CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 2108 of 2011

(Arising out of Order-in-Original No. 9 to 10/2009 dated 31.08.2009 passed by the Commissioner of Central Excise, Bangalore.)

M/s. Parle Products Private Limited,
15th KR Stone, Tumkur Road,
Bangalore – 560 073.

Appellant(s)

VERSUS

The Commissioner of Central Excise,
Bangalore-III Commissionerate,
CR Building, Queens Road,
Bangalore 560 001.

Respondent(s)

APPEARANCE:

Ms. Rinki Arora, Advocate for the Appellant

Mr. M.A. Jithendra, Asst. Commissioner(AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20383 /2024

DATE OF HEARING: 27.02.2024
DATE OF DECISION: 27.02.2024

PER : DR. D.M. MISRA

This is an appeal filed by the appellant against Order-in-Original No.9 to 10/2009 dated 31.08.2009 passed by the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of excisable goods viz. confectionaries and biscuits falling under Chapter heading 1803

and 1905 of Central Excise Tariff Act, 1985. The appellant had availed cenvat credit on inputs / capital goods and service tax used in the manufacture of final products. The Biscuits having retails price less than Rs.50/- per kg. was exempted from payment of duty by Notification No.03/2006-CE dated 01.03.2006. The said retail sale price later increased to Rs.100/- per Kg from 03.05.2007 by Notification No.22/2007 dated 03.05.2007. The appellant availed credit of inputs common to exempted as well as dutiable goods during the period 03.05.2007 to June 2007. They have availed cenvat credit viz. on sugar, liquid glucose, Sodium Meta Bi-Sulphate, Sodium Bi-Carbonate, Vanilla Flavour etc. on which credit availed and used for both exempted and dutiable final products. Alleging that the appellant had not maintained separate accounts during the period and failed to follow the procedures laid down under Rule 6(3)(b) of CENVAT Credit Rules, 2004, demand notice was issued on 06.06.2008 for Rs.38,04,053/- being 10% of the value of the goods cleared, with interest and penalty. Subsequently another show-cause notice was issued on 01.08.2008 for the period from July 2007 to March 2008 on the same grounds demanding 10% of the value of the exempted products amounting to Rs.60,85,415/- with interest and penalty. On adjudication, both the demands were confirmed with interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant submitted that the appellant had availed cenvat credit on common inputs like sugar, liquid glucose, Sodium Meta Bi-Sulphate, Sodium Bi-Carbonate, Vanilla Flavour etc. and also input services like GTA service during the period in question which were used in the manufacture of both dutiable and exempted biscuits and sold at MRP not exceeding Rs.100/- per kg. She has submitted that they reversed the credit attributable to exempted biscuits during the period in question which has been acknowledged by the learned Commissioner in the impugned order. She has submitted

that since the entire credit with interest had been reversed, the demand of duty of 10% on the value of the exempted biscuits having retail sale price less than Rs.100/- during the period May 2007 to March 2008 cannot be sustained. In support, she has referred to the following judgments:-

i. ***Chandrapur Magnet Wires (P) Ltd. Vs. CCE, Nagpur*** [1996(81) ELT 3 (SC)]
ii. ***Sheela Foam Pvt. Ltd. Vs. CCE*** [2024(2) TMI 957 – CESTAT KOLKATA]
iii. ***Rama Phosphate Limited Vs. CCE*** [2016(7) TMI 1146 – CESTAT NEW DELHI]
iv. ***Satyakala Agro Oil Products Ltd. Vs. CCE, Guntur*** [2008(223) ELT 441 (Tri. Bang.)]
v. ***CCE Vs. DCW Ltd.*** [2009(234) ELT 163 (Tri. Chennai)], affirmed by Hon'ble Madras High Court reported in 2011(274) ELT 183 (Mad.).

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for determination is: whether the appellant are required to pay 10% of the value of the exempted Biscuits having retail price less than Rs.100/- even though they have reversed proportionate cenvat credit with interest before issuance of Show Cause Notice, availed on common inputs/input services but used in the manufacture of exempted Biscuits.

7. Undisputedly, the appellant have been using common inputs and input services in the manufacture of biscuits which are exempted from payment of duty in terms of Notification No.3/2006-CE dated 01.03.2006 as amended where the retail sale price is equivalent or less than Rs.100/- w.e.f 03.05.2007. Initially, the appellant could not maintain separate accounts for the inputs in the manufacture of dutiable goods as well as exempted products. However, the cenvat credit availed on common inputs/input service attributable to exempted Biscuits manufactured and cleared during the period May 2007 to March 2008 has been reversed with interest by the appellant as recorded by the learned Commissioner in the impugned order which read as follows:-

> *"25. It has been admitted by the assessee that they had availed cenvat credit on common inputs and input services used for manufacture of exempted goods, but the reversed it is as good as not amounts were reversed along with interest before issue of the Show Cause Notice Assessee argues that since the credit availed has been reversed availing of credit A perusal of the statements furnished by the assessee for reversal of credits reveal that the assessee had availed cenvat credit on common inputs like sugar, sodium bi-carbonate, ammonium bi-carbonate, etc and common input services like GTA service, used in the manufacture of exempted biscuits during May 2007 & June 2007 It also reveals the fact that assessee had availed cenvat credit on inputs like Butter Flavour and Packing Material which were exclusively used in the manufacture of exempted biscuits during May 2007 & June 2007. The reversal of all these credits was made during November 2007. Similarly it is seen that the credit availed on LPG during May 2007 & June 2007, relating to exempted goods, was reversed during August 2007.*

> *26. In respect of second Show Cause Notice also, the assessee has confirmed that they have availed cenvat credit on common inputs and input services used in the manufacture of exempted goods. It is stated by them that they have availed the credit of Rs.1,51,504 in respect of inputs used in the manufacture of exempted goods & reversed the same with interest before issue of Show Cause Notice, Further, they reversed an amount of Rs. 61,110/- during November 2007, pertaining To GTA-inward on inputs used for exempted goods and also reversed an amount of Rs. 1,36,786/- during July 2008, pertaining to the portion of common input services used for exempted goods. It is further stated that they have reversed an amount of Rs. 1,04,438/- along with interest, being the proportionate credit on the quantity of LPG used for the manufacture of exempted goods. Therefore, it is very much clear that The assessee has taken cenvat credit on common inputs & input services used for manufacture of exempted goods and the amounts were reversed later after re of exempted goods."*

8. Since the appellant has reversed the credit with interest availed on inputs and input services attributable to exempted products, accordingly in view of the series of judgments referred to by the learned advocate for the appellant and also in view of the retrospective amendment to the relevant Cenvat Credit Rules, 2004 vide Section 72 and 73 of Finance Act, 2010 and Notification No. 13/2016-CE(NT) dated 01.03.2016, the demand of 10% of the value of the exempted goods confirmed by the learned Commissioner in the impugned order cannot be sustained.

9. In the result, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant, if any, as per law.

(Operative part of this order was pronounced in Open Court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…