

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Appeal No. E/75707/2018

(Arising out of Order-in-Appeal No. 27/CE/BBSR-GST/2017 dated 21.12.2017 passed by the Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.

M/s. Lingaraj Biscuits (P) Ltd.

Appellant (s)

Vs.

Commissioner of CGST & C. EX, Bhubaneswar

Respondent (s)

Appearance:

Shri H. P. Kanade, Advocate for the Appellant (s)

Shri A. Roy, Suptd. (A. R.) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: -29.05.2018

Order No. FO/76594/2018

PER SHRI P.K.CHOUDHARY

Briefly stated the facts of the case are that the appellant is a Contract Manufacturing Unit (CMU) of the principal- "M/s. Parle Biscuits Pvt. Ltd, Mumbai". The Appellants have availed credit of Cenvat on the inputs, capital goods, supplied by the principals on payment of excise duty, and received in the appellant's factory under Excise invoice. The said inputs/capital goods are used in the production of Biscuits on account of Principals, for the purpose of which, they comply with all the procedural formalities envisaged under Cenvat Credit Rules. Similarly, the appellants are also availing Cenvat Credit of Service Tax paid on services used for manufacture of final products. A Show Cause Notice dated 03/05/2011 was issued for irregular availment of Cenvat Credit of Service Tax amounting to Rs.21,56,211/-

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paid on Transport of Goods by Road (GTA) for the period April, 2006 to March, 2007 beyond the place of removal.

2. The Adjudicating Authority ordered for recovery along with interest and also imposed penalty of equal amount.

3. On appeal, the Ld. Commissioner (Appeals) upheld the O.I.O and rejected the appeal. Hence, the present appeal before the Tribunal.

4. The Ld. Advocate appearing on behalf of the Appellant Company filed the compilation of relevant provisions and relied upon judgments. He also filed written submission.

The Ld. Advocate submits that the appellant had utilized the Cenvat Credit for payment of duty on final products i.e. biscuits, based on MRP/RSP of M/s. Parle. The MRP/RSP declared by M/s. Parle includes the element of freight paid on transportation of finished goods from the factory of the appellant to the depot of M/s. Parle. Service Tax on this GTA service was paid by M/s. Parle and the appellants availed Cenvat Credit thereof, it being "Input Service" used in or in relation to manufacture of final products and clearance of finished goods from M/s. Parle. It is the case of the appellant that Notification No. 10/2008-C.E (N.T.) dated 01/03/2008 brought the change w.e.f. 01/03/2008 and hence, it is not applicable in the present case which is much prior to 01/03/2008.

The Ld. Counsel further contended that the provisions of Section 11 AC of the Central Excise Act, 1944 are not applicable in absence of any of the basic exigency essential for invoking provisions of Section 11 AC such as suppression, fraud, misstatement etc.

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5. The Ld. DR reiterates the orders of the Lower Authorities and submits that the depots are not the depot of the appellant who is only a job worker but are depots of Parle Biscuits Private Limited and therefore, the depots cannot be treated as place of removal.

6. Heard both sides and perused the appeal records.

7. I find that the impugned Show Cause Notice has been issued as a result of the scrutiny of the records and the ER-1 Return of the appellant as can be seen from para 3 thereof. This clearly indicates that there was no suppression of facts on the part of the appellant assessee as they have reflected the same in their statutory records. It is the case of the Revenue that the appellants were supposed to inform the matter to the Department as they have taken and utilized subject input service which is beyond the manufacturing liability fixed as per agreements ibid and this fact was suppressed in order to take the benefit in manufacturing account unlawfully.

I observe from the records, that all the facts concerning the issue, were reflected in the statutory records and the statutory returns Memo No. 01 dated 25/01/2008 issued by the Department confirms that they have raised the same at that time also, which was based on verification of Excise records, balance sheet and other related documents and records.

I find that the Lower Appellate Authority has not dealt with this issue in the impugned order.

8. On perusal of the records, I do not find any element of misstatement, fraud, collusion or suppression of facts with an intent to evade payment of Central Excise Duty. Accordingly, the extended

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period of limitation cannot be invoked in the present case. Show Cause Notice is barred by limitation. The impugned orders are set aside and I allow the appeal on the ground of limitation alone. The appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court.)

Sd/-
(P.K. Choudhary)
Member (Judicial)

Pooja