

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 51163 of 2022 [SM]

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-042-2021-22 dated 05.10.2021 passed by the Commissioner of CGST & Central Excise and Customs (Appeals), Indore]

M/s. M.B. Foods Pvt. Ltd.,
2-A/1/2, Sector-A,
Sanwer Road,
Indore, M.P.-452015

...Appellant

VERSUS

**Commissioner of Central Excise
& CGST – Indore**
C.G.O. Complex, Near white church,
Indore, M.P. - 452001

...Respondent

APPEARANCE:

Shri Udayan Choksi, Advocate for the Appellant
Shri Mahesh Bhardwaj, Authorised Representative for the Respondent

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

DATE OF HEARING: 28.04.2023
DATE OF DECISION: 28.04.2023

FINAL ORDER No. 50777/2023

DR. RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Appeal No. 042-2021-22 dated 05.10.2021, accepting the appeal filed by the department against the findings passed by the original adjudication authority. The facts in brief relevant for the present adjudication are that the appellant has been engaged in manufacture of biscuits. They were also availing the facility of Cenvat credit on inputs and input services under the Cenvat Credit Rules, 2004 (hereinafter referred as CCR, 2004). During the scrutiny of records of the appellant, department observed that appellant has taken and utilized the Cenvat credit on Goods Transport Agency (GTA) Services availed for transporting the

finished goods from their factory to various depots of M/s. Parle products Ltd. (PPL). The appellant in fact was manufacturing the finished goods i.e. Biscuits for M/s. PPL on job work/conversion basis. The department formed an opinion that place of removal of these finished goods were the factory premises of the appellant. Considering the amendment in the definition of input service w.e.f. March 2008, the GTA Service beyond the place of removal were not eligible for Cenvat credit that the department served following Show Cause Notices:

Show Cause Notice No.	Date	Period	Amount
V(19)15-02/10-11/ADJ-II/39017-119	23.11.2010	June, 2008 to December, 2009	Rs.14,58,138/-
V(19)15-03/2010/ADJ-II/1831-33	24.01.2011	January, 2010 to November, 2010	Rs.4,92,985/-
V(19)18-46/11A/C-III/11-12/T/2317	23.12.2011	December, 2010 to July, 2011	Rs.4,92,717/-
V(19) 18-33/11A/C-III/12-13/7604	28.08.2012	August, 2011 to February, 2012	Rs.4,07,512/-

The availment and utilization of the aforesaid respective amounts was accordingly proposed to be denied and thus recovered along with the recovery of proportionate interest and the imposition of appropriate penalties upon the appellant. This proposal was not considered by the original adjudicating authority vide Order-in-Original No. 03-06/20-21 dated 11.11.2020. Department,

however, moved an appeal before Commissioner (Appeals). Learned Commissioner (Appeals) has set aside the aforesaid Order-in-Original and has confirmed the proposal of the aforesaid show cause notices. Being aggrieved the appellant is before this Tribunal.

2. I have heard Shri Udayan Choksi, learned Advocate for the appellant and Shri Mahesh Bhardwaj, Authorized Representative for the department.

3. It is submitted on behalf of the appellant that the raw materials and packing materials used in the manufacture of the biscuits are supplied by Parle and delivered directly to the premises of the appellant. Similarly, the appellant avails Cenvat credit in respect of the input services relating to its manufacturing activity. One of these input services is (outward) transportation services from a transporter (GTA) for goods cleared from the Appellant's factory to the depot of Parle. The cost of transportation is borne by the appellant. The present appeal is in respect of these transportation services from the GTA for goods cleared from the appellant's factory up to depot of Parle on which the appellant has availed Cenvat credit of the service tax paid. The case of the department is that in the case of manufacture and removal of goods by the job worker, the factory gate of the job worker is the 'place of removal' and therefore, Cenvat credit cannot be availed on the GTA services.

3.1 Learned counsel while relying upon the definition of place of removal in Rule 2(F) of CCR, 2004 has impressed upon that since

the sale has taken place from the Parle's depot, it is not the appellant's factory but the Parle's depot which is the place of removal and the GTA service from the appellant's factory to the said place of removal is the service up to the place of removal only, hence, cannot be denied the availment of Cenvat credit thereof. Learned counsel further has mentioned that issue is no longer *res integra* as stands settled in several other cases of contract manufacturers/job workers of Parle. The following case laws has been relied upon by the appellant:

(i) S.G. Snacks India Pvt. Ltd. Vs. Commissioner of GST & Central Excise, Madurai vide Final Order No. 40920/2019 dated 09.07.2019 (CESTAT, Chennai)

(ii) Kohinoor Biscuits Products Vs. Commissioner of CGST & Central Excise, Noida vide Final Order No. 71596/2019 dated 28.08.2019 (CESTAT, Allahabad)

(iii) Hindustan Zinc Ltd. Vs. Commissioner of CGST, Udaipur reported as 2021 (44) G.S.T.L. 163 (Tri.-Del.)

(iv) Hindustan Zinc Ltd. Vs. Commissioner of Cus., C.Ex. & CGST, Udaipur reported as 2021 (375) E.L.T. 580 (Tri.-Del.)

3.2 Finally submitting that learned Commissioner (Appeals) has erred in relying upon the decision of **CCE Vs. Ultratech Cements Ltd. reported as 2018 (9) GSTL 337 (SC)**, learned Counsel has prayed for setting aside of the order of Commissioner (Appeals) and for the impugned appeal to be allowed.

4. Per contra learned DR has impressed upon no infirmity in the findings arrived at by the Commissioner (Appeals). Findings in Para

12 of the order under challenge have been relied upon, wherein, it has been held that the place of removal in the instant case is the factory gates of the present appellant. The GTA services availed beyond that place stands excluded from the amended definition of input services. It is impressed upon that no error has been committed when the decision of Apex Court in the case of **Ultratech Cements Ltd. (supra)** has been relied upon. With these submissions learned DR has prayed for the appeal to be dismissed and the order of Commissioner (Appeals) to be upheld.

5. Having heard the rival submissions perusing the records of the impugned appeal, it is observed and held as follows:

The moot question to be adjudicated in the present case appears to be:

"Whether the Cenvat credit is rightly availed on the Goods Transport Service by the appellant for transferring the goods/biscuits manufactured, on job work basis, to the premises of the principal who supplied the raw material."

6. For the availment of Cenvat credit the service received should be an eligible input service i.e. it should fall under the definition of input service in Rule 2 (I) of CCR, 2004. The definition reads as follows:

"input service" means any service :-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

The phrase 'upto the place of removal' exists in this definition w.e.f. 01.03.2008 by substituting the previous phrase 'from the place of removal'. The scope of this amendment was adjudicated and clarified by Hon'ble Apex Court in the case of **Ultratech Cements Ltd. (supra)** and it was held that the wordings in both of the afore quoted phrases itself is sufficient to show that the GTA Services availed only up to the place of removal shall be eligible for availment of Cenvat credit.

7. In these circumstances, it now becomes necessary to adjudicate as to what is the place of removal in the present set of circumstances. Whether it is the appellant's factory or the principals unit from where, admittedly, the finished goods/biscuits were sold. The definition for place of removal as under Section 4(3)(c) of Central Excise Act, 1944 is relevant to be observed as follows:

"Place of removal" means —

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place on premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed;

8. In the present case, it is an admitted fact that the principal M/s. PPL is giving their raw material to the appellant as job worker to manufacture biscuits/finished goods out of the said raw material. The job worker/appellant admittedly has to sent back the manufactured final product/biscuits to the Principal M/s. PPL for the onwards sale. This particular admitted fact is sufficient for me to hold that it is sub clause (3) of the aforesaid definition which shall be applicable to the given set of circumstances. Accordingly, the place of removal will be the place from where the manufactured biscuits have actually been sold which apparently and admittedly is the various depot of M/s. PPL. Hence, the transportation of manufactured biscuits from job work's/appellant's premises to the depots of M/s. PPL is the service availed up to the place of removal. Resultantly, to my opinion, is an eligible input service. The issue is otherwise no more *res integra*. This Bench itself in the case of **Hindustan Zinc Ltd. (supra)** has held as follows:

"12. *The Hon'ble Apex Court in the case of M/s. Escorts JCB Ltd. & Others v. Commissioner of Central Excise Delhi-II, (2003) 1 SCC 281 = 2002 (146) E.L.T. 31 (S.C.) has held that the place of removal has to be determined with reference to the point of 'sale'. Section 19 of Sale of Goods Act says that the "property in goods stands transferred only when it is intended to be so transferred".*

Section 19 reads as under :

"Property passed when intended to pass. - (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. (3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

13. Hon'ble Apex Court even in the case of CCE & CU v. Roofit Industries Ltd., 2015 (319) E.L.T. 221 (S.C.) held as under :

The principle of law, thus, is crystal clear. It is to be seen "12. as to whether as to at what point of time sale is effected namely whether it is on factory gate or at a later point of time, i.e. when the delivery of the goods is effected to the buyer at his premises. This aspect is to be seen in the light of provisions of the Sale of Goods Act by applying the same to the facts of each case to determine as to when the ownership in the goods is transferred from the seller to the buyer. The charges which are to be added have put up to the stage of the transfer of that ownership inasmuch as once the ownership in goods stands transferred to the buyer, any expenditure incurred thereafter has to be on buyer's account and cannot be a component which would be included while ascertaining the valuation of the goods manufactured by the buyer. That is the plain meaning which has to be assigned to Section 4 read with Valuation Rules."

15. Above all, there is a Circular No. 1065/4/2018, dated 8th June, 2018 which clarifies as under :-

General Principle : As regards determination of 'place of removal', in general the principle laid by Hon'ble Supreme Court in the case of CCE v. Ispat Industries Ltd. - 2015 (324) E.L.T. 670 (S.C.) may be applied. Apex Court, in this case has upheld the principle laid down in M/s. Escorts JCB (supra) to the extent that 'place of removal' is required to be determined with reference to point of sale' with the condition that place of removal (premises) is to be referred with reference to the

premises of the manufacturer. The observation of Hon'ble Count in para 16 in this regard is significant as reproduced below :

It will thus be seen where the price at which goods are 16. ordinarily sold by the assessee is different for different places of removal, then each such price shall be deemed to be normal value thereof, sub-clause (b)(iii) is very important and makes it clear that a depot, the premises of a consignment agent, or any other place or premises from where the excisable goods are to be sold after their clearance from the factory are all places of removal. What is important to note is that each of the premises is referable only the manufacturer and not to the buyer of excisable goods. The depot or the premises of the consignment agent of the manufacturer are obviously places which are referable to the manufacturer. Even the expression "any other place of premises" refers only to a manufacturers place or premises because such place or premises is to be stated to be where excisable goods "are to be sold". These are key words of the sub-section. The place or premises from where excisable goods are to be sold can only be manufacturer's premises or premises referable to the manufacturer. If we were to accept contention of the Revenue, then these words will have to be substituted by the words "have been sold" which would then possibly have reference to buyer's premises."

9. Similar observations of this Tribunal in the case of **M/s. S.G. Snack India Pvt. Ltd. (supra)**, in the similar set of circumstances are as follows :

"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."

10. In the given circumstances, it is held that the issue has clearly been settled. Learned Commissioner (Appeals) is observed to have ignored the judicial protocol. Though M/s. **Ultratech Cements Ltd. (supra)** decision has been relied upon but the Commissioner (Appeals) has failed to apply the gist of the said decision to the facts of the present case. Thus, it is held that Commissioner (Appeals) has erred while arriving at the conclusion that the impugned services in the given set of circumstances are the services beyond the place of removal. Resultantly, the order under challenge is hereby set aside. Consequent thereto, appeal stands allowed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)