,113/- has been raised alleging that the appellant has availed credit on membership fee of Bombay Gymkhana Club Ltd. and that these are not eligible

input services. After perusing the records, we agree with the view taken by the authority below as we find that such membership fee paid by the appellant does not have any nexus with their manufacturing activity. The demand raised on this ground is therefore upheld without any interference."

In view of the above said decision, we hold that second proviso to Rule 3(4) does not apply in the present case.

8. Further, we note that that it is a settled issue that the department does not have jurisdiction to question the correctness of credit distributed by ISD from the recipient i.e. respondent which is merely availing the credit based on invoices issued ISD. In this regard, we may refer to the decision of the Tribunal in the case of *Metro Shoes Pvt Ltd (cited supra)*, wherein the Tribunal has observed as under:

"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 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."

9. As regards the allegation of the appellant-Revenue that the respondent has not followed the provisions of Rule 7, which provides the manner of distribution by ISD, we find that first of all, the show cause notices do not allege the violation of any one of the provisions of Rule 7; and secondly, during the relevant period, Rule 7 does not provide for the mechanism of distributing the credit proportionately. The said condition was made effective only from 01.04.2012, therefore, the allegation of department that the respondent has violated the provisions Rule 7 does not hold good. This has been held consistently by the Tribunal and the High Courts in the various decisions as cited supra."

8. Further, we also find that in the case of Appellants themselves reported in **2024 (3) TMI 1038**, this Tribunal has held as under:

"**8.4** **<u>Services used by the Head Office (ISD)</u>** : Cenvat Credit in respect of courier service, mandap keeper service, event management, cargo handling and C&F service has been denied on the ground that the same is not in relation to manufacturing activities of the appellant and hence, the same is not admissible. This issue has also been considered by the various benches of this Tribunal and the Hon'ble Karnataka High Court. It is pertinent to refer to the decision of the Hon'ble Karnataka High Court in the case of ***CCE, Bangalore-I vs Ecof Industries Pvt Ltd [2011 (271) ELT 58 (Kar.)]***, wherein the Hon'ble High Court after considering the definition of 'input service' has held in para 8 to para 10 as under:

> ***"****8. It is in this context, the definition of input service distributor makes it clear that a manufacturer or a producer of a final product or a provider of output service may have more than one unit and may be distributed in various parts of the country. It is in this background the definition of service distributor is defined as office of the manufacturer or producer of a final product 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. Therefore, the law mandates that the manufacturer who wants to avail the benefit of this service tax if he has more than one unit he should also get registered himself as a service provider and then, he would be able to collect all the input service tax paid in all its units and accumulate them at its head office and distribute the said credit to its various units. At the time of distribution, the manner of distribution is provided in Rule 7 which reads as under :-*
>
> *"**Rule 7. Manner of distribution of credit by input service distributor.** — The input service distributor may*

distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, 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, or

(b) credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."

Therefore, only two limitations are put for the distribution of credit by an input service distributor. Firstly, it cannot exceed the amount of service tax paid and secondly, the credit of service tax attributable to service used shall not be distributed in a unit exclusively engaged in the manufacture of exempted goods or providing of exempted services.

9. In fact, the Board has issued a circular clarifying in this regard, which is extracted by the tribunal at para 7 which reads as under:-

*"**Para 7**. Para 2.3 of the Master Circular referred to by the ld. Advocate reads as under :-*

"2.3 An 'Input service distributor' is an office or establishment of a manufacturer of excisable goods or provider of taxable service. It receives tax paid invoices/bills of input services procured (on which Cenvat credits can be taken) and distributes such credits to its units providing taxable services or manufacturing excisable goods. The distribution of credit is subject to the conditions that - (a) the credit distributed against an eligible document shall not exceed the amount of service tax paid thereon, and (b) credit of service tax attributable to services used in a unit either exclusively manufacturing exempted goods or exclusively providing exempted services shall not be distributed. An input service distributor is required (under Section 69 of the Act, read with Notification No. 26/2005-S.T.) to take a separate registration."

10. Therefore, these are the only two limitations, which are imposed in Rule 7 preventing the manufacturer from utilizing the CENVAT credit, otherwise, he is entitled to the said credit. Merely because the input service tax is paid at a particular unit and the benefit is sought to be availed at another unit, the same is not prohibited under law. It is in this context, the manufacturer is expected to register himself as a input service distributor and thereafter, he is entitled to distribution of credit of such input in the manner prescribed under law. Therefore, the order passed by the tribunal is legal and valid and does not suffer from any legal infirmity and does not call for any interference and therefore it is dismissed."

Similarly, the Tribunal in the case of ***ITC Limited vs CCE, Bangalore-II [2016 (46) STR 73 (Tri. Bang.)*** after following the decision of the Hon'ble Karnataka High Court in ***Ecof Industries Pvt Ltd (supra)***'s case***,*** has held that the assessee is entitled to Cenvat Credit of service tax as distributed by the ISD. Therefore, this issue is also held in the favour of the appellant. Similarly, courier service, mandap keeper service and event management service have also been held to be 'input service' and rightly distributed by the ISD in the cases relied upon by the appellant cited supra. Hence, we hold that the appellant is entitled to Cenvat Credit with regard to these services."

9. In view of the above, we find that neither the impugned SCNs nor the impugned order can be sustained in the eyes of law and thus, are liable to be set aside. Accordingly, we set aside the impugned order and allow all the three appeals of the Appellants with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi