CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Excise Appeal No. 41527 of 2016

(Arising out of Order-in-Original No. 4/2016 dated 22.02.2016 passed by Commissioner of Central Excise, MHU Complex, Nandanam, Chennai – 600 035)

M/s. Tulsyan NEC Ltd. **...Appellant**
No. 39, Dr. Hari Krishna Naidu Street,
Ambattur,
Chennai – 600 053.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai II Commissionerate,
No. 692, Anna Salai,
MHU Complex, Nandanam,
Chennai – 600 035.

And

Excise Appeal No. 41528 of 2016

(Arising out of Order-in-Original No. 4/2016 dated 22.02.2016 passed by Commissioner of Central Excise, MHU Complex, Nandanam, Chennai – 600 035)

M/s. Tulsyan NEC Ltd. **...Appellant**
Input Service Distributor,
Apex Plaza, 1st Floor,
New No. 77 (Old No. 3),
Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai II Commissionerate,
No. 692, Anna Salai,
MHU Complex, Nandanam,
Chennai – 600 035.

APPEARANCE:

For the Appellants : Mr. G. Natarajan, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41322 & 41323 / 2025

DATE OF HEARING : 08.10.2025
DATE OF DECISION : 14.11.2025

Per Mr. VASA SESHAGIRI RAO

These appeals arise from the denial of input service tax credit distributed by the Input Service Distributor (ISD) of M/s. Tulsyan (hereinafter Appellant 2/ "ISD") to its Ambattur unit (the "Appellant 1-unit"). The departmental adjudication impugns distribution on multiple grounds, including that supplier invoices were addressed to the Gummidipoondi unit (another Tulsyan unit) and not to the ISD; and that several invoices lacked details of the original service providers and relied upon internal ledger (CWIP) entries.

2.1 M/s. Tulsyan NEC Ltd. Ambattur are manufacturing re-rolled products of steel and had taken Central Excise Registration. They had their office in the same address, where the office of the assessee (distinct from factory) is located, they have also obtained registration as an Input Service Distributor (hereinafter referred to as ISD), under Service Tax. The Appellant-1 have availed credit of Service Tax during the years 2009-10 and 2010-11, based on the invoices issued by their ISD.

2.2 As it appeared that some of the input Service Tax Credit is incorrect and not as per the law, a Show Cause Notice No. 9/2015 in C. No. V/15/22/2015-Cx.Adjn. was issued to the Appellants on 31.03.2015.

2.3 After due process, the CENVAT Credit of Rs.78,17,595/- was disallowed; along with interest under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 on incorrect CENVAT credit availed and a Penalty of Rs.39,08,797/- was imposed on the Appellant under Rule 15 of CENVAT Credit Rules, 2004 read with sub section (1)(b) of erstwhile Section 11 AC of the Central Excise Act, 1944. Further a penalty of Rs.10,00,000/- was imposed on M/s. Tulsyan NEC Ltd., Input Service Distributor, under sub rule 2(ii) of Rule 26 of Central Excise Rules, 2002 for issuing ISD invoices incorrectly to enable M/s. Tulsyan NEC Ltd., Ambattur unit, to take ineligible CENVAT Credit.

2.4 On being aggrieved, the Appellant and the ISD are before this forum by filing two separate Appeals as per the details given below: -

Sl. No.	Appeal No./Date	Impugned Order No. & date	Appealed amount	Period
1	E/41527/16 Appellant 1	OIO No. 4/2016 dated 22.02.2016	Rs.78,17,595/- along with interest and penalty of	2009-10 To 2010-2011

			Rs.39,08,797/-	
2	E/41528/16 Appellant 2	OIO No 4/2016 dated 22.02.2016	10,00,000/ (Penalty only)	2009-10 To 2010-2011

2.5 As the Appeals flow from a common impugned order, both are tagged together for disposal by this common order.

3. The Ld. Advocate Mr. G. Natarajan appeared on behalf of the Appellant and the Ld. Authorized Departmental Representative Ms. O.M. Reena appeared on behalf of the Respondent who have presented their case and put forth their submissions.

4. The contentions of the Ld. Advocate Mr. G. Natarajan are that: -

4.1 A total credit of Rs.90,34,015/- was sought to be disallowed in the hands of the Ambattur unit of the appellant. The credits in question were availed during March 2010 to January 2011 (2009-10 and 2010-11) and the Show Cause Notice was issued on 31.03.2015 by invoking the extended period under proviso to Section 11A of the Central Excise Act, 1944 and the grounds for such invocation are contained in para 9 of the SCN.

4.2 In the impugned order, the objection mentioned at (ii) above has been held in favour of the appellant and the adjudicating authority has held that as per the provisions of Rule 7 of CENVAT Credit Rules, 2004 (CCR) as it stood during the relevant period, there is no requirement that credit pertaining to only those services, which are used in a unit should alone be distributed to such unit (there is no one to one correlation contemplated in this regard). Accordingly, a demand of Rs.12,16,420 has been dropped and a demand. of Rs.78,17,595 has been confirmed on the appellant along with interest and penalties imposed in respect of the other two allegations.

4.3 That there are 4 questions framed in the impugned order and all the 4 questions have been resisted by the Appellant as elaborated in the grounds of appeal and synopsis filed.

4.4 On the ground of Limitation, the appellant submitted that the period involved in this case is from March 2010 to January 2011 and the Show Cause Notice was issued, by invoking the extended period of demand, on 31.03.2015. Such invocation was sought to be justified in para 9.1 of the SCN (Page No. 74 of the Paper book). The appellant wishes to submit that the reasons adduced in the

said para are not at all justifiable to invoke the extended period of demand and hence the demand is hit by time bar. In the impugned order, no finding has been given as to how extended period of demand can be invoked in this case.

4.5 Further, the Ld. Counsel has placed reliance on the following decisions. (i) *Commissioner of CE Vs. Dashion Ltd. 2016 (41) STR 291 884 Guj.* (ii) *Trident Powercraft Pvt. Ltd. Vs. CCE - 2016 (41) STR 687 Tri-Bang* in which it has been held that not obtaining registration is only a procedural mistake and credit cannot be denied. In the instant case, ISD registration has been obtained and for the reason that the invoices were not addressed to ISD, credit cannot be denied. Further, it is submitted that it is settled position of law that there is no one to one correlation in distributing the credit as held in the case of *Ecof Industries Pvt. Ltd. Vs. Commissioner - 2011 (271) ELT 58 Kar*. Reliance is also placed on the decision in the case of *Hindustan Unilever Ltd. Vs. Commissioner- 2017 (3) GSTL 132 -Tri-All* wherein it has been held that credit cannot be denied for procedural reasons like, not mentioning the details of service providers in ISD invoice, *etc*.

4.6 Finally, it was submitted that the issues raised are no longer *res integra* and already settled in the above

decisions and made a plea for allowing the Appeal on merits as well as on limitation.

5. *Per contra*, the Authorized Departmental Representative Ms. O.M. Reena, reiterated the findings in the Order-in-Original No. 4/2016 dated 22.02.2016 and argued that both the Appellant and the ISD unit are liable for penalty as discussed in the impugned order and supported invoking extended period. She has further contended that the ineligible credit has been rightly disallowed by the Adjudicating Authority and was prayed for rejection of the Appeal.

6. We have heard the submissions of both the sides, carefully perused the appeal records and the citations submitted as relied upon.

7. The questions that arise in these appeals for determination are: -

i. Whether the Appellant-1 is eligible to avail the ISD credit and distribute when the suppliers invoices were addressed to M/s. Tulsyan-Gummidipoondi (a different unit) and not to the ISD?

ii. Whether the distribution of credit is in order when the invoices do not disclose details of the original service providers?

iii. Whether credit can be denied when the services were utilized in Furnace Division and Rolling Division of Gummidipoondi unit if distributed by ISD to Ambattur unit? and,

iv. Whether extended period can be invoked in this case and imposition of penalty is justified on the ISD (issuer) as well as the Appellant (recipient of the service)?

8. We find that it is appropriate at this juncture to examine the relevant statutory provisions.

8.1.1 Rule 2 (m) defines Input Service Distributer and the same reads as under :-

> *"2(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;"*

8.1.2 The scope and mechanism of ISD have been explained by the Board *vide* Circular No. 97/8/2007 dated 23.08.2007 and the relevant portion of the Circular 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-ST) to take a separate registration."

8.1.3 Rule 7 of CCR prescribes the manner of distribution of credit by an ISD and the same 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 used in a unit exclusively engaged in manufacture of exempted goods or providing of exempted services shall not be distributed."

8.1.4 We find from the above Rule that two conditions are to be satisfied by an ISD and it is therefore, for the Revenue to give a finding as to the violation, if any, of any or both conditions of Rule 7. In the absence of any such specific findings, there cannot be any denial of the CENVAT credit distributed for consumption at the units. In the case on hand, without causing any investigation or enquiry as to the claim of the appellant, the Adjudicating Authority has

doubted the availment of service tax credit by the ISD. Admittedly, the assessee-appellant has only sought for consumption of credit that was claimed to be available with the appellant's ISD which was explained to have been passed on. So, in the absence of any dispute as to the eligibility of credits availed by the ISD, the same cannot be questioned at the receiver's end, who only sought for consumption of the same.

8.2 We also observe that the impugned order has allowed an amount of Rs.12,16,420/- towards input service tax credit taken wherein it was held that credit cannot be denied merely on the ground that input services were not used/ received in relation to manufacture of goods in a particular unit. The credits availed by M/s. Tulsyan, Ambattur, on invoices issued by ISD, were allowed even though the services were availed by M/s. Tulsyan, Gummidipoondi.

9. With this backdrop, we look into the questions framed by us: -

Question (i): Whether distribution of credit by ISD, to Ambattur Unit of the appellant, even in cases, where the invoices are issued in the name of Gummidipoondi unit of the appellant is correct or not?

10.1 To this the Appellant’s contention was that the Adjudicating Authority has confirmed the demand on the ground that as per the definition of "input service distributor" an ISD is the one, which receives invoices for input services and hence when the invoices are raised in the name of Gummidipoondi unit of the appellant, the credit in respect of such invoices cannot at all be distributed by the ISD, in as much as the said invoices are not received by the ISD.

Though these invoices were raised in the name of Gummidipoondi unit of the appellant, such invoices were "received" by the head office of the appellant at Nungambakkam and paid from there. Thus, distribution of such credit by the appellant's head office, in its capacity as ISD cannot be faulted. In support of this contention, reliance has been placed on the decision in the case of *Mahindra & Mahindra Ltd. Vs Commissioner – 2015 (38) STR 839 Tri-Mumbai*, wherein it has been held that credit cannot be denied when invoices are issued in the name of the branch office, but accounted and paid from head office, which is registered as ISD. In the instant case also, the invoices are paid from the appellant's head office, which is registered as ISD.

Further, the appellant has argued that there is no revenue loss in the whole issue in as much as, if not the Ambattur

unit of the appellant, Gummidipoondi unit of the appellant would be entitled to avail such credit.

10.2 The impugned order in Para 12(i) has held that: -

> *"As regards distribution of input service tax credit to Tulsyan, Ambattur, by ISD in cases where the invoices of the service providers were addressed to Gummidipoondi units of M/s. Tulsyan and not to ISD of M/s. Tulsyan, I draw attention to Rule 2(m) of the CENVAT Credit Rules, 2004, which states, "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 purchase 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." It is obvious from the said Rule, that input service distributor may distribute input Service Tax Credit only on the basis of invoices received by such input service distributor. Invoices received by the respective units cannot be taken up for distribution of input Service Tax Credit by the input service distributor. Distribution of input Service Tax credit in this manner by ISD to Tulsyan, Ambattur appears to be incorrect and in contravention of Rules 2 (m) and 7 of the CENVAT Credit Rules, 2004. Therefore, I disallow the CENVAT credit availed on input services by M/s. Tulsyan, Ambattur in cases where the invoices were not addressed to them by the ISD."*

10.3 We find that distribution by the ISD to Ambattur is not automatically invalid solely because supplier invoices were addressed to the Gummidipoondi unit. The correct approach is to examine the documentary evidence. We find that the ISD mechanism contemplates centralised procurement / central payment and distribution of credit. If the ISD has taken credit lawfully (entered in its CENVAT records), issued ISD invoices/statements to Ambattur and

distributed as per rules, denial on technical ground of invoice address would be unjust.

In this connection, we have perused the connected documents like ledger vouchers and Bank payment details *etc*. (Page Nos. 103 to 106 of Appeal paper Book).

We find that Department has not done any such exercise to show statutory exclusion or lack of nexus resulting in misuse or any evidence of fabricated invoices, shell suppliers or circular payments, mere technical defects in supplier invoices (invoice addressed to another unit; absence of non-essential particulars) are not sufficient to disallow ISD distributed credit despite this issue emanating out of investigation proceedings.

10.4 The Appellant has relied upon the decision in the case of *Mahindra & Mahindra Ltd. Vs. Commissioner - 2015(38) STR 839 Tri-Mumbai*, wherein it has been held that credit cannot be denied when invoices are issued in the name of the branch office, but accounted and paid from head office, which is registered as ISD. In the instant case also, the invoices are paid from the appellant's head office, which is registered as ISD. It has been held in Para 6 of the order that: -

> *"6. Having considered the rival contentions, in view of the fact that the branch offices have no separate accounting system and their accounts form part of the head office accounts, which is registered as an ISD, I hold that the appellant has rightly availed CENVAT credit in respect of*

> *the services received at the branch office/regional office and consequently, their distribution in the manufacturing unit is also proper. I further hold that the Revenue has erred in disallowing the credit on misconception of the fact that the invoices are not in the name of the appellant-assessee. In the facts and circumstances, the invoices are found to be in the name of the assessee-company, issued to the branch offices. The payments are accounted at the head office which is registered as an ISD. The availment of credit and the distribution by the head office are legal and proper. Thus, the appeal is allowed. The impugned order is set aside. The appellant will be entitled to consequential benefits in accordance with law."*

The above decision is squarely applicable to the situation on hand as the facts are similar and the Appellant has also submitted that payments are made by their head office which is registered as ISD and we are in agreement with the decision of the coordinate Bench of the Tribunal

Applying the ratio of the above decision, the first question is answered in favour of the Appellant.

Question (ii): Distribution of credit by ISD, to Ambattur unit of the appellant, without furnishing the details of original service providers is correct?

11.1 In this regard, the appellant has contended as follows: -

This allegation is with reference to invoices and Debit Notes issued by M/s. Alwin Cargo Services, the clearing agent for clearing the imported scrap. While invoices along with Service Tax were raised by them for their service charges, Debit notes were raised by Alwin Cargo Service, to claim reimbursement of various expenses incurred by them as

their clearing agent and Service Tax on such services were paid to various other service providers. But, in the ISD invoices, the name of Alwin Cargo Services is mentioned as the service provider.

In this connection, the appellant submitted that clearing and forwarding services were provided to the appellant by M/s Alwin Cargo Services and they claimed their consideration as well as reimbursement. Various service providers were engaged by Alwin Cargo services, on behalf of the appellant and such providers have collected service tax and issued invoices. The total amount charged by such service providers, including Service Tax was claimed as reimbursement by M/s. Alwin Cargo Services. Thus these services are procured through Alwin Cargo Services and the ISD of the appellant have mentioned the name of Alwin Cargo Services as the service provider. But the details of the actual service providers are very much available in the Debit Notes and its enclosures. Hence denial of credit on these grounds is not tenable in Law.

11.2 On this issue from Para 12(iii) of the impugned order it can be seen that: -

> *" ……. It is obvious from the said Rule 4A of the Service Tax Rules 1994, that input service distributor may distribute input service tax credit only on the basis of invoices received by such input service distributor. Invoices received by the respective units cannot be taken up for distribution of Service tax credit by the input service distributor. Alwin Cargo Services are not the original*

> *service' providers except in the case of clearing and forwarding services. The details of the original service providers who actually provided the services were not furnished in the ISD invoices. Distribution of input service tax credit in this manner by SD to Tulsyan, Ambattur, is incorrect as it is in contravention of Rule 2(m) and Rule (7) of CENVAT Credit Rules, 2004."*

11.3 We find that all Essential invoice particulars (supplier identity, address, description of service, amount, tax particulars) are required in law; and absence of such details raises suspicion. We find that Tribunal have not mechanically denied ISD distribution for missing non-essential particulars where genuineness could be established by other evidence (bank payments, contractual letters, delivery/performance certificates). If supplier identity is completely absent or supplier is found non-existent or a shell entity distribution must be disallowed and further penal action should follow. However, we find that the invoices on which credit is taken and distributed relates to debit notes and that all required details are available in the original invoices linked to the debit notes. The Respondent has not given any findings on the genuineness or otherwise of the invoices. The Appellant has attached Purchase Orders, and payment details in support of the claim which we have already discussed in the earlier question framed by us. As accepted by us earlier, we accept the same findings on this issue also.

Question (iii): Whether distribution of credit on the basis of CWIP ledger where invoices lacking supplier details is legal?

12.1 The impugned order in Para 12(iv) held that: -

> *"As regards the issue whether distribution of input Service Tax Credit to Tulsyan, Ambattur, on the basis of CWIP Service Tax Ledger and on the basis of invoices wherein the details of original service provider are not furnished, are correct, I conclude that the credits availed are in contravention of Rule 2(m) and Rule () of CENVAT Credit Rules, 2004. Also, according to Rule 4A(2) of Service Tax Rules, 1994, every input service 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; (ii) the name and address of the recipient of the credit distributed; (iv) the amount of the credit distributed; The ISD invoice should contain the name and address of the service provider, his Service Tax Registration and other details. The Input Service Distributor can distribute input service tax credit only on the basis of invoices received by him. Hence, I conclude that the credits availed are incorrect."*

12.2 In this regard, the appellant has submitted that: -

i. The above credit has been disallowed on the ground that the services in question were actually used in furnace Division and Rolling Division of Gummidipoondi plant.

ii. The credit cannot be denied in the hands of Ambattur Unit of the appellant, though the services were consumed in Gummidipoondi unit, as similar demand has already been held in favour of the Appellant as not maintainable.

iii. That in respect of certain instances, the details of service providers are not indicated in the ISD invoices. The list

of such cases are available in page 7 of the SCN (Page 72 of the paper book). The appellant has submitted that in these cases Service Tax was paid by them under reverse charge in respect of the GTA services availed and hence the credit is distributed on the basis of their own challans towards payment of service Tax.

12.3 We find that Only Ledger proof is insufficient by itself; but ledger plus corroboration may sustain distribution. Internal ledger entries (CWIP/service tax ledger) show accounting treatment but do not by themselves prove external supply or payment to real service provider. Where ledger entries are backed by vouchers, supplier invoices (even if imperfect), bank remittances and performance proof, distribution can be upheld. If ledger entries were used to create artificial CENVAT credits, distribution must be disallowed and appropriate penalties considered. We are convinced by the submissions of the Appellant on this score that they pertained to GTA invoices on which RCM has been paid through cash *vide* Departmental Challans. As such, we hold that the Respondents stand is not tenable and the issue is answered in favour of Appellant.

13. We find that in the case of *PRICOL Ltd. (Plant-III) Versus Commissioner of Central Excise, Salem (2023) 5 Centax 199 (Tri.-Mad)* it has been held that: -

> *"4.1 Heard both sides. All the three issues raised in this appeal are no more res integra. The Hon'ble Tribunal vide Final Order No. 924/2012 dated 12-9-2012 and also vide Final Order No. 41232-41233/2018 dated 16-3-2018 have already decided that input service credit when distributed by the ISD, cannot be held as inadmissible on the pretext that such invoices did not contain all the particulars as required in terms of Rule 4A of CCR, 2004, when it was possible for the department to verify all the input service invoices on the basis of which the credit has been accumulated by ISD. The findings of the Tribunal in the above cited two decisions are extracted as under:-*
>
> > *"2. The main allegation of the Revenue in this appeal is that as per Rule 4 A (2) of the Service Act Rules, 1994, the name, address and registration number of the person providing input service and the serial number and date of invoice, bill, or as the case may be, challan issued under sub-rule (1) were not mentioned in the invoices of input service distributor. Therefore, the respondents are not entitled to take credit on the strength of the invoices.*
> >
> > *3. Heard both sides. After considering the submissions from both sides, I find that during the course of adjudication, the respondents have provided all such details as annexure to the invoice before the adjudicating authority. As the whole record of annexure is very bulky, same was not filed along with the returns filed by the respondents. But in future, the respondent has undertaken that along with invoice of input service distributor, they will file annexure showing the details of registration number of input service provider etc., as required under Rule 4 A (2) of STR, 1994.*
> >
> > *4. In view of these observations, I do not find any infirmity in the impugned order. Same is upheld and the appeal filed by the Revenue is rejected but the respondents are directed that, in future, they will file all the details along with input service distributor's invoice as required under Rule 4A (2) of Service Tax Rules, 1994. The appellant is at liberty to verify whether the credit taken by the respondents is correct or not."*
>
> *In Final Order dated 16-3-2018, the Tribunal held as under:-*

"After hearing both sides duly represented by Shri M. Karthikeyan, learned Advocate for the appellants and Shri R. Subramaniyan, AC (AR) for the Revenue, we note that the appellants have been denied the Cenvat credit of service tax paid on various input services, which stand availed by them on the basis of the invoices issued by the Head Office, which is registered as an ISD. The sole reason for denial of credit was that the invoices issued by ISD did not contain any of the requisite details. It is seen that the invoices referred to the annexure attached wherein all the details were given. The Revenue's only objection is that such details should be given in the invoices itself.

2. We find no merits in the above stand of the revenue. In the absence of any evidence to the effect that the assessee is not entitled to such credit, adoption of such hypo-technical procedural issues for denial of credit cannot be appreciated. In the present case, such taking of credit cannot be faulted upon. We, accordingly, set aside the impugned order and allow both the appeals with consequential reliefs to the appellants."

14. The Appellant relied upon the case of *Commissioner of Central Excise Versus Dashion Ltd. 2016 (41) S.T.R. 884 (Guj.)* in which it was held that: -

*"**6**. The first objection of the Department therefore that the credit from one unit was utilized for the purpose of duty liability of other unit without pro rata distribution by the input service distributor therefore would not survive in view of no previous restriction of this nature flowing from Rule 7 of the Rules of 2004. In fact, the Tribunal has seen entire situation as a Revenue neutral, since as pointed out by the assessee, it had availed only 20% of the credit for payment of service tax and the balance was paid in cash.*

***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**. Coming to the question of penalty, right from the show cause notice stage till the final disposal of the show cause notice proceedings, we find little evidence to support the allegations of wilful misstatement, suppression, fraud or collusion on the part of the assessee. In fact, perusal of the show cause notice would show that the entire basis of the Revenue was wrongfully availment of the credit. Mere wrongfully availment without element of mens rea and that too for the purpose of evading payment of duty would not be sufficient to impose penalty. The adjudicating authority, without any basis or evidence, merely mechanically recorded that the assessee had, by reason of wilful misstatement, suppression of fact or in contravention of the provisions of the Rules, evaded payment of central excise duty. He was not even sure whether this was a case of wilful misstatement or suppression of fact or contravention of provisions of the Rules."*

15. The Appellant also placed Reliance on the decision in the case of *Hindustan Unilever Ltd. Vs Commissioner - 2017 (3) GSTL 132 -Tri-All* wherein it has been held that credit cannot be denied for procedural reasons like, not mentioning details of service providers in ISD invoice, *etc*. We have perused the above decision and Para 9 of the decision reads as follows: -

"9. Having considered the rival contentions and on perusal of the records we are satisfied that the appellants have made substantial compliance with 'the provisions of taking CENVAT credit read with the provisions for Input service distribution, as already noticed hereinabove. Whatever, minor infarction of the Rules has occurred, it appears to be due to the bulk nature of the data and there appears to be no deliberate disobedience of law. In this view the matter, we hold that the appellants are entitled to CENVAT credit from their Head Office/input service distributor. Further under the facts and circumstances of this case, we hold that there is no contumacious conduct or deliberate

defiance of law and accordingly we hold that the extended period of limitation is not attracted. Thus, the appeal is allowed with consequential benefits in accordance with law. Impugned order is set aside & the six Miscellaneous Applications are also disposed of."

16. What transpires from the above is clear, that there are only two limitations for distribution of credit by an ISD and in the case on hand, Revenue has not made out a case as to the non-satisfaction of the above two conditions. Consequently, there being no deficiency as to the eligibility of the ISD for distribution, no denial could be made in the hands of the recipient who has only consumed the same.

17. Finally, we find that there is no finding in the impugned order to conclude that that the service was not actually rendered and also that supplier invoices are not genuine and that there is no money trail i.e. (bank payments/RTGS, PO, contract, completion certificate). Further, we find that absence of technicality should not defeat substance i.e. minor defects (invoice addressed to unit instead of ISD; absence of minor particulars) will not automatically sink a bona fide claim; however, essential deficiencies (no supplier identity, no payments, forged documents) will justify denial.

18. All the case Law before us ultimately prove that Courts/Tribunals have consistently held that ISD distributed

credit should not be denied on mere technicalities where the substantive documentary trail establishes genuine receipt of service and lawful distribution.

19. In the absence of any evidence of fabricated invoices, shell suppliers or circular payments, mere technical defects in supplier invoices (invoice addressed to a unit; absence of non-essential particulars) are not sufficient to disallow ISD distributed credit.

20. Based on our findings and relying upon the ratio of the above decisions placed before us, we are very clear that the impugned order is not tenable and so ordered to be aside.

21. Thus, the Appeal fails on the grounds of merit. The questions (i) to (iii) are answered in favour of the Appellants.

22.1 Regarding limitation, we find that there is no discussion on the justification for invocation of extended period for fraud, suppression *etc*., in the impugned order. The impugned order justified only the imposition of penalty in Para 13 of the order as follows: -

> *"The other issue before me is to decide whether M/s Tulsyan NEC Ltd., the ISD, are liable for imposition of a penalty, under sub-rule 2(ii) of Rule 26 of Central Excise*

Rules, 2002, for issuing ISD invoices incorrectly, which enabled M/s Tulsyan, Ambattur, to take CENVAT Credit incorrectly. I find M/s Tulsyan ISD have registered themselves as 1SD in terms of Rule 2(m) of CCR, 2004 and are required to distribute input service credit as per rule 7 of CCR, 2004. From the foregoing, it is established that M/s. Tulsyan, Ambattur, have taken incorrect CENVAT credit of service tax distributed to them by M/s Tulsyan NEC, ISD. The ISD invoices issued by M/s Tulsyan ISD are in contravention of Rules 2(m) and 7 of CCR, 2004. Therefore, M/s Tulsyan NEC, ISD have rendered them liable for imposition of penalty.

22.2 Whereas, the appellant has contended as: -

"Further, the appellant wish to submit that the period involved in this case is from March 2010 to January 2011 and the show cause notice has been issued, by invoking the extended period of demand, on 31.03.2015. Such invocation is sought to be justified in para 9.1 of the SCN (Page No. 74 of the Paper book). The appellant wish to submit that the reasons adduced in the said para are not at all justifiable to invoke the extended period of demand and hence the demand is hit by time bar also. In the impugned order no finding has been given as to how extended period of demand can be invoked in this case."

22.3 We have examined the rival submissions and find that there is a serious allegation in the SCN for invocation of extended period and this issue was not adequately addressed in the impugned order. Neither were the ingredients for invoking extended period discussed or justified though invoked in the SCN. The impugned order has overlooked this important aspect and straightaway confirmed the draconian penalty on the grounds of ineligible credit only.

23. We find that the burden of establishing suppression or fraud lies squarely on the Department and cannot be discharged by conjecture or suspicion. We note

that Section 11A(5) of the Central Excise Act, 1944, was a provision that dealt with penalties in cases of fraud, collusion, or deliberate misstatements related to the non-payment or underpayment of excise duty.

24. Here we find that the Appellant is filing the ER-1 Returns and CENVAT availment details are captured in the returns.

25. Section 11 A of the Central Excise Act, is the provision meant to raise demands for no levy or short levy has two limbs, whereby, the demand/recovery is either under the normal period of limitation (1 year) or under an extended period of limitation (5 years). The Law provides for the recovery of duty under the extended time limit, if there is an element of mens-rea. While accepting the reason behind the imposition of a mandatory penalty under Section 11 AC of the Act, there should be an element of fraud or collusion or any wilful misstatement or suppression of facts with intent to evade payment of duty which has not been established in this case.

26. It is also appropriate at this juncture to refer to the decision of the Apex Court in *Uniworth Textiles Ltd v CCE, Raipur, [2013 (288) ELT 161 (SC)*], wherein the Apex

Court has held that it is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. Further, it was held therein that mere non-payment of duties is not equivalent to collusion or willful misstatement or suppression of facts, otherwise there would be no situation of which ordinary limitation period would apply. Inadvertent non-payment is to be met within the normal limitation period and the burden is on Revenue to prove allegation of willful misstatement. The onus is not on the assessee to prove their *bonafide.* Applying the ratio of the above decision, the Department has failed in adducing any evidence for suppression or fraud or misstatement on the part of the Appellant.

27. We also observe that the demand is for recovery of ineligible CENVAT Credit for the period March 2010 to January 2011. During the relevant period, the normal period of limitation was 1 year. The SCN was issued only in 31.3.2015 invoking Sub Section (5) of Section 11A of Central Excise Act 1944 and Rule 14 of CENVAT Credit Rules 2004 for recovery of ineligible CENVAT Credit. As the ingredients for invoking extended period are not established or discussed in this case, the demand fails on the ground of limitation as the demand is ipso facto beyond the normal period of 1 year.

Therefore, we hold that the demand crumbles on the grounds of limitation also.

28. In the end, when the order itself fails to sustain both on merits and limitation, the demand of eligible CENVAT Credit and interest thereon and all the consequent penalties imposed stand vacated.

29. All references to Appellants will be taken to mean Appellant 1 except where expressly mentioned otherwise in our findings above.

30. As the impugned Order-in-Original No. 4/2016 dated 22.02.2016 is set aside, the penalty of Rs.10,00,000/- imposed on the ISD (Second Appellant) is also set aside.

31. Thus, the appeals are allowed with consequential benefits if any as per law.

(Order pronounced in open court on 14.11.2025)

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

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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