

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 50701 of 2021 [SM]

[Arising out of Order-in-Appeal No. DDN/EXCUS/000/APP/150/2020-21 dated 09/04/2021 passed by the Commissioner (Appeals), CGST, Dehradun]

M/s.Huhtamaki India Ltd.
(Formerly known as Huhtamaki PPL Ltd.)

...Appellant

VERSUS

**Commissioner of
CGST & Central Excise, Dehradun**
Dehradun Commissionerate
Nehru Colony, Dehradun.

...Respondent

APPEARANCE:

Shri P.K. Shetty, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorized Representative for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : **07/02/2022**
DATE OF DECISION: **23/02/2022**

FINAL ORDER NO. 50164/2022

RACHNA GUPTA:

The appellants herein are engaged in the manufacturing of packing material. They were also availing Cenvat Credit on inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004. After an audit of accounts of appellants was conducted, the appellants were observed to have taken wrong Cenvat Credits of following amounts:-

- 1) Cenvat Credit of Rs.89,057/- for detention of container (as per Circular No. 121/3/2010 dated 26.04.2010 detention is not a service. Hence Service tax cannot be charged.)
- 2) Cenvat Credit of Rs.30,705/- on the invoice issued by the Bank to the other related manufacturing unit/offices of the appellant. Despite that all the particulars required under sub-rule (2) of Rule 9 of Cenvat Credit Rules were not provided.
- 3) Cenvat Credit of Rs.6,72,264/- on input services on which the service tax was payable under reverse charge mechanism.
- 4) Cenvat Credit of Rs.2,03,985/- taken after expiry of 1 year of issue of any of documents in Rule 9(1)
- 5) Cenvat Credit of Rs.3,64,151/- on such services i.e. of ocean freight as well not eligible input services. Accordingly, a SCN bearing No.285 dated 20th August, 2018 was served upon the appellants proposing the recovery of the total amount of Rs.13,60,162/- as the wrongly availed Cenvat Credit alongwith the proportionate interest and the appropriate penalties. The said proposal was initially confirmed vide the Order-in-Original No. 24 dated 13.11.2019. In the appeal against the said order, the demand of Cenvat Credit availed on detention charges, on invoices amounting to Rs.30,705/- on the input services which were issued beyond one year were dropped. However, the demand of Cenvat credit of

Rs.3,64,151/- availed and on ocean freight. Aggrieved of this confirmation that the appellant is before this Tribunal.

2. I have heard Shri P.K. Shetty, Id. Counsel for the appellant and Shri Mahesh Bhardwaj , Id. D.R. for the Department.

3. Ld. Counsel for the appellant has mentioned that the demand has been confirmed considering the date of bill of lading as the point of taxation. It is mentioned that the findings in para 6 of the Order under challenge reveals the same. That Rule 8 B of the point of Taxation Rules 2011 has wrongly been invoked in the SCN. It is actually rule 7 which is applicable on the appellant according to which the date of payment is the point of taxation. It is further submitted that the applicable service tax on ocean freight, in the present case, is paid in June, 2017. The importer was liable to pay service tax under reverse charge mechanism the appellant made payments to the suppliers in the month of March, May, June and November 2017. The payment of service tax was made on 30th of June, 2017 for the total ocean freight (OF) covered in all the import invoices. Still the appellants have been made liable to pay service tax w.e.f. 23.04.2017. The order of Commissioner (Appeals) is accordingly prayed to be set aside and appeal is prayed to be allowed.

4. Per contra, Id. D.R. has emphasized the justification of the order under challenge, submitting that the Commissioner (Appeals) has meticulously examined the facts and circumstances of the case

with respect to respective proposal of reversal of Cenvat Credit. Major part of demand has already been dropped. The point of taxation is rightly been inferred from the date of bill of lading i.e. 23.04.2017. Emphasizing the applicability of rule 8 of point of taxation rules to the given facts and circumstances, the appeal in hand is hereby prayed to be dismissed.

5. After hearing the rival contentions, the only point of adjudication appears to be :-

“Whether rule 8 B of Point of Taxation Rules, 2011 or Rule 7 thereof will be applicable to the facts and circumstances of the present case.”

6. Following are the admitted facts:-

- 1) The appellant is liable to pay service tax on ocean freight under reverse charge mechanism.
- 2) The date of payment of service tax with respect to all impugned invoices is 30th June, 2017.
- 3) The figures as tabulated below:-

Statement Showing six Invoices in question B/L, B/E & Service Tax Payment on Ocean Freight, and credit availed.

I. Billerudkorsnas Sweden AB

Sl. No .	Invoice No./Date	Bill of Lading No. & date	Bill of Entry No./date	CIF Value (INR)	Serviced Tax @ 1.4% of CIF (Rs.)	Date of payment to supplier	Date of payment of serviced tax	Credit availed
1.	10072545/ 15.12.2016	GTG0219188 / 15.12.16	9425053/ 24.04.17	1688450.87	23,638.31	20.03.2017	Challan No.18273 dated 30.06.2017	23638
2.	10073390/	GTG0219305/	9621160/	1706783.23	23894.97	31.03.2017	-do-	23895

	29.12.2016	28.12.2016	09.05.2017					
3.	10073705/ 29.12.2016	GTG0219495/ 28.12.2016	9620028/0 9.05.2017	1532785.68	21459.00	31.03.2017	-do-	21459
4.	10082041/ 23.03.2017	GTG 03221511/ 23.03.2017	9612466/ 09.05.2017	1447111.66	20259.56	21.06.2017	-do-	20260
5.	10077990 09.02.2017	GTG0221200/ 09.02.2017	9919293 / 01.06.2017	1430169.89	20022.38	10.05.2017	-do-	20022

II. Shanghai EOS International Trading Co. Ltd.

Sl. No .	Invoice No./Date	Bill of Lading No. & date	Bill of Entry No./date	CIF Value (INR)	Serviced Tax @ 1.4% of CIF (Rs.)	Date of payment to supplier	Date of payment of serviced tax	Credit availed
1	86702356/ 11.04.2017	EPIRCHNSH W 211368/ 18.04.2017	9551354/ 03.05.2017	18205519.42	254877.27	09.11.2017	Challan No.18273 dated 30.06.2017	254877
				TOTAL (B)	254877.27			
				GRAND TOTAL (A+B)	364151.49			

The rules in question read as follows:-

[RULE 8B **Determination of point of taxation in case of services provided by a person located in non-taxable territory to a person in non-taxable territory** - Notwithstanding anything contained in these rules, the point of taxation in respect of services provided by a person located in non-taxable territory to a person in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, shall be the date of bill of lading of such goods in the vessel at the port of export.]

RULE 7. Determination of point of taxation in case of specified services or persons.- Notwithstanding anything contained in rules 3, 4 or 8, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months:

7. The admitted fact No.1, as mentioned above, makes it clear that it is rule 7 which shall be applicable in the present case as this rule applies to the persons who are required to pay tax as recipients of service i.e. under reverse charge mechanism. This particular perusal is sufficient to hold that rule 8 has wrongly been applied by the adjudicating authorities. It was wrongly been proposed to be applicable in the impugned SCN. Further perusal of Rule 7 shows that the Point of Taxation shall be the date on which the payment of service tax made. From the above mentioned admitted fact No.2, it is clear that the payment of service tax for six of the invoices under question was made on 30th June, 2017. The admitted figures in the table at admitted fact No.3, mentioned above, are sufficient to show that, in the given circumstances, the appellant has rightly availed the input credit of service tax paid by him though under Reverse charge mechanism.

8. In view of these findings the confirmation of demand by Commissioner (Appeals) is hereby set aside. Resulting thereto, appeal stands allowed.

[Order pronounced in the open Court on 23.02.2022]

(RACHNA GUPTA)
MEMBER (JUDICIAL)