



**TAX
ALERT**

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Issue: Whether CENVAT credit available even if services were received in unregistered units of the assessee?

Facts: M/s Hardik Founders and Engineers (P) Ltd (Appellant) is a manufacturer having three units located at Pirangut, Hinjewadi and Wai. The Appellant availed various services such as security services, fettling contract services and architectural services, on which credit was availed by the Appellant. Department has disallowed the CENVAT credit of service availed in Hinjewadi unit claiming that such services were not received by the said unit. Such services were received in pirangut and wai unit, which were unregistered units. The department claimed that the two units were neither manufacturer nor service provider, so credit cannot be allowed. Being aggrieved with the aforesaid matter the Appellant filed an appeal before the Tribunal.

Appellant Contention: That the Hinjewadi unit, in which services were received was carrying out job work for the Appellant, therefore services received by the job worker is deemed to be used in relation to the manufacture of final product on which excise duty was paid by the appellant. Further Wai unit is a newly set up unit and it is also a part of the Appellant company. All the expenditure of both the aforesaid units was recorded in the books of the Appellant company. The appellant contended that all the three units were under the banner of appellant company, so credit cannot be denied merely because both the above units are outside the unit of appellant. Also it was submitted that the demand was time barred as the Show Cause Notice (SCN) was issued beyond the stipulated period of one year.

Revenue Contention: That the Appellant's unit is the only manufacturing unit and the two units i.e. Hinjewadi and Wai units are outside the Appellant's factory, so input services received by these two units cannot be said to be used in or in relation to manufacture of final products of the appellant. Therefore the appellant is not entitled to avail CENVAT credit in respect of services received by the aforesaid two units.

Observations: The Hon'ble Tribunal held that all the three units are under one common entity and they cannot be treated as different from the Appellant. Even though there were three units the business activity of the Appellant is one. So the services received at Hinjewadi unit were used in relation to the manufacture of final product. As regards to the Wai unit, though being a new unit but it was in connection to the business activity of the Appellant. So there is no prohibition for availing the cenvat



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credit on input services, even if services are used outside the factory. So long as it is used in relation to manufacture of final product, CENVAT credit cannot be denied irrespective of the location where services are received. It was also cited in various cases¹ that transfer of credit by Input service distributor from one unit to another is genuine.

Held: It was held that the appellant was entitled for CENVAT credit in respect of services used outside the appellant's factory.

1M/s Aurobindo Pharma Ltd. Vs. Commissioner of Central Excise, Chennai-III-2015

1Commissioner of Central Excise, Bangalore-I Vs. ECOF Industries Pvt. Ltd.-2011