

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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 11543 of 2016-- DB

(Arising out of OIO-AND-EXCUS-000-COM-025-028-15-16 dated 30/03/2016 passed by Commissioner of Central Excise and Service Tax-ANAND)

Sweety Industries

P-43/45, GIDC Industrial Estate,
Nadiad, Kheda, Gujarat.

.....Appellant

VERSUS

C.C.E. & C.-Anand

Office of the Commissioner, Central Excise, Customs & Service Tax,
Central Excise Building, Nr. Juna Dadar, Behind Old Bus Depot
Anand, Gujarat-388001

.....Respondent

With

Excise Appeal No. 10199 of 2018- DB

(Arising out of OIA-VAD-EXCUS-003-APP-197-198-2017-18 dated 10/07/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Sweety Industries

P-43/45, GIDC Industrial Estate
Nadiad, Kheda, Gujarat

.....Appellant

VERSUS

C.C.E. & C.-Anand

Office of the Commissioner, Central Excise, Customs & Service Tax,
Central Excise Building, Nr. Juna Dadar, Behind Old Bus Depot
Anand, Gujarat-388001

.....Respondent

APPEARANCE:

Ms. Padmavati Patil, Advocate for the Appellant

Shri M.G Rayka, Learned Additional Commissioner (AR) for the Respondent

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

Final Order No. 10407-10408/2024

DATE OF HEARING: 01.02.2024

DATE OF DECISION:14.02.2024

RAMESH NAIR

The following common issues are involved in both the appeals:-

- (a) Whether distribution of input service credit by the Principal manufacturer to its Contract Manufacturing Units (Job workers) was

permissible for the period December, 2010 to September, 2015 (Prior to substitution of Rule 7 of CCR w.e.f 01.4.2016), permitting distribution of credit by principal manufacturer to its job workers, in a case where;

(i) Job worker i.e. Sweety Industries were manufacturing biscuits under the brand names belonging to Principal Manufacturer (i.e. M/s. Parle Biscuits Pvt. Ltd)

(ii) Central Excise Duty was being paid by job worker in Parle Biscuits retail sale price (MRP) less permissible abatement u/S 4A of CEA.

(iii) Job worker's factory was dedicated for Parle Biscuits and was an extended factory of Parle, manufacturing biscuits under Notification No. 36/2001- CE (NT) dated 26.06.2001, for and on behalf of Parle.

(b) Whether the issue is no more res- integra in view of judgment of Larger Bench of Tribunal in the case of Krishna Food Products -2021-TIOL-294 (Tri.-LB), holding that distribution of credit, in identical case, was permissible for the period prior to 01.04.2016 as the amendment to Rule 7, CCR was clarificatory in nature and hence, applicable retrospectively, and covered under the expression "Unit" since working under Notification No. 36/2001-CE and manufacturing Biscuits on behalf of Parles.

(C) Whether the extended period and penal provisions are invokable in the absence of any conscious or deliberate suppression of facts or mis-statement on the part of the Appellants, in a case where similar disputes were there with various CMUs of Parles and resolved in their favour either on limitation by various Benches or on merits itself by Larger Bench of Tribunal.

2. Ms. Padmavati Patil, Learned Counsel appearing on behalf of the Appellant at the outset submits that in this case the appellant are manufacturing biscuits exclusively for Parle Biscuit Pvt. Ltd under their brand name viz. Parle-G, Hide & Seek, Monaco etc. in terms of clause (ii) of Notification No. 36/2001- CE (NT) dated 02.06.2001 as a job worker known as contract manufacturing unit. Since the manufacturing is done under the aforesaid notification for all the purpose the appellant is treated as deemed principal manufacturer. Accordingly, the excise duty was also paid as if the goods manufactured and cleared by M/s. Parle Biscuits Pvt. Ltd. Consequently, the appellant is legally entitled for the CENVAT Credit.

2.1 She submits that the very same issue has been considered by the Larger Bench in the case of Krishna Food Product – 2021-TIOL-294 – CESTAT-DEL-LB dated 25.05.2021, it was held that the contract manufacturer is entitled for the CENVAT Credit on the input used for manufacturing goods for their principal.

3. Shri M.G Rayka, Learned Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that all the issues involved in the present case have been answered by the larger bench in the case of Krishna Food Products vide order dated 25.05.2021, the same is reproduced below:

“13. The submissions advanced by learned counsel for the appellant and the learned authorized representative for the Department have been considered.

14. The provisions of rule 2(m) of the CENVAT Rules, before the amendment and after the amendment and that of rule 7 before the substitution and after the substitution w.e.f. 01.04.2016 are reproduced below:

PRIOR TO 1.04.2016

Rule 2(m) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives Invoices Issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;

Rule 7. "Manner of distribution of credit by input service distributor.- The input service distributor 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 the following conditions, namely:-

(a) *****

(c) *****

(d) credit of service tax attributable to service used by more than one unit shall be distributed pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all its units, which are operational in the current year, during the said relevant period;"

Explanation 1.- For the purposes of this rule, "unit" includes the premises of a provider of output service and the premises of a manufacturer including the factory, whether registered or otherwise."

AFTER 1.04.2016

Rule 2(m) "input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives Invoices issued under rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, or an outsourced manufacturing unit as the case may be;"

(bold portion added after amendment)

Rule 7. "Manner of distribution of credit by input service distributor.- The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units, as defined in Explanation 4, subject to the following conditions, namely:-

(a) *****

(b) *****

(c) *****

(d) The credit of service tax attributable as input service to all the units shall be distributed to all the units pro rata on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period;

(e) Outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned;

Explanation 1.- For the purposes for this rule, "unit" includes the premises of a provider of output service or the premises of a manufacturer including the factory, whether registered or otherwise or the premises of an outsourced manufacturing unit.

Explanation 2. ***

Explanation 3. ***

Explanation 4. For the purposes of this rule, "outsourced manufacturing unit" means a job- worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Excise Act."

15. The Additional Commissioner noticed the provisions of rule 2(m) and rule 7 of the CENVAT Rules prior to 01.04.2016 and after 01.04.2016 and concluded that since the show cause notice covered the demand of CENVAT credit for the period 26.06.2013 to 20.02.2015, the provisions of rule 2(m) and rule 7, as they stood prior to 01.04.2016, would be applicable. The observations are as follows:

"From the above it is apparent that if anybody wants to avail input service credit, the above provisions of law has to be complied with prior to 01.04.2016. As per the definition of input service distributor' it has to be a service used by the manufacturer, whether directly or indirectly, in relation to the manufacture of final products and clearance of the final products up to the place of removal. In the present case, the manufacturer (M/s. Krishna Food) is the job-worker who has undertaken the processing of the goods supplied by M/s. Parle and the services on which credit is taken and distributed by M/s. Parle has nothing to do with the manufacturing operations undertaker by the M/s Krishna Food and, therefore, it is difficult to agree with the contention that the services received by M/s. Parle is an input service relating to the manufacture of goods by the job-workers (M/s. Krishna Foods). Secondly, input service distributor' means an office of the manufacturer or producer of final products. The office of M/s. Parle cannot be considered as an office of the job-worker (Krishna Foods) and, therefore, the definition of input service distributor' is not satisfied. Thirdly, Rule 7 deals with the manner of distribution, which specifically states that the input service distributor may distribute Cenvat credit of the service tax paid on the input service to its manufacturing units. The job workers' factory (M/s. Krishna Foods is not the manufacturing unit of M/s. Parle but they are Independent legal entities by themselves and, therefore, the question of distribution of credit by M/s. Parle to the job-workers (M/s. Krishna Foods) does not to satisfy the condition that the credit is distributed to its manufacturing units. It is a settled position of law that job-workers (M/s. Krishna Foods) who actually undertake the manufacturing process are the manufacturer' of goods and not the supplier of raw materials."

(emphasis supplied)

16. The Commissioner (Appeals) also examined the provisions of rules 2(m) and 7 prior to 01.04.2016 and also after 01.04.2016 and the observations are as follows:

"8.1 The above definition of Rule 7, leaves no ambiguity of doubt that an Input Service Distributor can distribute the Cenvat Credit in respect of the Service Tax paid on the input service to its manufacturing units or units providing output service, only. Therefore, I am of the view that when there is an expressed provision in the Rule indicating the Government's Policy, the Adjudicating Authority or the Departmental Authority cannot take a contrary decision. The Appellants No. 1's & No.2's main contention is that the appellant No. 1 were working under the provisions of Notn. No. 36/2001-CE(NT). dated 26.6.2001, they would be treated as the manufacturer on behalf of the Appellant No. 2 and/or extended arm/factory of the Appellant No.2 so far as all Central Excise formalities were concerned, and as Biscuits were manufactured by the Appellant No. 1 as per the specifications provided by the Appellant No. treating the Appellant No. 1's factory as their own manufacturing unit, and accordingly proportional Service Tax credit, based on turnover of the Appellant No. 1, was distributed to them, and also in any case, Rule 7 of the said Cenvat Rules substituted w.e.f. 1.4.2016, wherein a specific provision has been made for an ISD to distribute the credit of input services even to job workers/contract manufacturers manufacturing goods on their behalf and paying duty on their sales price/MRP, and this substitution has been made with a view to correct the mistake/lacuna in the earlier Rule and, hence, the same would have retrospective effect from the inception of the said Cenvat Rules. I find that the said amendment relied upon by the Appellants not only refute their contentions, on the contrary substantiate the adjudicating Authority's view. To which, let me enunciate the Rule 7 of the said Cenvat Rules, as substituted w.e.f. 1.04.2016., and is stands as under.

8.1.1 From the above Rule 7 effective from 01.03.2016, I find the words 'an outsourced manufacturing units, as defined in Explanation 4' have been newly

inserted in Rule 7, further the said Explanation 4 defines 'an outsourced manufacturing Unit', which says 'outsourced manufacturing unit means a job-worker who is liable to pay duty or a manufacturer who manufacturers goods for the input service distributor. Thus, as regards to the contention of both the Appellants that as the Appellant No. 1 were working under the provisions of Notn. No. 36/2001-CE(NT) dated 26.06.2001, the Appellant No. 1 would be treated as the manufacturer on behalf of the Appellant No. 2 and/or extended arm/factory of the Appellant No. 2 so far as all Central Excise formalities were concerned, I find that had been any substance in such contention, then there would not have been any necessity for above referred amendment of Rule 7 of the said Cenvat Rules.

8.1.2 Further, as regards both the appellants' contention that the said amendment to rule 7 is applicable retrospectively, I am the view such contentions fail to stand, as in-term of Rule 7 of said Cenvat Rules credit distribution has been allowed by amending the said Rule by way of Notification No. 13/2016-CE(NT) dated 01/03/2016 which is applicable w.e.f. 1/4 / 2016 As an amendment has also been made in Rule 2(m) of the said Cenvat Rules, which amended the definition of "Input Service Distributor", effective from 01.04.2016, which reads as follows:-

Further, I also find that the amendment to Rule 7 of the said Cenvat Rules, to allow an Input Service Distributor to distribute cenvat credit of input service tax credit to an outsourced manufacturing unit, have been made subject to some conditions detailed in clause (a) to (g) in the said Rule 7, and the condition no. (f) Categorically stipulates that-"Credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units." Therefore, I am of the view that the provisions of Rule 7 of the said Cenvat Rules, as amended w.e.f 01.04.2016 are not clarificatory in nature and by no stretch of imagination can be applied retrospectively."

(emphasis supplied)

17. The main submission advanced by learned counsel for the appellant is that input service credit is available to the appellant since the contract manufacturer steps into the shoes of the principal when operating under the Registration Exemption Notification and rule 7 of CENVAT Rules allows distribution of credit to "its manufacturing units" and does not use the words "its own manufacturing unit" at any place. It is also the submission that rule 7 of the CENVAT Rules allowed credit distribution of credit for such a situation even prior to 01.04.2016 and, in any case, substitution of rule 7 of the CENVAT Rules would have retrospective application.

18. The main submission of the learned Authorized Representative of the Department is that the manufacturer i.e. Krishna is a job-worker who has undertaken the processing of the goods supplied by Parle, and the services on which credit is taken and distributed by Parle has nothing to do with the manufacturing operations undertaken by Krishna. Thus, the services received by Krishna is not input service' relating to the manufacture of goods by the job-worker i.e. Krishna. It is also the submission that rule 7 of Credit Rules has been substituted with effect from 01-04-2016 and from the amendment made in the Rules, it appears that the manufacturers', 'its manufacturing units' and 'Job worker/contract manufacturing units are independent legal entities by themselves. Further, the amendment made in the Rules by substitution of the existing rule 7 of Credit Rules is prospective i.e. effective from 1-4-2016 only, which is evident from the transitional provisions contained in rule 7 (e) of the Credit Rules.

19. The provisions of CENVAT rule 2(m) and 7, as they stood prior to 01.04.2016 and w.e.f. 01.04.2016, have been reproduced above. The provisions of the Registration Exemption Notification have also been reproduced above. It is clear that the Registration of every person, who produces, or manufacturers under the 2001 Rules has been exempted under the Registration Exemption Notification. It provides that every person who gets his goods manufactured on his account from

any other person subject to the conditions that the said manufacturer authorises the person, who actually manufactures to comply with all procedural formalities in respect to the goods manufactured on behalf of the said manufacturer and, in order to enable the determination of value to the said goods under section 4 or 4A of the Excise Act, to furnish information including the price at which the said manufacture is selling the goods and the person so authorised agrees to discharge all liabilities under the Excise Act and the Rules made thereunder.

20. Parle authorized the appellant to manufacture on its behalf 'Biscuits' and to comply on its behalf all the procedural formalities under the Excise Act and the Rules made thereunder and also to furnish information relating to the price at which Parle would the biscuits in order to determine the valuation of the goods. The authorization given by Parle and accepted by the appellant are reproduced below:

"AUTHORISATION

We M/s Parle Biscuits Pvt. Ltd. Vile Parle (East). Mumbai-400057. Hereby authorize M/s. Krishna Food Products. Plot No. 124-125. Siva. Dewas-Maxi Road, Distric Dewas, M.P. 455 001., holding Central Excise Registration No. AAJFR4928LSD001 to manufacture on our behalf "Biscuits" falling under Central Excise Tariff No. 1905 90 20 and to comply on our behalf all the procedural formalities under the Central Excise Act 1944 and RULE made thereunder in respect of goods manufactured on our behalf and also to furnish information relating to the price at which M/s Parle Biscuits Pvt. Ltd., sell the said Biscuits products in order to enable determination of value of the said goods under Section 4A of the said Act.

This will remain enforce till it is cancelled or another such authorization is filled.

For PARLE BISCUITS PVT. LIMITED

(Authorised Signatory)

Place: Mumbai-400057

Date: 8/3/2011

(Manufacturers Who gets his goods manufactured From any other person or his authorized Agent)

We M/s. Krishna Food Products, Dewas, holding Central Excise Registration AAJFR4928LSD001 of Dewas hereby accept the above authorization and agree to discharge all liabilities under the Central Excise Act 1944 and Rules made thereunder in the respect the said goods manufactured from time to Time by us on behalf of the above mentioned manufacturer

For PARLE BISCUITS PVT. LIMITED

(Authorised Signatory)

Place: Dewas

Date: 8/3/2011"

21. The terms and conditions agreed upon are also reproduced below:

"Terms and Condition mutually agreed up on Parle Biscuits Pvt. Ltd., North Level Crossing, Vile Parle (East), Mumbai-400057 and M/s. Krishna Food Products, Plot No. 124-125, Siya, Dewas-Maxi Road, Destrict- Dewas.M.P.-455001.. (hereinafter called as Krishna Food) in respect of Biscuits on Job Work basis.

1. It has been decided that Krishna Food Products, would work as Job Worker for manufacturer of Biscuits for Parle Biscuits Pvt. Limited, Mumbal.

2. Parle Biscuits Pvt. Ltd. would arrange to send materials (Raw materials and Packing materials) through the supplier to Krishna Food Products, on payment of Central Excise duty.

3. Krishna Food Products, would avail Cenvat credit of Central Excise duty paid on the raw and packing materials, capital goods.

4. Krishna Food Products, would process and manufacture Biscuits, would also carry out inspection, packing and delivery of the manufactured Biscuits to the various depots located all over the county as per the direction given by Parle Biscuits Pvt. Ltd. Mumbai.

5. Loss of Non-standard materials would be borne by Krishna Food Products, depending upon nature of the case.

6. Biscuits will produced and packed in wrappers/cartoons (C.B.).

7. Krishna Food Products, would make Excise Invoice/Stock Transfer Notes (STN's) to Depots/or Wholesalers of Parle Biscuits Pvt. Ltd. and would pay Excise duty on assessable value as shown in the Invoice of M/s. Parle Biscuits Pvt. Ltd. Mumbai.

8. The raw material and finished goods remains the property of Parle Biscuits Pvt. Ltd., Mumbai.

22. It is clear from the aforesaid that the appellant accepted the authorization and agreed to discharge all liabilities under the Excise Act and Rules made thereunder in respect of the goods manufactured from time to time by the appellant on behalf of Parle. The terms and conditions also stipulate that the appellant would work as a job worker for manufacture of "Biscuits" for Parle and that Parle would arrange to send the raw materials and packing materials to the appellant on payment of Central Excise duty and that the appellant would avail CENVAT credit of Excise duty paid on the raw and packing materials and capital goods. It also provides that the appellant would made excise invoice/stock, Transfer Notes to Depots or Wholesalers of Parle and would pay Excise duty on the assessable value as shown in the invoice of Parle

23. It is in terms of the CENVAT Rules, the Registration Exemption Notification and the aforesaid authorization that it has to be determined whether input service credit is available to the appellant even prior to 01.04.2016.

24. It is seen that the Registration Exemption Notification specifically uses the words "every manufacturer who gets his goods manufactured on his account". The exemption granted to Parle from registration necessarily means that Parle is exempted from all the procedural requirements which a registered person is required to undertake, like issuance in invoices, maintenance of records, filing of periodical returns, payment of duty etc. These requirements are met by the appellant, in terms of the undertaking submitted by the appellant. This would mean that the appellant steps into the shoes of Parle Since the

duty is paid by the appellant, it follows that the credits are also claimed by the appellant. The Department has not objected to the availment of credits by the appellant on various inputs procured by Parle. What is disputed is the availment of credit on services distributed by Parle.

25. The office of Parle at Bahadurgarh is registered as a "input service distributor" under rule 2(m) of the CENVAT Rules. Biscuits were manufactured not only in the factories of Parle, but also in the factories of other contract manufacturers. It is stated that the quantity of biscuits manufactured by the appellant is reflected in the balance sheet of Parle as goods manufactured on behalf of Parle and sold and marketed by Parle. The excise duty paid on the biscuits cleared from the factory of the appellant is also accounted for in the balance sheet of Parle as duties paid by them. It has also been stated that as a business strategy advertisement, market research, sales promotion and marketing was centralised and handled by the office of Parle at Bahadurgarh. Such Credit availed on input services attributable to the final product was distributed by Parle on a pro-rata basis proportionate to the turnover of each unit between its own manufacturing plants and its contract manufacturing units, including the appellant, under rule 7 (d) of the CENVAT Rules.

26. What is also important to notice is that rule 7 of the CENVAT Rules allows distribution of credit to its manufacturing units. It does not use the words its own manufactures units. It can, therefore, safely be presumed that the term its manufacturing units should include a contract manufacturer, who manufactures in accordance with the provisions of the Registration Exemption Notification.

27. In this connection it will be pertinent to refer to the decision of the Tribunal in Tamil Trading Corporation. The relevant portion is reproduced below:

“6. We have gone through the records of the case carefully. The Customs Notification No. 21/2002-Cus. Provides concessional rate of duty for imported Crude Palm Oil for the manufacture of refined oil. Condition 5 of the Notification stipulates that the importer follows the procedure set out in the Customs (Import

of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. Before the introduction of the above Rules in 1996, each Notification was having end-use condition and the importer was normally required to produce the end-use certificate. However, the above rules were framed as an improvement over the earlier procedure. The above Rules are applicable to an importer who intends to avail of the benefit of an exemption Notification and where the benefit of such exemption is dependent upon the use of imported goods covered by the Notification for the manufacture of any excisable commodity. As per Rule 3 a manufacturer intending to avail the benefit of the exemption notification shall obtain a Registration from the Assistant Commissioner of Central Excise having jurisdiction over his factory. Lower authorities have done their job by a very literal interpretation of Rule 3. Their argument is that the Rule 3 uses the expression "his factory". In other words the lower authorities interpret that the importer should own a factory and he has to use the imported material only in his factory. Otherwise, the importer would not be entitled for the concessional assessment under the above Notification. If the importer uses the imported goods in a factory belonging to some other person he would not be entitled for the concessional assessment. The Tribunal's decision in the Panacea Bio-tech Ltd. case relied on by the Commissioner has broadly followed the above line of argument. In our view, the above approach is not at all in consonance with the philosophy of liberalisation and globalisation embraced by the Government of India in all its policies relating to Customs, Excise and Foreign Trade as revealed in a plethora of policy documents, legislation, and procedures.

The expression "his factory" should be interpreted to mean the factory where the importer wants to utilise the imported goods in terms of the Notification. The Department can not insist on ownership of the factory and deny registration for the purposes of the Notification. The Tribunal, in the case of Commissioner of Central Excise, Bangalore v. Electronic Research Ltd. cited by the Id. Advocate, has

held that literal meaning of statute should be abandoned if it leads to unjustified results. In that case, goods imported under Concessional rate of duty for use in one factory were transferred to the factory of the importer at another place under certain circumstances. The Commissioner (Appeals) decided in favour of the importer. Revenue came in appeal before the Tribunal. The Tribunal held that the importer was entitled to exemption as neither the Rules nor the Notifications itself prohibited such transfer. The above decision was held in the context of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The ratio of the above decision is applicable to the present case also. The fact that Chennai Commissionerate has permitted Registration in respect of the importer who does not own the factory where the imported Crude Palm Oil is utilized is also supporting the appellants' case. Hence we allow the appeal with consequential relief, if any.

(emphasis supplied)

28. The Commissioner (Appeals) relied upon the decision of the Tribunal in Sunbell Alloys which was decided on 17.10.2013 and learned Authorized Representative of the Department also placed reliance upon this decision. It needs to be noted that Sunbell Alloys relied upon the decision of the Tribunal in Panacea Biotech that was decided on 21.01.2003. The relevant portion of the decision is reproduced below:

5.3 Therefore, if anybody wants to avail input service credit, the above provisions of law has to be complied with. As per the definition of 'input service distributor' it has to be a service used by the manufacturer, whether directly or indirectly, in relation to the manufacture of final products and clearance of the final products up to the place of removal. In the present case, the manufacturer is the job-worker who has undertaken the processing of the goods supplied by M / s Merck Specialties Ltd. and the services on which credit is taken and distributed by M / s Merck has nothing to do with the manufacturing operations undertaken by the appellants and, therefore, it is difficult to agree with the contention that the

services received by M / s Merck is an input service relating to the manufacture of goods by the job- workers.

5.4 Secondly, 'input service distributor' means an office of the manufacturer or producer of final products. The office of M / s Merck cannot be considered as an office of the job-worker and, therefore, the definition of 'input service distributor' is not satisfied. Thirdly, Rule 7 deals with the manner of distribution, which specifically states that the input service distributor may distribute Cenvat credit of the service tax paid on the input service to its manufacturing units. The job-workers' factory is not the manufacturing unit of M / s Merck Specialties Ltd, but they are independent legal entities by themselves and, therefore, the question of distribution of credit by M / s Merck Specialties Ltd. to the job-workers does not satisfy the condition that the credit is distributed to its manufacturing units. It is a settled position of law that job-workers who actually undertake the manufacturing process is the 'manufacturer' of goods and not the supplier of raw materials.

5.7 In the light of these evidences available on record, it is crystal clear that the appellants are manufacturers on their own right and there is no manufacturing of goods on account of M / s Merck Specialties Pvt. Ltd. Once this position is clear, the rules relating to input service credit distribution becomes easy to interpret. As per Rule 2(m) of the CCR, 2004 'input service distributor' means an office of the manufacturer or producer of output service. In this case, the distributor is M / s Merck Specialties Ltd. whereas the manufacturers are the appellants. Since these are separate legal entities, office of M / s Merck cannot be considered as an office of the manufacturer and hence Merck cannot be considered as an input service distributor' as defined under Rule 2(m) of the CCR, 2004. Further, as per Rule 7, the input service distributor has to distribute the credit to 'its manufacturing units'. The manufacturing units of the appellants are not that of M/s. Merck Specialties Ltd. and these units belong to the appellants and therefore, M / s Merck cannot distribute Cenvat credit to the appellants under Rule 7 of CCR, 2004

as aforesaid. The expression 'its manufacturing unit' specified under Rule 7 has to be interpreted in terms of the ratio of the decision of the Tribunal in the case of Panasea Biotec Ltd. (cited supra). In that case, for availing the benefit of Notification 23/98 - Cus., a condition was prescribed that the importer should utilise the imported bulk drugs in the manufacture of life saving drugs in his factory. A question arose whether 'his factory' would include factory of job-worker and it was held that job-workers' factory will not come within the purview of his factory' mentioned in the said notification. In the present case, the expression used is "its manufacturing unit". The said expression would mean that the manufacturing unit of the input service distributor and not that of the job-worker and, therefore, the contention of the appellants that they are eligible for the input service credit distributed by M/s. Merck Specialties Ltd. is not in accordance with the provisions of input service distribution scheme envisaged under CCR, 2004.

(emphasis supplied)

29. It needs to be noted that in Tamil Trading Corporation, it was held that Panacea Biotec was not correctly decided. Not only this it was found as a fact in the aforesaid decision rendered in Sunbell Alloys that the appellant was a manufacturer in its own right and was not manufacturing goods on account of M / s Merck Specialties Pvt. Ltd. In the present case, it is clear from the letter of authorization given by Parle and accepted by the appellant that the appellant manufactured biscuits for and on behalf of Parle as a job worker. Parle was also required to send raw materials and packing materials. The appellant was required to process and carry out inspection of various depots as per the directions given by Parle. In fact, the raw materials and the finished goods were to remain the property of Parle. There can be no doubt that the appellant had effectively stepped into the shoes of Parle. The factual position in the present case and in Sunbell Alloys is, therefore, entirely different.

30. The decision of the Tribunal in FDC also needs to be referred to, wherein after relying upon the decision of the Tribunal in Tamil Trading Corporation, it was held:

"4. We have carefully considered the submissions made by both sides and perused the records. The issue in dispute lies in a narrow compass that imported goods under exemption notification carrying condition of end use. Under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 whether goods can be used in the importer's own factory or also can be used in the job worker factory. There is no dispute the goods were used on behalf of the appellant in their loan licensee (job work factory) on behalf of the appellant only. The ownership of goods remained with the appellant right from import of the goods up to the use in the final product. In this position, in our view the imported goods used for the specified purpose, the condition of end use stands complied with. The whole objective of the duty free imported bulk drug is that it should be used in the manufacture of life saving drugs or medicine. In our view, if this condition is fulfilled while the ownership of the goods is with appellant, it can be said condition of the end use is satisfied. This issue has come up in the case of Tamil Trading Corporation Ltd. (supra).

(emphasis supplied)

31. It is, therefore, not possible to accept the contention of the Department that principal and the contract manufacturer being separated legal entities, the contract manufacturer, even when operating under the Registration Exemption Notification, cannot be termed as a manufacturing unit of the principal.

32. It also needs to be remembered that CENVAT credit scheme seeks to avoid cascading effect, as would be clear from the press release dated 12.08.2004 issued by the Press Information Bureau, Government of India Ministry of Finance, relating to the draft CENVAT credit rules. The relevant portion is reproduced below:

"(iii) In principle, credit of tax on those taxable services would be allowed that go to form a part of the assessable value on which excise duty is charged. This would include certain services which are received prior to commencement of manufacture but the value of which gets absorbed in the value of goods. As regards services received after the clearance of the goods from the factory, the credit would be extended on services received upto the stage of place of removal (as per section 4 of Central Excise Act). In addition to this, services like advertising, market research etc. which are not directly related to manufacture but are related to the sale of manufactured goods would also be permitted for credit."

33. A reading of the aforesaid press release shows that the intention behind the framing of the Credit Rules was to allow credit of taxes paid on all services, which form part of the assessable value. Thus, advertisement, market research, sales promotion and marketing, of which credit has been distributed by Parle to the appellant and which services have also been specifically referred to in the press release, should be allowed.

34. According to the Department Parle, which has its own manufacturing units and also operates through contract manufactures, can distribute credits to its own units but cannot distribute credits to contract manufacturers who manufacture the goods for and on behalf of Parle though they operate on identical basis as the units of Parle. The interpretation put by the Department clearly seeks to dilute the spirit behind the CENVAT Rules and the Registration Exemption Notification. The whole purpose of CENVAT credit is to capture all costs so as to evade the cascading effect of duties and taxes.

35. A narrow and a literal interpretation of the phrase its manufacturing units should, therefore, be avoided, more particularly when the Registration Exemption Notification provides for authorization for manufacture of goods on behalf of the principal manufacturer. There appears to be no good reason as to why CENVAT credits should not be allowed to be distributed to a job worker in the facts and circumstances of the present case.

36. In this connection reliance can be placed on the decision of the Karnataka High Court in CCE vs. Millipore India Pvt. Ltd. 2012 (26) S.T.R. 514 (Kar.), wherein it was held that if the cost of various services availed forms part of the assessable value of the goods manufactured and sold, there is no reason to deny CENVAT credit of duty and taxes paid on various inputs/ input services availed. The relevant portion of the judgment is reproduced below:

"7.5 The principle of law that the services which form a part of the assessable value on which excise duty is discharged, would be available as Cenvat credit has also been accepted by the Hon'ble Karnataka High Court in the Case of CCE v. Milipore India P. Ltd. reported on 2012 (26) S.T.R. 514 wherein, it was held that if service tax is paid in respect of any of the service which for a part of the cost of the final product, certainly the assessee would be entitled to Cenvat credit of the tax so paid. In the appellant's own case this Tribunal has in its Order No. A/225/14/EB/C- II, dated 3-3-2014 [2014 (36) S.T.R. 467 (Tribunal)] = 2014-TIOL-768- CESTAT-MUM held that if the cost of various services availed if it forms part of the assessable value of the goods manufactured and sold by the appellant, there was no reason to deny Cenvat credit of the duty/taxes paid on various inputs/input services availed, for undertaking the business operations. The ratio laid down by the Hon'ble Tribunal has been accepted by the Revenue and no appeal has been filed against the same.

8.1 It can be seen from the above reproduced relevant paragraphs from the judgment of the Hon'ble High Court the ratio is very clear inasmuch as the Cenvat credit has to be allowed in respect of the service tax which has been paid and which forms a part of the value of the finished goods on which excise duty is charged."

(emphasis supplied)

37. In the present case the appellant is paying duty on the sale price fixed by the principal, which includes all costs including sales promotions and marketing.

38. Learned Authorized Representative of the Department has, however placed reliance upon the decision of the Supreme Court in Commissioner Customs (Import), Mumbai vs. Dilip Kumar and Company 2018 (361) E.L.T. 5777 (5.C)= 2018 - T * 10L - 302 - SC - CUS-CB to contend that a strict interpretation should be given to rule 7 of the CENVAT Rules.

39. The Constitution Bench of the Supreme Court in Dilip Kumar was constituted to examine what would be the interpretative rule to be applied while interpreting a tax exemption provision/ notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied. The Supreme Court observed that the core issue to be examined in the event of any ambiguity in an exemption notification is whether the benefit of such an ambiguity should go to the assessee or should be considered in favour of the revenue by denying the benefit of the exemption to the assessee. The Supreme Court concluded that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of any ambiguity in a charging section, the benefit must necessarily go in favour of the assessee but the same would not be true for an exemption notification in regard to which the benefit of ambiguity must be strictly interpreted in favour of the Revenue. The Constitution Bench, therefore, answered the reference as follows:

"52. To sum up, we answer the reference holding as under-

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subjected to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

40. The Supreme Court subsequently in *Government of Kerala & Another vs. Mother Superior Adoration Convent Civil Appeal No 202 of 2012* decided on 01.03.2021 = 2021-TIOL-156-SC-MISC, drew a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose and the observations are as follows:

"23. It may be noticed that the 5-Judge Bench judgment (Dilip Kumar) did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose. We cannot agree with Shri Gupta's contention that sub-silentio the line of judgments qua beneficial exemptions has been done away with by this 5-Judge Bench. It is well settled that a decision is only an authority for what it decides and not what may logically follow from it (see *Quinn v. Leatham* [1901] AC 495 as followed in *State of Orissa v. Sudhansu Sekhar Misra* (1968) 2 SCR 154 at 162,163).

24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemption. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench."

(emphasis supplied)

41. As noticed above, CENVAT is a beneficial scheme with the stated purpose of allowing CENVAT credit of all taxes paid on inputs and services so as to avoid cascading effect of taxes and duties.

42. Thus, even in terms of the provisions of rule 2(m) and rule 7 of the CENVAT Rules, as they stood prior to 01.04.2016, the appellant could distribute CENVAT credit in respect of the service tax paid on inputs services to its manufacturing units, including a job workers.

43. Such being the position, we also find substance in the contention advanced by learned counsel appearing for the appellant that the amended provisions of rule 2(m) and rule 7 of the CENVAT Rules, after the 01.04.2016, merely seek to rectify the lacuna in the unamended rules and, therefore, would have effect from the inception of the rules.

44. The answer to the first issue referred to by the Division Bench would, therefore, be that Parle was justified in distributing credits on input services attributable to the final product on a pro-rata basis proportionate to the turnover of each unit between the manufacturing plants of Parle and its contract manufacturing units, including the appellant, under rule 7(d) of the CENVAT Rules.

45. In view of the answer to the first issue in favor of the appellant, it would not be necessary to answer the second issue referred by the Division Bench. This issue is whether the appellant would, irrespective of the answer to the first issue, be entitled to avail CENVAT credit when input service is attributed to the goods on which excise duty is paid and includes the cost of services on which credit was taken.

46. The matter may now be placed before the Division Bench for disposal of the appeal.”

4.1 From the above judgment, it can be seen that the issue involved in the present case has been settled in favour of the assessee. Accordingly, the impugned order in the present case is also not sustainable.

5. Hence, the impugned order is set aside. Appeals are allowed.

(Pronounced in the open court on 14.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Arpita