CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

EXCISE Appeal No. 50930 OF 2020

(Arising out of Order in Appeal No. BHO-EXCUS-001-APP-237-19-20 dated 31.10.2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jabalpur)

M/s. Balaji Edibles Pvt. Ltd. **...Appellant**
96 Industrial Area, Richhai,
Jabalpur (M.P.)-482010

Versus

Deputy Commissioner of Customs, **....Respondent**
CGST & C.EX, Jabalpur
4th Floor, Kataria Plaza,
Opp-Samdariya Astha Nagar,
Narmada Gwarighat Road,
Jabalpur (MP)

APPEARANCE:
Mr. Udyan Choksi, Advocate for the appellant
Mr. Ishwar Charan, Authorised Representative for the Respondent

CORAM : HON'BLE Ms. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: **19.04.2022**

FINAL ORDER No. 50376/2022

RACHNA GUPTA

M/s. Balaji Edibles Pvt. Ltd., the appellant herein are engaged in manufacture of various brands of biscuits and confectionaries under the agreement as one of the outsourced manufacturing unit of M/s. Parle Biscuit Pvt. Ltd. (PBPL). On the basis of information from DGGSTI Pune, Zonal Unit, it was noticed by the Department that M/s. PBPL is registered as input service distributor (ISD hereinafter) who distributed input service credit to their outsourced manufacturing units by way of issuing ISD invoices. It was observed that the appellant being such outsourced manufacturer has availed the CENVAT Credit and utilised the same for payment of duty on finished goods based upon the ISD invoices issued by M/s. PBPL. Department formed an opinion that appellant has wrongly availed the CENVAT Credit in violation of Rule 7 of CENVAT Credit Rules 2004. Accordingly, vide show cause notice no. 1233 dated 14.5.2018, that the credit of Rs.3,04,580/- was proposed to be recovered from the appellant along with interest and proportionate penalties. The said proposal was initially confirmed vide the order in original no. 10/2019-20 dated 28.5.2019. The appeal thereof has been rejected vide order in appeal no. 6010 dated 31.10.2019. Being aggrieved of the said order that same has been assailed before this Tribunal.

2. I have heard Mr. Udyan Chauksi, learned Advocate for the appellant and Mr. Ishwar Charan, learned Authorised Representative for the Respondent.

3. It is submitted on behalf of the appellant that they manufacture the biscuit for and on behalf of M/s. PBCL under the notification no. 36/2001-CE dated 26.06.2001. It is impressed upon that the authorisation of the impugned manufacture was being filed with the Jurisdictional Range Officer as was required under the said notification. The appellant is mentioned to have been one of the included units in relation whereof M/s. PBPL had obtained ISDL registration and accordingly the CENVAT Credit was being distributed by M/s. PBPL as ISD to such manufacturing units including that of the appellant. Learned Counsel has also impressed upon para 8.4 of Board's circular no. 97/8/2007-ST dated

23.8.2007 vide which ISD can distribute the eligible ITC to any unit of the manufacturer. The order under challenge is alleged to be in clear violation of the aforesaid notification as well as the aforesaid circular. It is further submitted there is not even the violation of rule 7 of CENVAT Credit Rules, which otherwise clearly states that input service distributor may distribute the CENVAT credit in respect of service tax paid on the input services only to its manufacturing units. For the said reason, the order under challenge is prayed to be set aside. The decision in the case of **Sunbell Alloys Company of India Ltd. vs. CCE reported as 2014 (34) STR 597**, as has been relied upon by Commissioner (A) is mentioned to be not applicable to the facts of the present case. Order is prayed to be set aside and appeal is prayed to be allowed. The learned Counsel for the appellant has relied upon the decision of the Tribunal in the case of **M/s. Krishna Food Products and Ors. Vs. Additional Commissioner of CGST & C.Ex vide Final order no. 51638-51640/2021 dated 7.7.2021** and in the case of **Ajmer Food Products Pvt. Ltd. vs. CCE Jaipur vide Final order no. 51645/2021 dated 9.6.2021.**

4. While rebutting the submissions, learned DR has mentioned that there has been an amendment in Rule 7 of CENVAT Credit Rules w.e.f. 1.4.2016 by virtue of notification no. 13/2016 dated 1.3.2016 due to which certain conditions were made applicable on the input services distributor while distributing CENVAT credit in respect of the service tax paid. Commissioner (A) has clearly appreciated the applicability of explanation 4 as was introduced by

the aforesaid amendment. While relying upon the findings in para no. 8 of the order in appeal, learned DR has prayed for the appeal in hand to be dismissed.

5. After hearing the rival contentions and perusing the records, it is observed and held as follows:

The appellant apparently is a contract manufacturing unit engaged in manufacturing biscuits for its principle i.e. M/s. PBPL. It is mentioned on behalf of the appellant and has not been denied that the appellants do not manufacture any final product either on their own account or for anybody else except M/s. PBPL and under the terms of notification appellant undertake all the compliances and have been maintaining all the records. The inputs in question were procured by M/s. PBPL which were delivered directly to the appellant under the cover of excise invoices and the CENVAT credit has been availed by the appellant based on the said invoices only. There is also no denial for the fact that the inputs used for manufacturing of the biscuits are supplied by M/s. PBPL itself and it is for these inputs that the appellant have taken the credit and utilised the said credit for payment of duty on the biscuits cleared on account of Parle biscuits. The final product is cleared on payment of excise duty by the appellant on the maximum retail price declared by M/s. PBPL which is printed on the packages of the biscuits as is provided under rule 10 A of Central Excise (Valuation Rules) 2000.

6. In the given circumstances the moot question appears to be adjudicated is:

Whether M/s. PBPL was justified in distributing credits on input services attributable to the final product on pro rata basis proportionate to the turnover of each unit between the manufacturing plants of M/s. PBPL and its contract manufacturing units including M/s. Balaji Edibles i.e. the appellant in terms of Rule 7 (d) of CENVAT Credit Rules.

7. From the decision relied upon by the appellant i.e. **M/s. Krishna Food Products (Supra)** it is clear that the said issue has already been decided by the larger bench of this Tribunal hence remains no more res integra. Further perusal of the said decision shows that the decision in the case of **Sunbell Alloys (Supra)** and others as have been relied upon by Commissioner while passing the order under challenge have also been discussed and distinguished by the Larger Bench of this Tribunal. It is also perused that the said decision has already been followed in similar facts and circumstances by this Bench n the case of **M/s. Ajmer Foods Products Pvt. Ltd. (Supra)**. No distinguished fact is apparent on record in the present appeal nor could have been brought to the notice by the learned DR, who rather expressed no objection for following the decision of the Larger Bench.

8. Keeping in view the same, it is held that M/s. PBPL was justified in distributing credits on input services attributable to final product on pro rata basis proportionate to the turnover of each unit between the manufacturing plants of M/s. PBPL and its contract manufacturing units including the appellant under Rule 7(d) of the CENVAT Credit Rules. Accordingly, the appellant is held entitled to

avail the CENVAT credit where input services is attributed to the goods on which the excise duty is paid and includes the cost of services on which credit was taken.

9. In view of these findings the order under challenge is hereby set aside appeal stands allowed.

(Order dictated and pronounced in the open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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