CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 57608-57609 & 58179 of 2013

(Arising out of Order-in-Appeal No. 9-10/2013(CE)-Commr dated 31.01.2013 and 9/Commr/Ind/CEX/2013 dated 25.03.2013 passed by the Commissioner of Central Excise, Jaipur-I)

DATE OF HEARING : 24.07.2017
DATE OF DECISION : 24.07.2017

M/s Dabur India Ltd. …. **Appellants**
(Rep by Sh. Hemant Bajaj, Adv.)

VERSUS

CCE, Jaipur-I …. **Respondent**
(Rep. by Sh. H.C. Saini, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 55565-55567/2107

PER JUSTICE (Dr.) SATISH CHANDRA :

All these appeals are filed by the assessee-Appellants against the Order-in-Appeal No.9-10/2013(CE)-Commr dated 31.01.2013; and 9/Commr/Ind/CEX/2013 dated 25.03.2013 respectively passed by the Commissioner of Central Excise, Jaipur-I. The period in dispute is April 2006 to April 2011.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were registered with

the Central Excise & Service Tax Department as Input Service Distributors (**ISD**). They were availing the facility of Cenvat Credit of Service Tax paid on various input services including Advertisement Service & Sales Promotion Service. As input service distributors, they used to distribute input service credit to its various units which were manufacturing dutiable goods. The dispute in the present appeals is pertaining to the credit of Service Tax paid on (i) advertisement and sales promotion services; and (ii) Rule 6(5) services, such as, management consultancy, security, maintenance or repair etc. received at the Headquarters of the assessee-Appellants which is registered as input service distributor and distributed to its duty paying units including the assessee-Appellants. But the same was not allowed. Being aggrieved, the assessee-Appellants have filed the present appeals.

3. With this background, we have heard Shri Hemant Bajaj, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Revenue.

4. After hearing both sides and on perusal of material available on record, it appears that an identical issue in the assessee-Appellants' own case has come up before the Allahabad Bench of this Tribunal and the Tribunal vide Final Order No. 70452-70453/2017 dated 13.04.2017 has observed as under :

> **"6. Having considered the rival contentions and on perusal of the records, we find that the Original Authority has specifically relied on provisions of**

Clause (d) of Rule 7 of the Cenvat Credit Rules, 2004 for confirmation of demand whereas no such provision has been invoked in the said Show Cause Notice because during the material period such provisions did not exist on statute. We further find that in Para 14 & 15 of the said Show Cause Notice a methodology was adopted for distribution of Cenvat credit into admissible and inadmissible credit on the basis of turnover. We do not find any provision of law for doing so. We further find that Clause (b) of Rule 7 of the Cenvat Credit Rules, 2004 that existed during material time provided that such Cenvat credit of Service Tax paid was not admissible to be distributed which was exclusively used in unit engaged in the manufacture of exempted goods. The said Show Cause Notice nowhere established that the Cenvat credit which was proposed to be recovered was used in a unit exclusively engaged in manufacture of exempted goods. It is admitted that the Services such as Advertisement Service & Sales Promotion Services, were utilized in Corporate Office, Kaushambi, Ghaziabad. The ld. Counsel also contended that both the Show Cause Notices are hit by limitation. He has also contended that the second Show Cause Notice is repetition of the first Show Cause Notice. We keep the issue of limitation open. We set aside both impugned Order-in-Original and allow both appeals. The appellants shall be entitled for consequential relief, if any, as per law."

Similarly, in the case of **M/s Secure Meters Limited vs CCE&ST, Jaipur,** the Tribunal vide Final Order No. 52089-52090/2017 dated 03.03.2017 has allowed the appeal of the assessee-Appellants by observing that :

"8. In view of the above fact, in terms of Rule 6(5) of Cenvat Credit Rules, the full Cenvat credit will be available to the assessee, if such services were used in a manufacturing unit making both, the exempted as well as dutiable goods. In the present case, the full Cenvat credit has been availed by the ISD who is required to distribute the same to various units as per Rule 7 of Cenvat Credit Rules. The Rule 7 (as it stood at the relevant time) only enforces the condition that credit of service tax attributed to services used in units exclusively engaged in the manufacture of exempted goods or providing exempted services shall not be distributed. The appellant's four manufacturing units are covered by area based exemption and no such duty is payable on the goods manufactured there. However, there is nothing on record to suggest that any of the services have been used only in the units manufacturing exempted goods. In fact, the nature of services tells us that these are used at the level of corporate of the manufacturing units of the assessee. Under the circumstances, restricting the distribution of Cenvat credit in terms of Rule 7 is not justifiable. The restrictions are there only in distribution of credit in respect of services which are exclusively used in relation to manufacturing of exempted goods.

9. It may be mentioned that Rule 7 of Cenvat Credit Rules, was amended vide Notification No. 5/2014-CE(NT) dated 24.02.2014 whereby the expression was substituted with "*used by one or more units*" in the place of "*used in a unit*". Further, such an amendment will have no bearing in the present proceedings which cover the period prior to Jan 2010. The submissions of the appellant is supported by the decision of Tribunal in the case of *Elder Pharmaceuticals Limited (supra)*."

By following our earlier decisions (supra), we find no reason to sustain the impugned orders and the same are hereby set aside.

5. In the result, the appeals filed by the assessee-Appellants are allowed.

(Dictated & pronounced in the open court)

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(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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