CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 1

EXCISE APPEAL NO. 52692 OF 2019

[Arising out of Order–in-Appeal No. IND-EXCUS-000-APP-092-093-094-095-19-20 dated 28.06.2019 passed by Commissioner (Appeals), CGST & Central Excise, Indore (M.P)]

M/s. Krishna Food Products **...Appellant**
124-125 Siya
Dewas-Maxi Road,
Dist.- Dewas
M.P. 455001

Versus

The Additional Commissioner of **....Respondent**
CGST & C.EX
Indore Commissionerate,
Manik Bagh Palace, P.B.No-10,
Indore-452011

WITH

EXCISE APPEAL NO. 52693 OF 2019

[Arising out of Order–in-Appeal No. IND-EXCUS-000-APP-092-093-094-095-19-20 dated 28.06.2019 passed by Commissioner (Appeals), CGST & Central Excise, Indore (M.P)]

Ms. Mariamma R.Iyer **.... Appellant**
C/o . Parle Biscuits Private Limited,
North Level Crossing,
Vile Parle(East),
Mumbai- 400057

Versus

The Additional Commissioner of **....Respondent**
CGST & C.EX
Indore Commissionerate,
Manik Bagh Palace, P.B.No-10,
Indore-452011

AND

EXCISE APPEAL NO. 52694 OF 2019

[Arising out of Order–in-Appeal No. IND-EXCUS-000-APP-092-093-094-095-19-20 dated 28.06.2019 passed by Commissioner (Appeals), CGST & Central Excise, Indore (M.P)]

M/s. Parle Biscuits Pvt Ltd. **.... Appellant**
36.8 KM, Delhi Rohtak Road,
Vill. Sankhol Bahadurgarh,
Jhajjar,
Haryana- 124507

Versus

The Additional Commissioner of CGST & C.EX ....**Respondent**
Indore Commissionerate,
Manik Bagh Palace, P.B.No-10,
Indore-452011

APPEARANCE:

Shri Udayan Choksi, Advocate for the Appellant
Shri Ravi Kapoor, Authorised Representative of the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: July 05, 2021
DATE OF DECISION: July 07, 2021

FINAL ORDER NO. 51638-51640/2021

JUSTICE DILIP GUPTA

These three appeals seek to assail the order dated 28.06.2019 passed by the Commissioner (Appeals). The appeal filed by **M/s. Krishna Food Products**[1] has been dismissed and the demand of CENVAT credit of Rs 75,80,416/- confirmed by the Adjudicating Authority against Krishna Food has been upheld with interest and penalty. The appeals filed by **M/s. Parle Biscuits Pvt. Ltd.**[2] and **Ms. Mariamma R. Iyer**[3] against the imposition of penalty have also been dismissed.

2. Krishna Food is the appellant in **Excise Appeal No. 52692 of 2019.** It claims to be a contract manufacturing unit engaged in manufacturing biscuits for its principal Parle Biscuits, which is the appellant in **Excise Appeal No. 52694 of 2019.** Iyer is Vice

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1. **Krishna Food**
2. **Parle Biscuits**
3. **Iyer**

President of Parle Biscuits and has filed **Excise Appeal No. 52693 of 2019.**

3. Krishna Food claims that it was authorised by Parle Biscuits to manufacture, on its behalf, "biscuits" and to comply on its behalf all the procedural formalities contemplated under the Central Excise Act, 1944[4] and the Rules framed thereunder in respect of the goods manufactured on behalf of Parle Biscuits and also to furnish information relating to the price at which Parle Biscuits would sell the said biscuits in order to enable the determination of the value of the said goods under section 4A of the Excise Act**.**

4. The inputs used for manufacture of the biscuits are supplied by Parle Biscuits which pays for the inputs but Krishna Food takes credit of the same and utilises the credit for payment of duty on the biscuits cleared on account of Parle Biscuits. Krishna Food also claims that it availed and utilised input services used in relation to the manufacture of biscuits for Parle Biscuits in accordance with the provision of the CENVAT Credit Rules 2004[5]**.**

5. The final product is cleared on payment of excise duty by Krishna Food on the maximum retail price declared by Parle that is printed on the packages of the biscuits, as is provided under rule 10A of the Central Excise (Valuation) Rules 2000[6]. The excise duty paid by Krishna Food is over and above the amount of CENVAT credit reimbursed by Parle Biscuits.

6. The office of Parle Biscuits at Bahadurgarh is registered as an "input service distributor" under rule 2(m) of the CENVAT Rules. It

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4. Excise Act
5. CENVAT Rules
6. Valuation Rules

has also been stated that various inputs services were procured by Parle Biscuits on payment of service tax. However, as biscuits were manufactured not only in the factories of Parle Biscuits, but also in the factories of other contract manufacturers, it was thought, as a business strategy, that advertisement, market research, sales promotion and marketing should be centralised and handled by the office of Parle Biscuits at Bahadurgarh. Such credit on input services attributable to the final product was distributed by Parle Biscuits on a pro-rata basis proportionate to the turnover of each unit between its own manufacturing plants and its contract manufacturing units, including Krishna Food, under rule 7(d) of the CENVAT Rules.

7. A show cause notice dated July 18, 2018 was, however, issued to Krishna Food and Parle Biscuits to show cause as to why the CENVAT credit of service tax distributed by Parle Biscuits to Krishna Food for the period from July 2013 as to May 2015 should not be denied. Krishna Food filed a reply. The Additional Commissioner, by order dated 08.02.2019, confirmed the demand and imposed penalty with interest upon Krishna Food. Penalty was also imposed upon Parle Biscuits and Iyer. The appeals filed to assail the said order of the Additional Commissioner were dismissed by the Commissioner (Appeals), by order dated 28.06.2019.

8. The issue involved in all these appeals is whether Parle Biscuits was justified in distributing credits on input services attributable to the final product on a pro-rata basis proportionate to the turnover of each unit between the manufacturing plants of Parle Biscuits and its contract manufacturing units, including Krishna Foods, under rule 7(d) of the CENVAT Rules.

9. The Division Bench, while hearing of the aforesaid three Excise Appeals, expressed reservations about the proposition of law laid down by the Division Bench in **Sunbell Alloys Co. Of India Ltd.** vs. **Commissioner of Central Excise & Customs, Belapur**[7] and also noticed that a Division Bench of the Tribunal in **Colgate Palmolive (I) Ltd. vs. Commissioner of Central Excise, Mumbai-I**[8] had taken a contrary view. The Division Bench, therefore, referred the following two questions for consideration by a Larger Bench of the Tribunal:

> "(i) Whether issuance of Input Service Distributors' invoice by Parle to its contract manufacturing unit is legal and correct when the contract manufacturing is carried out in terms of notification No. 36/2001-CE (NT).
>
> (ii) Irrespective of the position that whether issuance of Input Service Distributors' invoice by Parle to Krishna is correct or otherwise, whether Krishna still is entitled for cenvat credit when the input service is attributed to the goods on which excise duty is paid includes the cost of services on which credit was taken."

10. The Larger Bench of the Tribunal by order dated 25.05.2021 answered the reference in the following manner:

> 44. The answer to the first issue referred to by the Division Bench would, therefore, be that Parle was justified in distributing credits on input services attributable to the final product on a pro-rata basis proportionate to the turnover of each unit between the manufacturing plants of Parle and its contract manufacturing units, including the appellant (Krishna Food), under rule 7(d) of the CENVAT Rules.
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> 45. In view of the answer to the first issue in favor of the appellant, it would not be necessary to answer the second issue referred by the Division Bench. This issue is whether the appellant (Krishna Food) would, irrespective of the answer to the first issue, be entitled to avail CENVAT credit when input service is attributed to the goods on which excise duty is paid and includes the cost of services on which credit was taken.

11. In view of the aforesaid answer given by the Larger Bench of the Tribunal, the order passed by the Commissioner (Appeals)

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7. 2014 (34) S.T.R. 597 (Tri.- Mumbai)
8. 2012 (25) S.T.R. 268 (Tri.- Mumbai)

cannot be sustained and is set aside. The three Appeals bearing Excise Appeal No's. 52692 of 2019, 52693 of 2019 and 52694 of 2019 are, accordingly, allowed.

(Pronounced on **July 07, 2021**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya