IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 41633 of 2016

(Arising out of Order-in-Appeal No. 49/2016-CE dated 27.07.2016 passed by Commissioner of Central Excise & Service Tax (Appeals), 1775, J.N. Road, Anna Nagar (W) Extn., Chennai – 600 102)

M/s. Roca Bathroom Products (P) Ltd. **...Appellant**
223-226, Matsya Industrial Area,
Alwar – 301 030.

Versus

Commissioner of Central Excise **...Respondent**
Large Tax Payer Unit,
1775, J.N. Inner Ring Road,
Chennai – 600 102.

APPEARANCE:

For the Appellant : Shri P. Jayalakshmi, Advocate

For the Respondent: Shri Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 11.12.2023
DATE OF DECISION : 19.12.2023

FINAL ORDER No. 41140 / 2023

Order :- [Per Ms. SULEKHA BEEVI C.S.]

Brief facts are that the appellants are engaged in manufacture of sanitary wares falling under Chapter 69 of Central Excise Tariff Act, 1985. They avail CENVAT Credit of duty paid on inputs and input services under the provisions of CENVAT Credit Rules, 2004, on the strength of invoices issued by their Head Office situated at Chennai who are registered as

'Input Service Distributor'. The Head Office availed credit on the Service Tax paid on various input services which included C & F Services, Consultancy Services, Courier Service, Telecommunication Service, Rental Service, IT Service, Transport Service, *etc.,*. These were common input services used in or in relation to manufacture as well as trading. The credit availed by the Head Office was distributed to the appellant unit which is engaged in manufacture only. The Department was of the view that the Head Office having distributed credit availed on common input services used for both manufacture of finished goods as well as trading of goods, the appellant has availed ineligible credit. Show Cause Notices dated 29.10.2013 and 30.07.2014 were issued for the periods October 2012 to June 2013 and July 2013 to June 2014 proposing to recover the wrongly availed credit along with interest and for imposing penalties invoking Rule 14 and Rule 15 of CENVAT Credit Rules, 2004. After due process of law, the original authority confirmed the demand, interest and penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence, this appeal.

2.1 On behalf of the appellant, the Ld. counsel appeared and argued the matter. It is submitted that the Show Cause Notice issued is without jurisdiction. The appellant being the manufacturing unit has availed the credit as distributed by the Head Office. The Department has not issued any Show Cause Notice to the Head Office who is the Input Service Distributor. Therefore, the proceedings initiated against the appellant is not sustainable in law. Being the unit which is receiving the credit as distributed by Head Office (ISD Unit), the appellant is not in a position to prove the eligibility of credit and the Department ought to have initiated proceedings against Head Office in case of any dispute.

2.2 Secondly, it was argued that the Head Office has not availed any credit on trading activity. The Head Office is maintaining separate accounts. The appellant unit is engaged in manufacturing activity only and is not required to maintain separate accounts for CENVAT account as per law. The Head Office (ISD) has not distributed any credit pertaining to trading.

The appellant has furnished reconciliation statement of the credit availed and distributed. The same has not been considered at all.

2.3 The Ld. counsel submitted that from such reconciliation statement it would be clear that the appellant has not availed any credit on input services pertaining to trading. The Ld. counsel prayed that the appeal may be allowed.

3. The Ld. Authorised Representative Shri Harendra Singh Pal appeared and argued for the Department. The issue as to whether Show Cause Notice issued to the appellant unit is within jurisdiction and whether Show Cause Notice ought to have been issued to the Head Office has been elaborately discussed in the impugned order. The appellant having availed ineligible credit, the Show Cause Notice issued is legal and proper. The appellant has not been able to establish that they have not availed credit on common input services pertaining to trading. The reconciliation statement was not furnished before the authorities below. It is prayed that the appeal may be dismissed.

4. Heard both sides.

5.1 The foremost argument put forward by the Ld. counsel for the appellant is that the Department ought to have issued Show Cause Notice to the Head Office as it is the Head Office which has availed credit and distributed to the appellant as per the provisions of CENVAT Credit Rules, 2004. The Show Cause Notice is issued invoking Rule 14 of CENVAT Credit Rules, 2004. The said Rule states as credit wrongly 'availed or utilized'. The credit is utilized by the appellant. In such circumstances, the Show Cause Notice issued to the appellant alleging wrongful availment of credit, in our opinion is valid though it is the Head Office which has distributed the credit.

5.2 The second argument advanced by the appellant is that the Head Office has been maintaining separate accounts and that the Head Office has not distributed credit of input services pertaining to trading. The appellant has furnished detailed reconciliation statement. However, this requires to be verified. We are therefore of the considered opinion that the matter requires to be remanded to the adjudicating authority who is directed to verify the contention of the appellant that credit pertaining to trading has not been distributed by Head Office and availed by the appellant. The adjudicating authority is also directed to verify the reconciliation statement furnished by appellant.

6. In the result, the impugned order is set aside. The matter is remanded to the adjudicating authority with the above directions.

7. Appeal is allowed by way of remand.

(Order pronounced in open court on 19.12.2023)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

MK