Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 1

Excise Appeal No. 10556 of 2019- DB

(Arising out of OIA-VAD-EXCUS-002-APP-554-2018-19 dated 21/12/2018 passed by the Commissioner (Appeals), CGST & Service Tax, Vadodara)

Axalta Coating Systems India Pvt Ltd **........Appellant**
Plot No Kv-1/2, GIDC, Vill Alindra
Taluka Savli
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-II **......Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

With

Excise Appeal No. 10799 of 2021- DB

(Arising out of OIA-VAD-EXCUS-002-APP-034-2021-22 dated 30/06/2021 passed by the Commissioner (Appeals), CGST & Central Excise, Vadodara)

AXALTA COATING SYSTEMS INDIA PVT LTD **........Appellant**
Plot No. Kv-1/2, GIDC,

Vill. Alindra, Tal Savli
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-Vadodara-II **......Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Saurabh Dixit, Advocate for the Appellant
Shri R K Agarwal, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10599-10600/2025

DATE OF HEARING: 09.07.2025
DATE OF DECISION: 25.07.2025

SOMESH ARORA

The facts of the case are that this is the second round of litigation inasmuch as in the first round, the CESTAT vide its order dated 25.04.2019 had remanded the issue back with certain observations. While the Original authority was required to consider it appropriately and decide whether the Credit was eligible or not to the Appellant, the impugned order has on the contrary simply denied the Credit by merely copy pasting earlier OIO dated.

21.12.2016, without application of mind by violating the remand terms as such. Most of the credit stands denied on the ground that only factory gate is the place of removal and depot warehouse is not place of removal and hence, credit stands denied. In any case, the specific terms of remand by Hon'ble CESTAT vide its final order dated. 25.04.19 actually allowed the credit even if availed at depot, however, the limited purview of remand was to examine the documentary evidence.

1.1 That the short issues involved in the present dispute are regarding availability of Cenvat credit on various services availed by the Appellant as indicated below:-

a. Whether the Cenvat Credit taken on proportionate basis by excluding the Credit amount involved in trading activity i.e. Cenvat Credit involved in trading activity was reduced from the total Credit available or not?

b. Services used out of the factory gate i.e. at depot (which are also place of removal), the credit is prima facie admissible to the appellant but for want of documentary evidence as observed by CESTAT is tenable under the broader ambit of Central Excise Law or not?

c. Whether various services availed by them fall in the ambit of "input service" in terms of the provisions of the Cenvat Credit rules, 2004 or otherwise?

2. The point wise submissions of the party are as follows: -

- <u>Whether the Cenvat Credit taken on proportionate basis by excluding the Credit amount involved in trading activity i.e. Cenvat Credit involved in trading activity was reduced from the total Credit available or not?</u>

(i) It may be appreciated that while the lower authorities tacitly admit that the Appellant had taken 10% less Cenvat Credit compared to total duty/tax involved on the procurement invoice, meaning thereby that the Appellant has already adhered to Rule 6 of CCR, 2004 requirements. Despite this, the "whole of credit" is denied on the ground that the Appellant had certain trading activity. Without prejudice to the above, credit of 0.6%/0.7% of trading turnover at best could have been denied in terms of Rule 6 of CCR, 2004, which has not been done.

(ii) CA vide Certificate dt. 11.04.2017 has already certified that by availing lesser Cenvat Credit, which is as good as maintaining separate accounts, the Appellant has already fulfilled the requirements of Rule 6 of CCR, 04 and the demand on this count therefore must be quashed and set aside on this ground alone. The impugned order on the other hand has confirmed the demand, by agreeing with the lower authority, on the ground that since the Appellant availed only 90% Cenvat Credit out of total tax paid on invoices, and since demand too is limited to 90% only, hence, such demand is sustainable. The basis of confirming demand does not even make any logical sense, much less a legal sense.

(iii) The Appellant has availed Cenvat Credit only limited to the quantum which pertains to dutiable production undertaken by them. That no part of credit, which pertains to trading activity, whatsoever has been availed and the disputed credit in the impugned order is limited to credits exclusively pertaining to dutiable production and/or credits availed only in proportion to dutiable production via-a-vis total turnover of the Appellant. This clarification was also made before lower authorities who have not properly appreciated the same. That there is no reason to deny entire credit in such circumstances since substantial production activity was undertaken by the Appellant during the material period.

(iv) The impugned order does not dispute the fact of taking less credit at all. In fact, there is tacit finding in the OIO dated. 30.04.21 at Para 20.2 and 20.3 (reproduced even in the impugned order) that the

Appellant had in fact availed less credit compared to total credit available and the balance credit though available was expensed out by not availing the same. It is also not in dispute that while on proportionate basis, the credit required to be reversed/ expensed out was less, a higher amount stands not availed as credit/expensed out by the Appellant. This is being emphasised, since this was the only limited purpose for which the matter was remanded by Hon'ble CESTAT.

(v) That once admittedly, the Appellant expensed out some portion of credit and availed lesser credit, owing to trading turnover, and when admittedly, such expensing out portion is higher than credit legally required to be paid/reversed, this is as good as maintaining separate accounts for the purpose of Rule 6 of CCR, 04. Anyway, the Appellant has in fact complied with Rule 6 of the CCR, 04 requirements inasmuch as they have proportionately reversed credit on common services used for manufacturing as well as trading activity, which was also reflected in their periodic returns as well, by taking less credit itself at the threshold. This is as good as maintaining separate accounts. As such, no further amounts stand outstanding or payable on this count anymore. They also produced work sheet as well as sample invoices in support of the contention that entire credit of the tax shown in invoice was not availed, but lesser credit pertaining to ratio of dutiable turnover alone was availed by the Appellant in paper book. This is as good as maintaining separate accounts as held by Hon'ble CESTAT in the case of Alembic Ltd. and Shreno Ltd. as reported at 2018 (10) TMI 1557(CESTAT-Ahm) and upheld by Hon'ble Gujarat High Court as reported at 2019 (7) TMI 1018 (Guj.).

(vi) In following decisions, it has been held that once a technical expert like Chartered accountant, chartered engineer has certified something, unless the Revenue Authorities show how such findings are wrong, the said technical evidence has to be followed and the benefit has to be allowed to the assesse.

a) Panasonic Energy India Co. Ltd. 2017(5) TMI 1334-CESTAT AHMEDABAD
b) Tata Technologies Ltd. 2016(42) STR 290(Tri-Mum)
c) JakapMetind P. Ltd. 2017(356) ELT 279(Tri-Mum)
d) Kirloskar Oil Engines Ltd. 2017(349) ELT 299(Tri-Mum)

Such impugned order therefore deserves to be quashed and set aside. The appeal on this count therefore deserves to be allowed.

- <u>Service used out of the factory premises i.e. depot (which are also the place of removal) the Credit is prima facie admissible to the Appellant but for want of the documentary evidence as observed by the Hon'ble CESTAT is tenable under the broader ambit of Central Excise Law or not?</u>

(i) The impugned order is ex-facie bad in law when it assumes that "place of removal is a place where goods are cleared and stored without payment of duty" and that in the present case, the place of removal was factory gate. That such understanding is contrary to not only the settled legal position but also common sense. Place of removal as stated supra, is actually a place where goods are cleared to from where they are to be further sold. In terms of Central Excise Act, 1944 and Rules framed there under, duty has to be paid on manufactured goods cleared from the factory even if cleared to any other place of removal such as depot/warehouse etc. As such, to assume that only such places where goods are deposited without payment of duty are place of removal tantamounts to reading portions of law out of context and intentional misreading of law. The impugned order therefore deserves to be quashed and set aside even on this count.

(ii) Furthermore, all invoices are pertaining to services availed at or for the Appellant's manufacturing unit only which are favour of the Appellant unit to whom SCN is issued, meaning thereby that the document is otherwise a valid document. In any case, the specific terms of remand by Hon'ble CESTAT vide its final order dated. 25.04.19 actually allow the credit even if availed at depot, however, the limited purview of remand is to examine the documentary evidence.

(iii) The that credit with respect to each of the services availed at the warehouse/godown is admissible on merits, as the same are Place of Removal, in view of various case laws. Reference can be made of the following case laws in this regard:-

a) L.G. Electronics (India) Pvt. Ltd. Vs. CCE, Noida [2010 (19) STR 340 (Tri.-Del)]-2010-TIOL-1048-CESTAT-DEL
b) Ultratech Cement Ltd. Vs. CCE, Raipur [2014 (307) ELT 3 (Chattisgarh)]=2014-TIOL-1437-HC-CHHATTISGARH-CX
c) Metro Shoes Pvt. Ltd. Vs. CCE, Mumbai-1 [2008 (10) STR 382 (Tri-Mumbai] 2008-TIOL-417-CESTAT-MUM
d) Menon Piston Ltd. 2015(40) STR 283(Tri)
e) Cantabi Retail India Ltd. 2018(17) GSTL 275(Tri),
f) Sports & Leisure Apparel Ltd. 2016 (6) TMI 468-CESTAT ALLAHABAD

(iv) For the record, the Appellant has a single factory in India and therefore, any invoice addressed at any office, depot, godown, being merely the place of removal for the factory itself, the credit must be allowed to the Appellant, in the light of the following decisions:

a) Cement Manufacturing Company 2016 (9) TMI 536-CESTAT KOLKATA
b) Bloom Dekor Ltd. Vs. CCE, Ahmedabad-2012 (28) S.T.R. 182 (Tri.-Ahmd.)
c) Parekh Plast (India) Pvt. Ltd. Vs. CCE, Vapi-2012 (25) S.T.R. 46 (Tri.-Ahmd.)
d) CCE, Vapi Vs. DNH Spinners 2009 (16) S.T.R. 418 (Tri.-Ahmd.)

e) Durferrit Asea Pvt. Ltd. Vs. CCE, Guntur -2010 (258) E.L.T. 414 (Tri.-Bang.)

f) CCE, Pune Vs. Telco Ltd. 2006 (204) E.L.T. 83 (Tri.-Mumbai)

(v) The entire discussion regarding no provision to distribute credit to depot under ISD route is also rather strange and absurd, in the impugned order. The issue is not qua ISD credit distribution at all and the findings in this regard are therefore irrelevant. If the impugned order feels that there is no provision to distribute credit under ISD route to depot/godown, that is because the credit can be availed in factory itself and there is no need to distribute it at all. It may be for this reason that the law did not provide for such credit distribution.

(vi) There is no dispute that the services were availed at depot/godown which are the place of removal and therefore, credit can be availed at factory premises. That the impugned order, apart from merely reproducing the contents of OIO dt.30.4.21, has observed at Para 5.6 that the Appellant was storing manufactured goods as well as trading related goods at depots and hence, credit for services availed at the depot cannot be allowed. It is on record that the Appellant has already availed lesser credit to the extent of trading turnover meaning thereby that whatever credit was availed, was exclusively pertaining to manufactured goods and no portion of credit pertaining to trading related depot activity was ever availed by the Appellant at all. under the circumstances, credit on services availed at Depot, being place of removal, and exclusively pertaining to manufacturing operations, cannot be denied. The impugned order has wrongly agreed with the lower authority on the ground that depot cannot ever be place of removal and hence, credit relating to services availed at depot is not eligible to the Appellant. Merely because duty is paid at the time when goods are cleared from the factory to depot, does not mean factory gate is place of removal. Such view is contrary to the above settled legal position, as well as various CBEC Circulars.

- <u>Whether various services availed by them fall in the ambit of "input service" in terms of the provisions of the Cenvat Credit rules, 2004 or otherwise?</u>

(i) That the Appellant had produced various evidences such as invoices, CA Certificate as well as detailed explanation of each service and where such service was put to use, before the lower authorities. However, both the lower authorities without bothering to check single evidence, decided the issue on extraneous grounds.

(ii) Most of the credit is denied on the grounds that the services were not used in factory but in warehouse which is not considered to be place of removal by revenue authorities. As regards the allegation that trading activity was undertaken at warehouse, again the above averments are reiterated that by taking lesser credit compared to the tax paid on invoices received, itself amounts to maintaining separate accounts and complying with Rule 6 of the CCR, 2004.

(iii) That the impugned order merely reiterates OIO findings and seeks to deny Cenvat Credit on the following nature of services, on the grounds that it has no nexus with production activity within the factory. They wish to rely upon appropriate judicial decisions, service wise, wherein such services are held to be valid input services, as indicated by them points wise with plethora of case laws not considered by the lower authorities. They have a single factory across India and even if handful of invoices were addressed to their other offices/depots/godowns, instead of factory premises, the same should not be fatal to the substantial credit benefit. They relied on decision in the case of Commissioner of Central Excise Vs. Chandresh C. Shah as reported in 2014(36) STR 972(Guj.).

3. It was stated that the Appeal No. E/10556/2019 is relating to periodic demand for the period January, 2016 to June, 2017 and the short issue involved is regarding availability of Cenvat Credit on various services viz. C&F imports, C&F warehouse, C&F agent service, Management Consultant, Management consultant-leave process and chartered accountant, Business support service-payables, etc., in light of the definition of "Input Services" as given under Rule 2(l) of the CCR, 2004.

3.1 That the decisions in the cases of Vikram Ispat and Sundaram Brakes as relied upon at Para 4.3.5 of the OIO do not lay down the correct law and in fact, the said decisions were rendered prior to the law being made clear by series of judicial pronouncements on this issue. The same have been regularly distinguished by various other case laws on the issue and therefore, they cannot be used as a binding precedent against the Appellant at all. Further, the Appellant has availed only that portion of Cenvat Credit which pertains to dutiable production undertaken by them. That no part of credit, which pertains to trading activity, whatsoever has been availed and the disputed credit in the impugned order is limited to credits exclusively pertaining to dutiable production and/or credits availed only in proportion to dutiable production via-a-vis total turnover of the Appellant.

3.2 It is reiterated that the impugned order only disputes eligibility to Credit on the ground that various services do not meet the criterion of "input service" as per the definition at Rule 2(l) of the Cenvat Credit Rules, 2004 and no other reason is adduced in the impugned order whatsoever to deny such credit. The proceedings therefore are limited to this ground as raised in the impugned order only. They also crave leave to adopt all submission made for the Appeal No. E/10799/2021 as to why Credit is eligible to the Appellant and why no penal action lies against them and in turn the present Appellant. More particularly, they adopt all averments qua Rule 6 of CCR, 04 compliance as well as credit relating to items appearing at Sr. No.1,2,4, 5, and 8 to ISSUE NO.3.

3.3 That given the interpretational issue involved, especially when the matter is well covered vide catena of decisions available on the issue, neither extended period of limitation can be invoked nor any penalty can be imposed on the Appellant. That the bona fide belief entertained by the Appellant cannot be doubted in the circumstances.

4. Learned AR, *inter alia*, pointed out that order has dealt with various terms of remand as per the order of this Tribunal in the first stage of litigation. However, when asked about various decisions indicated by the appellant and findings on the same, he agreed that the matter can be remanded, as there were not adequate discussion/findings.

5. We have considered the rival submissions. We find that on the first issue, appellants on a notional basis by themselves are not taking 10% of the credit considering that the same pertains to traded goods portion and not to the clearance of excisable goods. However, this kind of notion is not provided for under the Cenvat Credit Rules, 2004 which require that separate account should be maintained and Cenvat Credit is not availed on the exempted goods which included traded goods. Only the credit that has gone in to the manufacture of excisable goods could be availed as Cenvat Credit. It appears to us that principle of 10% notionality in respect of trading goods, at the time of receipt, is not provided for in the CENVAT Credit Rules. Therefore, this issue needs thorough consideration by the authorities as to whether the 10% credit not taken by the appellant fulfils the requirement of Rule 6(3) of the CCR, 2004 as far as reversal of credit on proportionate basis is concerned. The method to determine ineligible credit on exempted goods and/or service as per CCR, 2004 as amended needs to be applied and same is required to be reversed by the appellant alongwith appropriate interest. This while involves exercise of re-determination on the basis of records or on the basis of balance

sheet which we find so far has not been carried out. What has been brought on record during first remand proceeding is only the fact that appellant had reversed 10% credit on a notional basis for the traded goods in advance, which we are afraid is not mandated by the provisions of Cenvat Credit Rules, 2004. It therefore needs re-determination as to what is actual quantum of Cenvat Credit required to be reversed and benefit of Cenvat permitted accordingly. Issue No. 2 and 3, have not been adequately discussed in the impugned order of the Commissioner (Appeals). He has not dealt with many issues as well as elaborate on the case laws, on each points involved. The order therefore, is not a speaking order and is cryptic.

6. In the face of above constraints, we are inclined to remand the matter back to the original authority with directions to re-determine demand after due consideration of various case laws as well as our observations as have been made on the basis of availment of Cenvat Credit considering that only 10% of goods were considered as traded goods. This is not provided in the Cenvat Credit Rules, 2002. Therefore, it is to be seen as to what was actual quantum traded and whether this notional limit of 10% of traded goods was sufficient or not? As in law, it is provided to allow credit on manufacture of goods vis-à-vis traded goods only in proportion of their actual turnover to be determined on the basis of the books of accounts. With the above observation, we remand the matters.

7. Appeals are allowed by way of remand.

(*Order Pronounced in the open court on* *25.07.2025*)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha