# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

**EXCISE Appeal No. 11121 of 2016-DB**

[Arising out of Order-in-Original/Appeal No BHR-EXCUS-000-COM-076-15-16 dated 15.03.2016 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch]

**Agro Pack** .... **Appellant**
(Unit-ii) Plot No. B/155, GIDC, Ankleshwar,
BHARUCH, GUJARAT -393002

*VERSUS*

**Commissioner of Central Excise & ST, Bharuch** .... **Respondent**
Vadodara-II,GST Bhavan,Subhanpura,Vadodara
Vadodara, Gujarat -390023

**APPEARANCE** :

Shri Jigar Shah & Shri Amber Kumrawat, Advocates, for the Appellant
Shri Rajesh R. Kurup, Superintendent, for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**
**HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 02.12.2024
DATE OF DECISION: 04.12.2024

**FINAL ORDER NO. 12985/2024**

**C.L. MAHAR** :

The brief facts of the matter are that the appellant are engaged in the manufacture of pesticides such as Cruiser, Alika, Gramoxone, Curacron, Ekalux, Matedor etc. falling under Chapter heading 38 of the schedule to the Central Excise Tariff Act, 1985. The appellant manufactures the final product on job work basis for M/s. Syngenta India Limited and M/s. Syngenta Crop Protection Pvt. Limited. The final product manufactured by the appellant are cleared by them on payment of duty for domestic clearance or for export purpose. The appellant are availing Cenvat credit of duty paid on inputs, capital goods and input service as per the provisions of Cenvat Credit Rules, 2004. The department noticed that the appellant have availed Cenvat credit on the strength of the invoices issued for distribution of service tax credit by M/s. Syngenta India Limited as 'Input Service Distributor' and the department is of the view that appellant are not eligible to avail and utilize the input service credit distributed by M/s. Syngenta India Limited as the appellant is not a manufacturing unit of M/s. Syngenta India Limited.

2. On the basis of above facts, a show cause notice dated 15.4.2015 came to be issued demanding reversal of Cenvat credit amounting to Rs. 2,72,21,989/-. As per the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A(4) of the Central Excise Act, 1944. The show cause notice has also invoked provisions pertaining to levy of penalty as per the provisions of Rule 15 read with Section 11AC of Central Excise Act, 1944 etc. The matter has been adjudicated by the impugned order-in-original dated 15.03.2016 whereunder all the charges as invoked in the show cause notice has been confirmed by the Adjudicating Authority. The appellant are before us against the above mentioned impugned order-in-original dated 15.03.2016.

3. Shri Jigar Shah, learned Advocate appearing for the appellant along with Shri Amber Kumrawat, Advocate submitted that impugned order-in-original has confirmed the demand merely on the ground that appellant is a job worker for M/s. Syngenta India Limited and not a manufacturing unit of M/s. Syngenta India Limited and therefore, the appellant should not have availed credit on the invoices issued by M/s. Syngenta India Limited as Input Service Distributor. In this regard it has been contended by the learned advocate that Rule 7 of Cenvat Credit Rules, 2004 allows distribution of credit to its manufacturing units and it does not differentiate between the input service distributor to any manufacturing unit or job worker of the unit. The learned advocate has referred to Rule 7 of Cenvat Credit Rules, 2004 which reads as follows:-

> **"RULE 7. Manner of distribution of credit by input service distributor.**
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> 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 :-"

4. The learned advocate has further contended that the issue of distribution of credit by principal manufacturer to its job workers is no longer *res-integra* as the same has been addressed by this Tribunal in the decision in case of M/s. Sweety Industries vs. CCE & C, - Anand – 2004-VIL-198-CESTAT-AHM-CE wherein this Tribunal has held that interpretation put by the department clearly seeks to dilute the spirit behind Cenvat Credit Rules

and has held that principal manufacturer who is an Input Service Distributor is justified in distributing credits on input services attributable to final product on a pro-rata basis to turnover of each unit between manufacturing plants and contract manufacturing units including the job workers.

5. The learned advocate has also placed reliance of the decision of principal bench, New Delhi in the case of M/s. Krishna Food Products vs. The additional Commissioner of CGST & C.Ex., Indore – 2021-VIL-210-CESTAT-DEL-CE. The learned advocate argued that the Tribunal in the case of M/s. Krishna Food Products (supra) held that Rule 7 of Cenvat Credit Rules, 2004 allows distribution of credit to its manufacturing units which also cover the job work units working for the principal manufacturer.

6. We have also heard Shri Rajesh R. Kurup, learned Superintendent (AR) who reiterated the findings as given in the impugned order-in-original.

7. Having heard both the sides, we are of the view that the matter is no longer *res-integra* as in the case of Sweety Industries vs. CCE &C-Anand (supra) has held that Input Service Distributor is also entitled to distribute Cenvat credit of various input services to its job work units. The relevant portion of the above mentioned order is reproduced here below:-

> "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.
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> 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 :
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> > *"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.*

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*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 Biotec 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).*
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> *( 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 pri 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 phase 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.*
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> *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."*
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> *( 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-TIOL-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 statue 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. Leathem [1901] AC 495 as followed in State of Orissa v. Sudhansu Sekhar Misra (1968) 2 SCR 154 at 162,163).*
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> *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 ewe 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."*
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> *(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.**"**

8. Following the above decision of this Tribunal, we are of the view that impugned order-in-original is devoid of any merits therefore, we set-aside the same. The appeal is accordingly, allowed.

*(Pronounced in the open court on* 04.12.2024*)*

**(Ramesh Nair)**
**Member (Judicial)**

**(C L Mahar)**
**Member (Technical)**

**KL**