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

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 714 of 2012

[Arising out of Order-in-Appeal No OIA-CS/45/SURAT-II/2012 dated 30.05.2012 passed by Commissioner (Appeal) of Central Excise & ST, Surat]

M/s. Pepsico India Holdings Private Limited .... Appellant
Plot No. 27, GIDC, Jhagadia,
BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Surat .... Respondent
NEW C.Ex BUILDING...OPP.
GANDHI BAUG, CHOWK BAZAR,
SURAT, GUJARAT - 395001

WITH

Excise Appeal No. 10009 of 2018

[Arising out of Order-in-Appeal No OIA-VAD-EXCUS-004-APP-153-2017-18 dated 20.06.2017 passed by Commissioner (Appeal) of Central Excise & ST, Vadodara]

M/s. Pepsico India Holdings Private Limited .... Appellant
Plot No. 27, GIDC, Jhagadia,
BHARUCH, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Vadodara .... Respondent
R K CASTA SECOND FLOOR,
CORPORATE HOUSE, TATION
ROAD Bharuch, Gujarat -392001

APPEARANCE :

Ms. Priyanka Kalwani, Advocate for the Appellant
Shri T.K.Sikdar, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11018-11019 / 2019

DATE OF HEARING : 20.06.2019
DATE OF DECISION: 20.06.2019

RAMESH NAIR

The issue involved in the present appeal is whether the appellant is entitled for Cenvat credit in respect of services of Annual Maintenance Charges (AMC) of visi coolers located at their Dealer/Retailer's premises.

2. M/s. Priyanka Kalwani, Ld. Counsel appearing for the appellant, at the outset before starting her arguments submits that another appeal, bearing Appeal No. E/10009/2018 is listed for tomorrow i.e. on 21.06.2019. Since in both the appeals, the issue involved is the same and both the appeals are of the same party, she requested to take up both the appeals together. Accordingly, Registry is directed to pre-pone the Appeal No. E/10009/2018 for today and with the consent of both sides, both the appeals are taken up together for disposal.

3. Ld. Counsel submits that the lower authorities have denied Cenvat credit on the ground that the visi coolers are not located in their premises but are installed at the premises of Retailer/Dealers. She submits that even though the service was received outside the premises but it is in relation to the business activity of the appellant. She submits that visi coolers are owned by them and used for sales promotion and bearing the brand name of Pepsico. Therefore, the service of AMC is directly related to the sales promotion and advertisement which is covered under the inclusive clause of

the definition of Input Service, as per Rule 2(l) of Cenvat Credit Rules, 2004. She placed reliance on the following judgments :-

(a) Hindustan Coca Cola Beverages Pvt. Limited vs. CCE 2017(7) TMI 17-CESTAT-BANGALORE

(b) Hindustan Coca Cola Beverages Pvt. Limited vs. CCE - 2010 (19) STR356 (T)

(c) DCIT, CIR vs. Bengal Beverages Pvt. Limited - 2017 (11) TMI-901-ITAT

(d) CCE vs. Heidelberg, Cement India Limited 2017 (6) GSTL 473 (T)

(e) CCE vs. Endurance Technology Pvt. Limited - 2017 (52) STR 361 (Bom.)

(f) Deepak Fertilizers & Petrochemicals Corpn. Limited vs. CCE - 2013 (32) STR 532 (Bom.)

(g) CCE vs. Ultratech Cement Limited - 2010 (20) STR 577 (Bom.)

(h) Coca Cola India Pvt. Limited vs. CCE 2009 (15) STR 657 (Bom.)

(j) CCE vs. Pragathi Concrete Products (P) Limited - 2017 (50) STR 92 (SC)

4. Shri T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned orders. He submits that since the visi coolers installed outside the premises of the appellant, they are not entitled for the Cenvat credit.

5. Heard both sides and perused the record. We find that even though the visi coolers are installed at the Retailer/Dealer's premises but the same are owned by the appellant therefore the service of AMC of visi coolers were received by the appellant which is in relation to their business activity as sales promotion and advertisement. The sales promotion and advertisement

is specifically mentioned in the inclusive clause of the definition in terms of Rule 2(l) of Cenvat Credit Rules, 2004. Therefore, the AMC service of visi coolers, which are owned by the appellants, is an input service and accordingly, the Cenvat credit is admissible. Hence, the impugned orders are set-aside and both the appeals are allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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