CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 89804 of 2014

(Arising out of Order-in-Original No. 50-51/ST-II/RS/2014 dated 21.07.2014 passed by the Commissioner of Service Tax, Mumbai-II)

M/s Hawkins Cookers Ltd. **.... Appellant**
Maker Tower, F-101, Cuffe Parade,
PO Box – 16083, Mumbai - 400005

Versus

The Commissioner of Service Tax-II, Mumbai **.... Respondent**
115, New Central Excise Building, M.K. Road,
Churchgate, Mumbai - 400020

Appearance:

Shri Prakash Shah, Advocate for the Appellant

Shri Suresh Merugu, JC, Authorized Representative for the Respondent

WITH

Service Tax Appeal No. 87166 of 2015

(Arising out of Order-in-Original No. 07/ST-VII/RS/2015 dated 30.06.2015 passed by the Principal Commissioner of Service Tax-VII, Mumbai)

M/s Hawkins Cookers Ltd. **.... Appellant**
Maker Tower, F-101, Cuffe Parade,
PO Box – 16083, Mumbai - 400005

Versus

The Principal Commissioner of Service Tax-VII, Mumbai **.... Respondent**
115, New Central Excise Building, M.K. Road,
Churchgate, Mumbai - 400020

Appearance:

Shri Prakash Shah, Advocate for the Appellant

Shri Suresh Merugu, JC, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87417-87418/2019

Date of Hearing: 01.10.2019
Date of Decision: 01.10.2019

Per: Dr. D.M. Misra

These two appeals are filed against respective Orders-in-Original passed by the Principal Commissioner of Service Tax-VII, Mumbai, since involved common issues, are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of excisable goods at their factory at Thane. During the relevant period, i.e. 2011-12 and 2013-14 they have availed CENVAT Credit on the invoices issued by their Head Office being registered as an 'Input Service Distributors' (ISD). Alleging that the appellant also engaged in the activity of trading of goods and common input services have been used in the manufacture of excisable goods as well as in the trading activity, show-cause notices were issued during the relevant period to the appellant's Thane unit for recovery of 5%/6% of the profit margin of traded goods in accordance with Rule 6(3)(i) of the CENVAT Credit Rules, 2004, as the appellant failed to maintain separate accounts to utilize the credit in the activity of manufacture of goods and providing of exempted services i.e. trading activity. On adjudication, the demands were confirmed with interest and penalty imposed on the appellants. Hence, the present appeals.

3. At the outset learned Advocate Shri Prakash Shah for the appellants submits that the appellants are having three manufacturing units located at Thane, Hoshiarpur and Jaunpur. They are also having 27 depots across the country from where the manufactured goods are sold by the appellants. Also, the appellant had purchased duty paid goods from the open market and sell the same from these depots. It is his contention that credits of Service Tax paid on various services initially were taken at their Head Office, which is registered as an ISD. The credit is distributed among three units in proportionate to the turnover of each of the units. It is his contention that no trading activity is taken by the appellant from their Thane unit, therefore, demanding 5/6% of the profit margin of the total trading turnover is contrary to law and not tenable. It is his contention that credit taken on common input services utilized in the trading activity from the various depots cannot be construed as the activity exclusively taken at their Thane factory. It is his contention that Thane unit is entitled to the credit on the invoices issued by ISD. It is his contention that at best the Thane unit may be required to reverse proportionate CENVAT Credit availed on disputed input services availed at Head Office and allocated to Thane unit attributable to trading activity undertaken from their various depots/sales offices.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner.

5. We have carefully considered the submissions advanced by both sides and perused the records. The short issue involved in the present case for determination is whether Thane unit is required to reverse/pay 5/6% of the total trading turnover of the appellant under Rule 6(3)(i) of the CENVAT Credit Rules, 2004. It is not in dispute that the appellants are having three factories situated at Thane, Hoshiarpur and Jaunpur; also 27 depots located at various places across the country. Besides sale of manufactured goods from these depots, the appellant also undertake trading activity from these depots. It is also not in dispute that they availed credit on common input services, namely, security services, Chartered Accountant's services, clearing and forwarding services, business auxiliary services, banking and financial services etc. used in the manufacturing activities at their three factories and also trading of their purchased goods at various depots. The CENVAT Credit on these input services are taken at their Head Office, which is registered as an Input Service Distributor (ISD) and subsequently the credit is distributed among three manufacturing units in proportionate to their turnover. In the present case, the Department sought to recover 5/6% of the profit margin of the trading turnover from their Thane unit alleging that no separate records have been maintained on the use of common input services relating to the trading activity as well as manufacturing of goods at their Thane unit. Learned Advocate for the appellants has vehemently contested the said approach of the Revenue. It is strongly pleaded that no trading activity has been undertaken by their Thane unit. Whatever credit on common input services was

availed at Thane unit on the basis of invoices issued by their Head Office is in proportionate to the turnover of Thane unit in the total turnover of the appellant. Therefore, demanding the entire amount of credit on trading activity from the Thane unit is without jurisdiction and unsustainable in law. It is their contention that at best the Thane unit can be asked to reverse proportionate credit availed by them on the trading activity relatable to invoices issued by their Head Office as an ISD. We find force in the contention of the appellant inasmuch as at their Thane unit, the appellant had taken credit on the basis of the ISD invoices issued by their Head Office which includes credit on common input services attributable to trading activity undertaken from their depots situated all over India; and also the credit availed on input services used in the manufacturing activity and distributed among all the three manufacturing unit including the Thane unit. In these circumstances, directing the Thane unit to reverse the proportionate credit attributable to trading activity of other two unit would be incorrect and cannot be sustained in law. Therefore, the appellant’s Thane unit would be required to reverse the CENVAT Credit availed on common input services relatable to trading activity availed by them at their Thane unit on the invoices issued by their Head Office. Thus, to ascertain the quantum of CENVAT Credit availed at Thane unit and attributable to the trading activity, the matter is remanded to the adjudicating authority. Since the issue relates to interpretation of law, therefore, we do not find merit in sustaining penalty. Consequently, no penalty is imposable on the appellants.

6. The appeals are disposed of in the above terms.

(Dictated and pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Sinha