

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

E/40714/2019

[arising out of Order-in-Appeal No.49/2019, dated 01.02.2019
passed by the Commissioner of GST & Central Excise (Appeals),
Coimbatore]

M/s. S.G. SNACKS INDIA PVT. LTD.

APPELLANT

Versus

COMMISSIONER OF GST & CENTRAL EXCISE,
MADURAI

RESPONDENT

Appearance:

For the Appellant Shri Udayan Choksi, Adv.

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

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)

Date of hearing/decision **09-07-2019**

FINAL ORDER NO. **40920 / 2019**

Brief facts are that during the course of audit, it was noted that the appellants had availed ineligible Cenvat credit of service tax paid on freight, paid for outward transportation of goods upto the depot of the principal manufacturer. Show-cause notice was issued for the period Dec.'14, Feb.'15 and Mar.'15 proposing to recover the ineligible credit along with interest and for imposing penalty. After due process of law, the original authority disallowed the credit and ordered

recovery of the same along with interest and imposed penalty of Rs.4,68,860/-. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, the learned counsel Shri Udayan Choksi appeared and argued the matter. The appellants are engaged in the manufacturing of potato wafers and snack items on behalf of the principal manufacturer M/s. Parle Biscuits Pvt. Ltd., Mumbai [hereinafter referred to as 'Parle']. As per the arrangement M/s. Parle supplies the raw materials to the appellant for manufacture of finished products i.e., potato wafers and snacks. The finished goods have to be delivered at the depots and other places as directed by M/s. Parle. Thus, as regards the appellant, the place of removal is the depot of M/s. Parle and such other places as directed by their principal manufacturers. The appellant discharged excise duty on the finished products including the freight charges for transport of the goods to the depot of M/s. Parle. The department has proposed to deny the credit on the service tax paid on freight charges alleging that the freight charges are paid by M/s. Parle and not by the appellant. He adverted to the table in para 3 of the show-cause notice and submitted that the break-up of the credit alleged to be wrongly availed by the appellant is given by the department in the above table. The relevant challans for payment of freight charges was also furnished by the appellant. He submitted that these challans would show that though M/s. Parle had paid the freight charges, these were paid on behalf of the appellant and in the name of appellants. Thus, the freight charges having been paid by the appellant and included in the assessable value for transportation of goods upto the depots of M/s. Parle, the place of

removal becomes the depot and such other places as directed for delivery by M/s. Parle. The appellant has, therefore, rightly availed the credit on the service tax for outward transportation of the goods upto the place of removal.

3. The learned Authorised Representative for the Revenue Shri L. Nandakumar, AC (AR) supported the findings in the impugned order. In the present case, the freight charges are seen paid by M/s. Parle and, therefore, the demand has been raised, disallowing the credit avail on the outward transportation upto the place of removal. He also relied upon the decision of the Tribunal in the case of *M/s. Kohinoor Biscuit Products Vs Commissioner of Central Excise, Noida* reported in 2015 (37) S.T.R. 567 (Tri.-Del.).

4. Heard both sides.

5. It is not in dispute that the appellants are contract manufacturing units of M/s. Parle. They are manufacturing the goods as per Notification No.36/2001. The goods are delivered to the depots of M/s. Parle and also in some cases to the customer's premises as per direction of M/s. Parle. The show-cause notice has been issued mainly alleging that the freight charges are seen to be paid by M/s. Parle. The department does not have a case that M/s. Parle has availed credit of the service tax paid on the freight charges. The challans for payment of service tax for GTA/outward transportation upto the place of removal, is issued in the name of the appellant. From these documents it is very much clear that the freight charges have been borne by the appellant and has been included in the assessable value. In such circumstances, as per the decision of the Hon'ble Apex Court in the case of *Commissioner of Customs & Central*

Excise, Aurangabad Vs M/s. Roofit Industries Ltd., reported in 2015 (319) E.L.T.221 (S.C.), the place of removal will be depot or the buyer's premises. Then the credit on outward transportation upto the place of removal will be eligible. Further, in the case of *M/s. Genau Extrusions Ltd., Vs CGST & CE, Salem* vide *Final Order No.40900/2019, dated 04.07.2019* the Tribunal has analyzed the said issue and held that credit on service tax paid on freight charges for outward transportation of goods upto the place of removal would be eligible when freight charges are included in the assessable value. .

6. From the discussions made above as well as appreciating the facts and evidences, I am of the view that disallowance of credit is unjustified. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

	DRAFT			Remarks
	I	II	III	
Date of dictation	09.07.2019			
Draft Order - Date of typing	10.07.2019			
Fair Order Typing	11.07.2019			
Date of number	11.07.2019			

and date of dispatch				
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