

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT III : Division Bench B1]**

Appeal Nos.: ST/332 & 333/2011

[Arising out of Order-in-Original No. 07/2011-ST-Commr.
dated 28.02.2011 passed by the Commissioner of Central
Excise, Customs and Service Tax, Coimbatore]

(i) M/s. Pricol Ltd. (Plant I), **: Appellant(s)**
No. 132, Ooty Main Road,
Perianaickenpalayam,
Coimbatore – 641 020

(ii) M/s. Pricol Ltd.,
No. 702/7, Avinashi Road,
Coimbatore – 641 037

Versus

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Coimbatore Commissionerate

Appearance:-

Shri. M. Karthikeyan, Advocate
for the Appellant

Shri. K. Veerabhadra Reddy, ADC (AR)
for the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing: 17.01.2019

Date of Pronouncement: 29.01.2019

Final Order No. 40188-40189 / 2019

Per Bench :

The issue involved in both these appeals being connected,
they are heard together and disposed of by this common order.

2.1 M/s. Pricol Ltd. have three plants situated at different locations and is the appellant in Appeal No. ST/333/2011. They are registered as Input Service Distributor (ISD). M/s. Pricol Ltd., Plant-I is one of their manufacturers and is the appellant in Appeal No. ST/332/2011.

2.2 It appeared that M/s. Pricol Ltd., Plant-I had transferred CENVAT Credit of Rs. 3,32,14,672/- to M/s. Pricol Ltd., ISD in an unauthorized manner and thus contravened the provisions of Rule 3(4) of the CENVAT Credit Rules (CCR), 2004. It further appeared that in as much as M/s. Pricol Ltd., Plant-I is not a person liable to pay service tax, the unauthorized transfer of service tax and issue of invoice for input Credit transfer appeared to be wrong. The credit transferred as above by M/s. Pricol Ltd., Plant-I to M/s. Pricol Ltd., ISD appeared to be recoverable as per Rule 14 of CCR, 2004. In order to distribute CENVAT Credit availed on input services to various plants situated at different locations, M/s. Pricol Ltd. had obtained Input Service Distributor (ISD) Registration. Verification of records of M/s. Pricol Ltd., ISD indicated that they had availed Credit of Rs. 3,32,14,672/- on the strength of invoice dated 01.02.2009 issued by M/s. Pricol Ltd., Plant-I. The provisions of CCR, 2004 do

not permit transfer of Credit by M/s. Pricol Ltd., Plant-I who is the manufacturer and not the Input Service Distributor.

2.3 The Department was of the view that M/s. Pricol Ltd., ISD has availed Credit on the strength of improper documents and is liable for penal action. Accordingly, Show Cause Notice was issued to M/s. Pricol Ltd. alleging wrongful availment of Credit on improper documents and for imposing penalties under various provisions of CCR, 2004. Show Cause Notice was issued to M/s. Pricol Ltd., Plant-I for wrongly transferring the Credit to M/s. Pricol Ltd. demanding recovery of such Credit and for imposing penalties. After due process of law, the Original Authority confirmed a demand of Rs. 3,32,14,672/- on M/s. Pricol Ltd., Plant-I and imposed equal penalty. The Original Authority held that M/s. Pricol Ltd. has availed wrong Credit on improper documents and distributed the same, for which penalty of Rs. 2,000/- was imposed. Aggrieved by such Order, the appellants are now before the Tribunal.

3.1 Ld. Counsel Shri. M. Karthikeyan appeared and argued the matter on behalf of the appellants. He gave the details of the appeals as well as the nature of demand, which is furnished in the table below :

| Sl. No. | Appeal No. | Appellant | Nature of demand |
|---------|------------|---|---|
| 1. | E/332/2011 | M/s. Pricol Ltd., Plant-I | Recovery of CENVAT Credit of Rs. 3,32,14,672/- along with equal penalty |
| 2. | E/333/2011 | M/s. Pricol Ltd., Input Service Distributor | Finding that availment and distribution of Credit to the tune of Rs. 3,32,14,672/- is improper and levy of penalty of Rs. 2,000/- |

3.2 He submitted that M/s. Pricol Ltd., Plant-I, situated in Coimbatore, is a manufacturing unit of M/s. Pricol Ltd. who is registered as an Input Service Distributor. As per the definition of “Input Service Distributor” given in Rule 2(m) of CCR, 2004, 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..”. In the present case, M/s. Pricol Ltd., which is the Input Service Distributor, transferred Credit of Rs. 3,32,14,672/- to M/s. Pricol Ltd., Plant-I. Thereupon M/s. Pricol Ltd., Plant-I vide invoice dated 01.02.2009 re-transferred the said Credit to the Input Service Distributor, namely, M/s. Pricol Ltd., who, in turn, distributed the Credit to its other units. Thus, in fact, M/s. Pricol Ltd., Plant-I has reversed the Credit which was originally transferred to them by the Input Service Distributor. The said Credit was transferred to M/s. Pricol Ltd., Plant-I inadvertently by the Input Service Distributor

when M/s. Pricol Ltd., Plant-I was having excess Credit. On noticing the same, M/s. Pricol Ltd., Plant-I reversed the Credit by issuing an invoice to retain *status quo*. Reversal of Credit has been done on the premises that Credit reversed is equal to 'no Credit taken'. That the Credit was reversed by raising invoice under the *bona fide* belief that the action of reversal of Credit would restore *status quo*. Thus, the amount was available to the Input Service Distributor for further transfer. The reversal of Credit by M/s. Pricol Ltd., Plant-I has to be considered as non-availment of Credit. To support this argument, he relied upon the cases of :

- *Chandrapur Magnet Wires Pvt. Ltd. Vs. C.C.E., 1996 (81) E.L.T. 3 (S.C.);*
- *Hello Minerals Water Pvt. Ltd. Vs. Union of India – 2004 (174) E.L.T. 422 (Allhd.);*
- *Mount Mettur Pharmaceuticals Ltd. Vs. C.C.E. – 2009 (235) E.L.T. 664 (Tri. – Chennai).*

3.3.1 He submitted that the allegation of the Department that M/s. Pricol Ltd., Plant-I had issued invoice which is not prescribed under Rule 9 of CCR, 2004 is incorrect. The invoice was raised by M/s. Pricol Ltd., Plant-I as a proof of reversal of Credit and it has nothing to do with the documents mentioned in Rule 9 *ibid*. The whole attempt was an exercise to restore *status quo* and to Credit the amount into the ISD account of the appellant. Ld. Advocate

submitted that M/s. Pricol Ltd., ISD had distributed Credit to M/s. Pricol Ltd., Plant-I which was having a huge balance of CENVAT Credit at that time. However, since there was dearth of Credit with regard to the other plants of the appellant, the Credit availed by Plant-I based on ISD invoices was reversed and such reversal was evidenced by an invoice raised by M/s. Pricol Ltd., Plant-I on M/s. Pricol Ltd., ISD. Thereafter, the ISD availed back such Credit and subsequently re-distributed the same to Plant-III (Rs. 1,92,75,000/-), Plant-IV (Rs. 1,22,415/-) and also to Plant-I (Rs. 1,38,17,257/-) over a period of one year. Ld. Advocate contended that in the absence of any restriction as to the manner of distribution of Credit by an ISD, the quantum of Credit that can be distributed by an ISD to its various units is purely based on the discretion of the ISD, based on the requirement of such Credit in the different units. Thus, the excess Credit transferred to M/s. Pricol Ltd., Plant-I, since found to be unnecessary, was reversed and re-taken by M/s. Pricol Ltd., ISD. The concept of proportionate distribution of Credit based on turnover of different units was introduced for the first time, only with effect from 01.07.2012, when Rule 7 was substituted vide Notification No. 18/2012 CE (NT) dated 17.03.2012.

3.3.2 By reversing the Credit, there is no violation of any substantial position of law. The whole exercise is revenue neutral to the extent that the Credit has later been re-distributed by M/s. Pricol Ltd., ISD to the respective units and the same was used for payment of duty/tax. Such reversal of Credit is not prohibited by law as laid in CCR, 2004. The Credit reversed has originally been availed by M/s. Pricol Ltd., ISD on the basis of valid documents prescribed under Rule 9 ibid and this fact is not disputed by the Department. Therefore, the mere fact of reversal to facilitate re-credit in the ISD account has no legal implications. Since there is no unjust enrichment or revenue evasion by the said arrangement, the allegations raised in the Show Cause Notice as well as the demand and penalties cannot sustain.

3.4 He submitted that Rule 3(4) of CCR, 2004 lays down that CENVAT Credit may be utilized for payment of duty of excise on final product or payment of service tax on any output service. The amount has been utilized by the respective units which received the Credit distributed for discharging service tax/duty. The re-credit of the amount by the Input Service Distributor and the reversal of Credit by M/s. Pricol Ltd., Plant-I, if at all, can only be viewed as a procedural infraction. The allegation that M/s. Pricol Ltd., Plant-I

has transferred the Credit to M/s. Pricol Ltd., ISD, and that this transfer is without any authority of law, is countered by the Ld. Counsel on the submission that if M/s. Pricol Ltd., Plant-I had ISD registration, the same would be within the four corners of law. Thus, the same tantamounts to distribution of Credit without ISD registration only.

3.5 Further, the entire facts were captured in the accounts of the appellant and also in the returns filed by them. The Show Cause Notice issued invoking extended period of limitation alleging suppression of facts, therefore, is without any basis. To support this argument he relied upon the decision in the case of *Doshion Ltd. Vs. C.C.E., Ahmedabad – 2013 (288) E.L.T. 291 (Tri. – Ahmd.)* which was upheld by the Hon'ble High Court of Gujarat vide *2016 (41) S.T.R. 884 (Guj.)*

4.1 Ld. AR Shri. K. Veerabhadra Reddy appearing on behalf of the respondent supported the findings in the impugned Order. He submitted that M/s. Pricol Ltd., Plant-I is not the Input Service Distributor and only the unit which has obtained ISD registration can distribute the Credit. In the present case, the Credit was distributed by M/s. Pricol Ltd. to M/s. Pricol Ltd., Plant-I On noticing that they have sufficient Credit, M/s. Pricol Plant I has

reversed the Credit under an invoice and M/s. Pricol Ltd. has availed re-credit of the said amount. There is no provision in law to reverse the Credit by the unit to which the Credit has already been distributed. So also there is no provision in law for the Input Service Distributor to avail Credit on an invoice issued by its own unit. Therefore, the reversal of Credit by M/s. Pricol Ltd., Plant-I as well as the availment and re-distribution of the Credit to their units by M/s. Pricol Ltd.,ISD is against the provisions of law, for which the proceedings have been rightly initiated.

4.2 The adjudicating authority has confirmed the Order to recover the CENVAT Credit of Rs. 3,32,14,672/- from M/s. Pricol Ltd., Plant-I and also imposed equal penalty. Though it is contended by them that CENVAT Credit has been reversed by issuing an invoice, there is no document to show that the Credit was originally transferred to M/s. Pricol Ltd., Plant-I inadvertently. The Credit transferred by M/s. Pricol Ltd., Plant-I to M/s. Pricol Ltd., ISD is nothing but unutilized CENVAT Credit lying in their account which has accumulated over a period of time. On receiving such unauthorized Credit from M/s. Pricol Ltd., Plant-I, M/s. Pricol Ltd., ISD, has immediately distributed the same to their three plants, including M/s. Pricol Ltd., Plant-I. From the accounts of the appellants, it is

evident that it is a premediated strategy adopted by M/s. Pricol Ltd., Plant-I in collusion with M/s. Pricol Ltd., ISD, to re-distribute the Credit among the various units viz., M/s. Pricol Plant-I, Plant-III and Plant-IV. Therefore, the reversal of Credit by M/s. Pricol Ltd., Plant-I and the re-credit taken by M/s. Pricol Ltd., ISD, is against law. The demand and the penalties imposed therefore may not be interfered with.

5. Heard both sides.

6. From the facts narrated above, it can be seen that the allegation against M/s. Pricol Ltd., Plant-I is that they have reversed the Credit to M/s. Pricol Ltd., ISD, which is against the law. The allegation against M/s. Pricol Ltd., ISD, is that they have wrongly availed the Credit on the strength of improper documents and thereafter, distributed it to its other units. For better appreciation, the definition of "Input Service Distributor" as defined under Rule 2(m) of CCR, 2004 is reproduced as under :

"RULE 2. Definitions. — In these rules, unless the context otherwise requires, -

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(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, [or an outsourced manufacturing unit] as the case may be;"

7.1 The manner in which the Credit can be distributed among different units is prescribed under Rule 7 of CCR, 2004. During the relevant period, Rule 7 ibid stated that the Input Service Distributor may distribute the Credit to its manufacturing units or units providing output service subject to two conditions stated therein.

The two conditions are :

- (i) The Credit distributed against a document referred to in Rule 9 does not exceed the amount of service tax paid thereon;
- (ii) Credit of service tax attributable to service use in a unit exclusively engaged in manufacture of exempted goods or providing exempted services shall not be distributed.

8.1 The Department has no case that these conditions have not been satisfied. The whole case is based on the allegation that the Credit which was distributed by M/s. Pricol Ltd., ISD, was re-transferred to it and later distributed to the other units. Rule 7 ibid was later amended vide Notification No. 18/2012 CE (NT) dated 17.03.2012 wherein a restriction for proportionate distribution was introduced. At the cost of repetition, it has to be said that during the

disputed period, there was no restriction in the quantum of Credit that could be distributed. When the amount of Rs. 3,32,14,672/- was distributed by M/s. Pricol Ltd., ISD, to M/s. Pricol Ltd., Plant-I, they had reversed the Credit as they were already having excess unutilized Credit. This reversal is carried out by issuing an invoice by M/s. Pricol Ltd., Plant-I to M/s. Pricol Ltd., ISD dated 01.02.2009.

8.2 True, there may not be any specific provision to facilitate such “return” of non-required credit which has been transferred in the first place by the Input Service Distributor, but it has to be kept in mind that there would be situations when an Input Service Distributor may transfer Credit amounts inadvertently or in excess of what was intended, to a constituent unit. In such situations, the only recourse would be by way of “return/reversal” of such Credit back to the Input Service Distributor, which in turn can be facilitated only by the recipient unit reversing the unintended Credit and issuing a document confirming the facts of the same.

9. It is also to be borne in mind that there is no prohibition in law for such reversal of Credit to the Input Service Distributor. The law does not provide any procedure that can be applied to such situations. Therefore, this is the only way unintended Credit, transferred inadvertently by the Input Service Distributor, can be

“returned” to such Input Service Distributor. Certainly, there is nothing in the Service Tax Rules or the Finance Act, 1994 or, for that matter, in the CENVAT Credit Rules, 2004 which prohibits or bars such collections. In any case, it is not the allegation that the same quantum of Credit has been availed not just by M/s. Pricol Ltd., ISD, but also by M/s. Pricol Ltd., Plant-I.

10. From the facts on record as also on perusal of invoices, etc., produced at the time of hearing, it is evident that M/s. Pricol Ltd., Plant-I has only returned/reversed the exact quantum of Credit that was transferred to it in the first place by the M/s. Pricol Ltd., ISD. Such return/reversal has not enlarged the quantum of Credit that has been availed nor has there been any financial injury caused to the exchequer. This is then only a revenue neutral situation. For these reasons, we find that the demand or penalties cannot sustain. The impugned Order is set aside.

11. The appeals are allowed with consequential reliefs, if any, as per law.

(Pronounced in open court on 29.01.2019)

(Madhu Mohan Damodhar)
Member (Technical)
Sdd

(Sulekha Beevi C.S.)
Member (Judicial)