

ISD can utilise CENVAT Credit without distributing to its other

In the case of **Oerlikon Baizers Coating India Pvt. Ltd. v. Commissioner, Central Tax, Pune - I**, ((2019) 101 taxmann.com 251 (Bombay)), the respondent assessee was engaged in providing certain services including IT software, IPR and coating services from its units located at various locations including Pune. For the period during Oct, 2009 to March, 2014, Pune unit discharged their service tax liability on outward coating services by utilizing the cenvat credit available with them in respect of IPR and IT software services received by them. For this, the Revenue held that the assessee should have distributed such credit to its various units situated across the country in terms of Rule 7 of the Cenvat Credit Rules, 2004 (i.e. Manner of distribution of credit by Input service distributor), and should not have availed the entire cenvat credit only at Pune unit.

In appeal to the High Court, it observed that the provisions of Rule 7 as existed both prior to amendment and post amendment in 2012. The said rule provides that *'the input service provider 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 certain conditions as specified thereof'*. From that, it has been observed that the use of the words 'may distribute the CENVAT credit' as used in the provisions of the said Rule existed both prior and post amendments, that the assessee concerned has been given an option to distribute input service tax available to it amongst its other manufacturing units which are providing output services. However, it is not mandatory for the assessee to distribute the input service tax among its various units providing output services. Further, the provisions of Rule 7 of the said rules as substituted with effect from 1-4-2016 makes it mandatory for distribution of input service tax credit to the various units providing output services. This is evidenced by the use of words 'shall distribute the cenvat credit' in the substituted rule 7 which is with effect from 01.04.2016.

Therefore, the High Court held that as the period involved in the present proceedings is covered by the provisions as governed by both pre and post amendment 2012 (i.e. October, 2009 to March, 2014), so the assessee have an option whether to distribute the input service tax to its various units or not and was entitled to utilize the cenvat credit available at its Pune unit.