IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 3.2.2017

Appeal No. E/1326/2011-EX.(DB) & E/845/2012

(Arising out of Order-in-Original No. 20-21/2011(CE)-Commissioner dated 23.2.2011 & Order-in-Original No. 63-2011 dated 28.12.2011 passed by the Commissioner of Central Excise, Jaipur)

Hindustan Coca Cola Beverages Pvt. Ltd. — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance

Shri Alok Yadav, Advocate - for the appellant

Shri Yogesh Agarwal, DR - for the respondent

CORAM:**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 51900-51901/2017

Per Justice Dr. Satish Chandra:

Both the appeals have been filed against the Order-in-Original No. 20-21/2011 dated 23.2.2011 and No. 63-2011 dated 28.12.2011.

2. The brief facts of the case are that the appellants are the manufacturers of aerated beverages under different brand names like Coke, Fanta, Sprite & Limca etc. All the aforesaid goods are dutiable and the appellant does not manufacture any exempted goods in its factory located at Jaipur. The appellant is a part of a

multi-locational legal entity having manufacturing units in various States in the Country. The present manufacturing unit of the appellant caters to the market demand of the State of Rajasthan. To meet the market demand, the appellant sourced certain finished goods from their other units on a "stock transfer" basis specially from Ahmedabad or Mumbai. The stock so transferred was put in Jaipur warehouse, where the goods manufactured in the Jaipur units were also stored.

3. As appellant claims credit on various input service pertaining to the storage and distribution and other services like courier etc., they claimed that the Cenvat credit on the service input may be allowed on the components which were transferred as a "stock in trade" from the other units. The department has stated that on the physical stock and the traded goods, they denied the input service credit on the services attributable to the traded goods. Being aggrieved, the appellants have filed the present appeals.

4. With this background, we have heard Shri Alok Yadav, ld. Advocate for the appellant and Shri Yogesh Agarwal, ld. DR.

5. The ld Counsel for the appellant submits that the Commissioner in its impugned order has accepted that Rule 6 of

Cenvat Credit Rules, 2004 is not applicable, where there was a requirement of maintaining of accounts for various types of goods. The ld. Counsel further submits that Commissioner was intended to rely on Rule 3 but he has not invoked the provisions of Rule 3. But the same has no reference in the show cause notice. He also accepts that the goods transferred from other units were duty paid on MRP basis. The MRP was meant for State of Rajasthan. He also accepts, during the course of arguments, that the necessary Cenvat credit was already availed in the manufacturing unit at Ahmedabad or Mumbai on input services. But his argument is that when the goods have been transferred and stored in Jaipur then the assessee is entitled for the credit of input services on transferred goods. So, finally, he made a request that impugned order may be set aside. To support his argument, he also relied on the ratio laid down in the cases of ***CCE, Mumbai Vs. Toyo Engineering India Ltd.*** – 2006 (201) ELT 513 (SC) and ***CC, Nagpur Vs. Ballarpur Industries Ltd.*** – (2007) 8 SCC 89. Lastly, he prays that the impugned order may be set aside.

6. On the other hand, Shri Yogesh Agarwal, ld. DR for the department has relied on the impugned order. In addition, he submits that Rule 3 has already been invoked in para 5 of the Show Cause Notice. Consequently, he also submits that there is no provision for making a demand under Rule. The demand is under Rule 14 of Cenvat Credit Rules read with Section 11A of the Central

Excise Act and the same has been done in the instant case. The definition of input service under Rule 2(l) of Cenvat Credit Rules, 2004, disallowed taking credit of those input services which are not related to the manufacturing of final products of the tax payer. In the instant case, the appellant has taken credit of input services on final products, which were not manufactured in his factory but in the factory of his another unit. Lastly, he justified the impugned order.

7. We have heard both the sides at length and gone through the bulky matter including written submission.

8. From the record, it appears that the appellants has different units in different parts of the country where different products are manufactured. In the instant case, dutiable goods were manufactured in Ahmedabad or Mumbai, where Cenvat credit on the input service was already availed. When these goods have come to Jaipur, they were called under the heading of the “trading goods”. But fact remains that Cenvat credit pertaining to service has already been availed on the goods at Ahmedabad or Mumbai. When it is so, then again Cenvat credit cannot be provided at Jaipur. In other words, it would amount to double benefit. Thus, the Cenvat credit again cannot be allowed to the appellant. It makes no difference that the duty was paid on the MRP basis meant for Rajasthan. MRP may

be at location basis but principle of Cenvat credit will be same. In the instant case, the appellant has already availed Cenvat credit on the services on the goods in question in Ahmedabad or Mumbai then the same cannot be allowed again especially when the appellant is not maintaining any separate books of accounts for the same. Duty has already been paid on these goods in Ahmedabad or Mumbai where the credit of Cenvat pertaining to service has already been availed on the goods, then no Cenvat credit can be provided at Jaipur. The Counsel has not cited any case laws or legal provisions where the Cenvat credit on services can be claimed twice.

9. When it is so, then we do not find any reason to interfere with the impugned order. The same is upheld along with the reasons mentioned therein.

10. In the result, both appeals filed by the appellants are dismissed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

RM