CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No.ST/1848 & 1859/2011,
Appeal No.ST/60348/2013

[Arising out of Order-in-Original No.21/LDH/2011, Order-in-Original No.20/LDH/2011 dt.03.10.2011 and OIO No.59/LDH/2011 dt.10.9.2013 passed by the Commissioner of Central Excise, & Service Tax, F Block, Rishi Nagar, Ludhiana)

Ludhiana Beverages Pvt.Ltd. **Appellant**
(185, Giaspura, GT Road, Ludhiana)

VERSUS

CCE & ST, Ludhiana **Respondent**
(Central Excise House, F Block, Rishi Nagar, Ludhiana)

APPEARANCE:
Present for the Appellant: Ms.Priyanka Singla, Advocate
Present for the Respondent: Shri M.S.Dhindsa & Ms.Shivani, ARs

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.60915-60917/2021

DATE OF HEARING/ DECISION: 24.08.2021

PER ASHOK JINDAL

All the appeals are disposed of by a common order.

2. The appellant is engaged in the distribution and sale of non-alcoholic beverages under the brand name of the Coca-Cola Company ('TCCC') The appellant entered into a 'Bottlers Agreement' with TCCC wherein the appellant has been authorized to use the trade mark in connection with preparation, packing, distribution and sale of beverages/aerated waters/mineral water in throughout a specified territory. The appellant purchases the concentrates, required for manufacture of final products, from Coca Cola Pvt.Ltd., authorized by

TCCC for this purpose. As per the Bottlers Agreement, the appellant is required to take steps for advertising, marketing and promoting the sale of the beverages/mineral water by creating its own funds, and TCCC agreed to contribute financially in the marketing program. The appellant regularly places purchase orders on CCIPL for purchase of concentrate of mineral water and non-alcoholic beverages. The appellant received incidence claim and other claims from CCIPL in the form of credit notes. As per Revenue, the appellant is promoting sale of concentrate of CCIPL, for which, the latter is paying a consideration in the form of support price. Therefore, the appellant is providing "Business Auxiliary Service" of promotion or marketing of goods produced or provided by or belonging to the client to CCIPL. In view of this, several show cause notices were issue to the appellant alleging that they are providing "Business Auxiliary Service". The show cause notices were adjudicated and the demands were confirmed along with interest and penalty. Against the said order, the appellants are before us.

3. Ld. Counsel appearing for the appellant submits that the activities undertaken by the appellant are for the purpose of promoting the final product and not the concentrate. Therefore, they are not providing "Business Auxiliary Service". Further, the said issue has been settled by this Tribunal in the case of Kandhari Beverages Pvt.Ltd. Vs. CCE-2020 (11) TMI 925, CESTAT-Chandigarh.

4. On the other hand, Ld.AR opposed the contention of the Ld.Counsel that the issue has been decided in case of Kandhari Beverages Pvt.Ltd.

5. Heard the parties.

6. We find that the said issue came up before this Tribunal in the case of Kandhari Beverages Pvt.Ltd. (supra), wherein this Tribunal has held as under:-

"5. As the issue has been dealt by this Tribunal in appellant's own case for the earlier period, wherein this Tribunal observed as under:

"4.2 We find that the issue involved in the present appeal is squarely covered by the decisions of the Tribunal in case of Superior Drinks Pvt Ltd [2019 (6) TMI 272 -CESTAT Mumbai]. This decision in turn follows the decisions rendered by the Delhi Bench in case of Narmada Drinks (P) Ltd reported at 2017 (5) GSTL 369 (T-Del)] and also in case of Narmada Drinks (P) Ltd reported at [2018 (6) TMI 899 (TDel)]. Similar view has been expressed by the Allahabad Bench in case of Brindavan Bottlers Ltd [2019 (27) GSTL 354 (T-All)] and Mumbai Bench in case of SMV Beverages Pvt Ltd [2018 (17) ELT GSTL 284 (T-Mum)].

4.3 Learned Authorized Representative does not dispute that the issue is squarely covered by the above decisions but questions the decisions themselves. In his submission, he has referred to Service Agreement between Coca Cola USA (CCI) and Coca Cola India Pvt Ltd (CCIPL) to state that "Coca Cola USA work as an agent of Coca Cola India and all terms and conditions of have been set by Indian Co which nis the supplier of concentrate." Thus the findings recorded by the Mumbai bench in case of Superior Drinks (supra) in para 5.2 to 5.4 are not correct in as much as that it holds that there is contract between Coca Cola USA and bottler but not between bottler and Coca Cola India who is the supplier of concentrate.
4 ST/51051/2015 This agreement now being referred to by the learned Authorized Representative is not even part of relied upon documents or have even been referred in the Show Cause Notice. In such a situation the reliance placed by the learned Authorized Representative to various clauses of this agreement is totally uncalled for. However, even in terms of this agreement also we do not find any support to the arguments being advanced. There is no dispute that bottler is under obligation in terms of bottlers agreement with the Coca Cola USA to promote Beverage and the Brand.

4.4. Undisputedly Appellant purchases the concentrate from the Coca Cola India. Learned Authorized Representative after referring to various terms of agreement argues stating that "all these conditions reflect that concentrate is only transferred for use and not sold to the bottler." The *fallacy in the arguments advanced is self evident if we refer to the definition of sale and purchase as per Section 2(h) of the Central Excise Act, 1944 as it existed then. The said definition has been made applicable to Chapter V of Finance Act, 1994 as per Section 65 (121) ibid. The relevant provisions are reproduced below:*

Section 2(h) of Central Excise Act, 1944

"sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration; Section 65 (121) of Finance Act, 1994:

words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise. Thus in terms of Section 2(h) of Central Excise act, 1944 the transfer of possession for a consideration in normal course of trade would signify the sale. CESTAT Bangalore Bench has in case of Nestle India Ltd [2009 (248) ELT 737 (T- Bang)] held as follows:

"3 As per the definition of "Sale" or "Purchase" under Section 2(h) of Central Excise Act, 1944 "means ....". In the instant case, the sale is transfer of ownership of goods from M/s Nestle India Ltd to Indian Army/ ITBP. From the Central Excise point of view the transaction ends there. Beyond the point of sale, The Central Excise Act, 1944 does not have any provisions to look into the intended use of the goods transacted. Once the ownership of the goods is transferred to the buyer of goods, the intended use of the goods must not be, a factor to determine the manner of assessment of the goods for duty under Section 4/ 4A of the Central Excise Act, 1944." Thus by stating that the goods namely concentrate was transferred for use by M/s Coca Cola India Pvt Ltd to the Appellant for consideration, a fact not in dispute, the sale of the goods in term of Central Excise Act, 1944 has occurred. The imposition of restrictions or conditions in respect of the 5 ST/51051/2015 usage and consumption of the concentrate, by the seller cannot alter that position. Hence we do not merit in the submission of the Authorized Representative that this transaction was not a truncation of sale but only "transfer to use".

4.5 Thus the arguments advanced by the Authorized Representative in respect of non applicability of the decision of CESTAT in case of SMV Beverages, too need to be rejected.

4.6 In any case if the arguments advanced by the Authorized Representative, were to be accepted then in every case, sale promotion activities undertaken by the manufacturer of finished product, shall amount to sale promotion of the raw material, and the service so rendered to the raw material supplier will be taxable as Business Auxiliary Service in this category. This is neither the intention nor the rationale of the scheme of taxable category defined as "Business Auxiliary Service".

4.7 The decision of the Hon'ble Bombay High Court relied upon by the Commissioner in the impugned order and by the Authorized Representative has been distinguished by the Mumbai Bench in case of Superior Drinks stating as follows:

"5.9 There cannot be more convoluted application of the decision of the High Court and stretching the provisions in an agreement for purpose of levy of tax. If the arguments of the Commissioner were to be accepted then in that case every manufacturer/ producer/ supplier of the goods who purchases and material/ inputs is promoting the sale of his input supplier. Since as the sale of his finished goods goes up automatically consumption of inputs will go up and accordingly he promotes the sale of input manufacturer/ supplier. In our view such an interpretation is neither logical or rational. Both input suppliers and the finished product manufacturer are independent business entity acting in the interest of their business. The issue before the High Court was vis a vis the admissibility of CENVAT Credit in respect of Advertisement services availed by the Coca Cola India as is evident from para 2 & 3 of order reproduced below:

"2. The main question which is therefore, required to be considered, in the present Appeal, is whether the Appellants, who are manufacturers of non-alcoholic beverage bases (concentrates) are eligible to avail credit of the service-tax paid on advertising services, sales promotion, market research and the like availed by them and utilize such credit towards payment of excise duty on the concentrate. As now judicially recognized, Service tax is VAT which in turn is destination based consumption tax in a sense that it is on commercial activities and is not a charge on the business but on the consumer. Just as excise duty is a tax on value addition on goods. Service tax is on the value addition by rendition of service. See All India Federation of Tax Practitioners v. Union of India - 2007 (7) S.T.R. 625 (S.C.) = (2007) 7 SCC 527.

3. Credit has been denied on the ground that the advertisements do not relate to concentrates manufactured by the Appellants. It is not disputed that the advertisement expenses incurred by the Appellant form part of the sale price of the concentrates on which duty has been paid."

5.10 While considering the questions as above High Court has recorded what has been state by the Commissioner. In the case before High Court, the advertisement expenses were incurred by Coca Cola India and High Court had held that expenses towards advertisement services are part of the cost incurred for production of the finished product, and hence these services are to be treated as input services for determining eligibility to CENVAT Credit. In our view the decision of High Court does not state what Commissioner has intended to conclude from the same."

4.8 In view of the discussions as above, we do not find any merits in the submissions an arguments advanced by the learned Authorized Representative. Since issue as observed by us in para 4.2, squarely covered by various decision referred in that para, we do not find any merits in the impugned order.

5.1 We do not find any merits in the impugned order and set aside the same thereby allowing the appeal.

6. As issue has already been settled in favour of the appellant, therefore, we hold that no demand of service tax is sustainable against the appellant, therefore, we set aside the impugned order and allow the appeal with consequential relief"

7. In view of the decision of this Tribunal in the case of Kandhari Beverages Pvt.Ltd. (supra), we hold that no demand of service tax is sustainable. Accordingly, we set aside the impugned orders and allow the appeals with consequential relief, if any.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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