CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing: 24.08. 2017
Date of decision: 01/09/2017

**Excise Appeal No. 2284 of 2011 – SM**
(Arising out of order-in-original No. 191(DKV)CE/JPR-I/2011 dated 28.6.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur).

M/s Parle Biscuits Pvt. Limited Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance:

Sh. Jatin Mahajan, Advocate for the appellant
Sh. U. Sengraj, AR for the respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order No. 56373/ 2017

Per: **Ashok Jindal**:

The appellant is in appeal against the impugned order wherein cenvat credit on inputs and capital goods has been denied.

2. The brief facts of the case are that one M/s Mound Trading Co. Pvt. Limited has obtained the premises in question on lease basis and also obtained the capital goods from M/s Parle Products Pvt. Limited on lease basis. The lesser gave an undertaking that M/s Mound Trading Co. Pvt. Limited is their job worker and they will use the capital goods and will entitle to take cenvat credit on capital goods and inputs. As M/s Mound Trading Co. Pvt. Limited did not find it viable to continue their business. Therefore, they discontinued their business and surrender the registration certificate. As M/s Mound Trading Co. Pvt. Limited was job worker of M/s Parle Products Pvt. Limited the premises were taken over by them and availed cenvat credit on capital goods. A show cause notice was issued to deny

cenvat credit in terms of Rule 10 of Cenvat Credit Rules, 2004 as the appellant has contravened the provisions of Rule 10 ibid, therefore, they are not entitled to avail cenvat credit. Proceedings were initiated against the appellant and cenvat credit was denied. Aggrieved from the said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that as appellant has taken over all the capital goods and inputs and work in process, therefore, they are entitled to avail cenvat credit thereon. It is his submission that as M/s Mound Trading Co. Pvt. Limited was the lessee, therefore, they are the owner of the goods and appellant were actual user of the goods. It is further submitted that the appellant has undertaken all the assets and liabilities of M/s Mound Trading Co. Pvt. Limited therefore, they have correctly availed cenvat credit and not violated the provisions of Rule 10 of Cenvat Credit Rules, 2004.

4. On the other hand, ld. AR submitted that the appellant has not complied with the provisions of Rule 10 of the Cenvat Credit Rules, 2004 and M/s Mound Trading Co. Pvt. Limited has surrendered their registration certificate. In that circumstances, the appellant is not entitled to avail cenvat credit.

5. Heard both the sides and considered the submissions.

6. For better consideration of the issue, it is essential to extract the provisions of Rule 10 of Cenvat Credit Rules, 2004 which is extracted below:

> "(1) *If a manufacturer of the final products shifts his factory to another site the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit who utilised in his accounts to such transferred, sold, merged, leased of amalgamated factory".*

7. As per the said Rule if a manufacturer shifts his factory to another site, the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture, in that

circumstances, cenvat credit can be transferred. In this case M/s Mound Trading Co. Pvt. Limited has surrendered his registration certificate the letter of surrender of Central Excise registration certificate is extracted below:

> "*This has reference to our letter dated 18/07/08 wherein we have requested to you that we did not want to carry on our manufacturing activity after 31st July, 2008. In other words we will keep continue our manufacturing activity upto 31st July 2008. Now we would like to inform you that due to some packing material i.e. lying in stock like wrapper that cannot be utilised or sale because of printing of company name on the wrapper. This wrapper cannot be utilised by owner company. It's a legal bounding of P.F.A. so we will utilise this wrapper and will surrender our Registration certificate on date 05/08/08 and we will submit original Registration certificate on our before 05/08/08.*
>
> *As we know on or after 05/08/08 M/S PARLE BISCUITS PVT. LTD., NEEMRANA want to carryon it's manufacturing activity in the same premises.*
>
> *If we are to observe any other formality in this regard please advise us. Your guidance is most welcome.*
>
> *This is for your kind information please*."

8. As M/s Mound Trading Co. Pvt. Limited has not transferred their business to M/s Parle Biscuits Pvt. Limited, in that circumstances, the provision of Rule 10 of Cenvat Credit Rules, 2004 have not been complied with. Therefore, the appellant is not entitled to avail cenvat credit on work in process on capital goods and inputs of M/s Mound Trading Co. Pvt. Limited.

9. In these terms, I do not find any infirmity in the impugned order, the same is upheld, the appeal filed by the appellant is dismissed.

(Pronounced on 01.09.2017).

(Ashok Jindal)
Member (Judicial)

Pant