

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT: Single Member 3 B3]**

Appeal No.: E/41211/2018

[Arising out of Order-in-Appeal No. CMB-CEX-000-APP-032-18 dated 20.02.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals), Coimbatore]

M/s. TTK Prestige Ltd., : **Appellant**
SF No. 234/1, Pollachi Road,
Myleripalayam,
Coimbatore – 641 032

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Coimbatore Commissionerate

Appearance:-

Shri. K. S. Naveen Kumar, Advocate
Shri. R. Dakshina Murthy, Advocate
for the Appellant

Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 05.11.2018

Date of Pronouncement: 04.12.2018

Final Order No. **43051 / 2018**

Brief facts are that the appellants are engaged in the manufacture of Pressure Cooker and are availing the facility of CENVAT Credit on inputs, capital goods and input services

distributed by their Head Office which is registered as Input Service Distributor (ISD). During the period August 2012 to November 2014 they had cleared Induction Starter Packs (ISP) as combination package in which pressure cooker manufactured by the appellants was packed along with Tawa manufactured and supplied by M/s. Triveni Bialetti Industries P. Ltd. (hereinafter referred to as 'M/s. Triveni') on job work basis.

2.1 The appellants were discharging duty on the combo-package which contained the pressure cooker and Tawa, on which MRP was affixed. The Department entertained a doubt that the Tawas being cleared without payment of duty amounted to trading activity which, being an exempted service, the CENVAT Credit availed by them on common inputs and input services without maintaining separate accounts is irregular i.e., in contravention of the provisions of CENVAT Credit Rules, 2004.

2.2 A Show Cause Notice was issued proposing to recover the Credit availed on common inputs and input services used for the manufacture of pressure cookers as well as the alleged trading activity. After due process of law, the Original Authority confirmed the demand of Rs. 10,80,681/- under Rule 14 of the

CENVAT Credit Rules, 2004 along with interest and imposed penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence, this appeal.

3.1 On behalf of the appellant Ld. Counsel Shri. K. S. Naveen Kumar and Shri. R. Dakshina Murthy submitted that the appellant had engaged M/s. Triveni as job worker for the manufacture of Tawas. The appellants supplied inputs to M/s. Triveni who manufactured the Tawas and cleared them to the appellants on payment of excise duty. The appellant has also paid the job charges as conversion charges to the job worker. The pressure cooker was manufactured by the appellant. The combo-package contained the pressure cooker as well as the Tawa and on this package the MRP of pressure cooker alone was indicated for the reason that the Tawa was given free of cost to the customers. As per provisions of Section 4A of the Central Excise Act, 1944, the appellant has discharged the excise duty correctly. The Department has no case that the excise duty paid on the combo-pack was incorrect. The present demand is raised alleging that since Tawa was cleared without payment of duty, the appellant

(principal manufacturer) is not eligible to take credit of the inputs used for the manufacture of Tawa.

3.2 He argued that as per the definition of inputs, it is not necessary that the inputs should form part of the final product cleared by the manufacturer. The allegation that when the Tawa is cleared as a combo-package along with pressure cooker without indicating the MRP it becomes a trading activity, is incorrect. The assessable value of the pressure cooker in such a scheme takes in the cost incurred for the manufacture and clearance of Tawas. Therefore, the appellant has rightly discharged the duty on the pressure cooker and, the credit availed was in order.

3.3 It was also argued by him that the Department had seriously erred in holding that the purchase of raw materials procured for the manufacture of Tawa by M/s. Triveni and sale of Tawa thereafter amounted to trading. He thus concluded that the activity alleged is not a trading activity and consequently, there is no requirement for maintaining separate accounts.

4. Ld. AR Shri. L. Nandakumar supported the findings in the impugned Order. He submitted that since Tawa is cleared without payment of duty by the appellant, the Credit is not

eligible on the inputs used for the manufacture of Tawa and since the activity is nothing but a trading activity, they ought to have maintained separate accounts. In the absence of such bifurcation of accounts, the Credit availed on common inputs and input services is irregular. The demand therefore is legal and proper.

5. Heard both sides.

6. The appellant has cleared pressure cooker along with Tawa in a combo-package. The MRP of the pressure cooker alone was indicated on the package. They have floated another scheme in which the MRP of pressure cooker as well as Tawa was indicated on the combo-package. The dispute was therefore triggered when Tawa was cleared free of cost and the combo-package indicated the price of pressure cooker alone.

7. In paragraphs 13.4.1 and 13.4.2 of the Order-in-Original, the adjudicating authority has concluded that the Tawa is cleared by M/s. Triveni on payment of concessional rate of duty under Notification No. 01/2011 dated 01.03.2011; that after the clearance of Tawa to the appellant, it is subsequently sold by the appellant to dealers as part of their promotion scheme and therefore, this is pure trading of goods.

8. The Department does not dispute that M/s. Triveni is a job work manufacturer of the appellant. It is also not disputed that the appellant has supplied the raw materials for the manufacture of Tawa to the job worker. The duty on the Tawa has been discharged by the job worker. Merely because the Tawas are supplied by the job worker to the appellant and then cleared to the customer, the Department has taken the view that the clearance of Tawa is a pure trading activity. It has to be noted that inputs for manufacture of Tawa has been supplied by the appellant herein. So also the job work charges are paid as conversion charges to the job worker. These elements including the excise duty has gone into the assessable value of the pressure cooker which is cleared along with the free Tawa in the combo-package. This being so, the appellants have rightly availed the Credit on the inputs. The activity of supply of job worked goods to the principal manufacturer and thereafter, the clearance of the finished product, cannot be considered as a trading activity. Consequently, there is no requirement for the appellant to comply with the provision of maintaining of separate accounts as per Rule 6 of the CENVAT Credit Rules, 2004. In my view, therefore,

the Credit availed on the inputs used for the manufacture of Tawa is correct and proper.

9. A similar situation was discussed by the Tribunal in the case of *M/s. Manik Machinery Manufacturers P. Ltd. vs. C.C.E., Mumbai-IV – 2016 (339) E.L.T. 334 (Tri. – Mum.)*. The relevant paragraph is noted as under :

“ ...6. I find that the whole concept of Modvat/Cenvat scheme to avoid cascading effect of tax suffered on input. In that stream whatever input is going into final product either directly or indirectly, duty suffered on that input should be set off and only on value addition duty is levied. In the present case the playing cards even though it does not participate directly in the manufacture of final product i.e. spray guns but undisputedly the same is purchased by the appellant and expenditure of the same stands absorbed in the cost of the final product which ultimately suffered the duty as a whole, therefore in my considered view the playing cards which is supplied along with final product should be eligible for input credit. The definition of input also clearly suggests that the input need not to be used directly in the manufacture and also not required to be contained in the final product but if it is used even in relation to the final product credit should be allowed. In the present case the playing cards indeed supplied alongwith final product it fulfilled the criteria of inputs, therefore credit cannot be denied of the duty paid on playing cards. Though there are contrary judgments on this issue but comparing the judgments of both the sides, I find that Tribunal’s Single and Division Bench in cases Cello Home products (supra) and G.S. Enterprises (supra) respectively held that items supplied along with final product for sale promotion have been considered as input and Cenvat credit was allowed. In the case of Prime Health Care Products (supra) Hon’ble Gujarat High Court on the identical issue also allowed the credit in respect of bought out tooth brush supplied along with tooth paste manufactured by the assessee. The Hon’ble High Court has allowed the Cenvat credit on the tooth brush considering it as input. As regard the judgments relied upon by the Ld. AR, I find that since there is reasoned judgment of the Hon’ble High Court of Gujarat, it prevails over all the decisions given by the Tribunal, therefore following the Hon’ble Gujarat High Court judgment, I am of the considered view that Cenvat credit in respect playing cards supplied by the appellant along with spray guns is admissible. The impugned order is set aside. Appeal is allowed.”

10. On an overall appreciation of facts as well as the decisions (*supra*), I am of the view that the impugned Order cannot sustain and hence requires to be set aside which I hereby do.

11. The appeal is therefore allowed with consequential reliefs, if any, as per law.

(Pronounced in open court on 04.12.2018)

(P Dinesha)
Member (Judicial)

Sdd