

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

EXCISE APPEAL NO: 1795 OF 2011

[Arising out of Order-in-Original No: 37/BR—37/Th-I/2011 dated 10th August 2011 passed by the Commissioner of Central Excise, Thane – I.]

Hindustan Coca-Cola Beverages Pvt Ltd

Survey No. 284-P, Post Kudus, Tal: Wada,
Dist: Thane – 421 312

... Appellant

versus

Commissioner of Central Excise

Thane – I

Navprabhat Chambers, Ranade Road, Dadar (W)
Mumbai - 400028

...Respondent

APPEARANCE:

Shri Jitendra Motwani, Advocate for the appellant

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A /87077 /2023

DATE OF HEARING:

03/07/2023

DATE OF DECISION:

01/11/2023

PER: C J MATHEW

This appeal of M/s Hindustan Coca-Cola Beverages Pvt Ltd,

arising from order¹ of Commissioner of Central Excise, Thane – I in which recovery of ₹ 1,75,49,220/- has been confirmed under section 11A of Central Excise Act, 1944, along with interest as applicable under section 11AB of Central Excise Act, 1944, besides imposing penalty of like amount under section 11AC of Central Excise Act, 1944 for the period from April 2006 to March 2011, seeks restoration of credit availed under CENVAT Credit Rules, 2004 that had been disallowed as ineligible.

2. Proceedings were initiated against the appellant in relation to certain taxable services, procured in pursuit of their business of manufacturing ‘aerated water’, and the tax so discharged were claimed as eligible credit which was sought to be denied for reasons peculiar to each. Accordingly, credit attributable to ‘goods transport agency service’ for outward transportation up to the place of buyer, amounting to ₹ 1,25,79,059/- was disallowed as also ₹ 6,428/- on such service for transport of inputs cleared as such, to ‘outdoor catering service’ to the extent of ₹ 19,95,382, to ‘manpower recruitment and supply agency service’ to the extent of ₹ 25,932/- and for services rendered by Mumbai International Airport Authority amounting to ₹ 29,42,220/- were enumerated as ineligible.

3. It is the contention of Learned Counsel for the appellant that the

¹ [order-in-original no. 37/BR-37/Th-I/2011 dated 10th August 2011]

issue of eligibility of CENVAT credit on ‘outward transportation’ up to the place of removal, for the period from prior to 1st March 2008 stands settled by the decision of the Hon’ble High Court of Karnataka in *Commissioner of Central Excise, Bangalore v. ABB Ltd [2011 (23) STR 97 (Kar.)]* that was upheld by the Hon’ble Supreme Court in *Commissioner of Central Excise, Belgaum v. Vasavadatta Cements Ltd [2018 (11) GSTL 3 (SC)]*. It was further contended that for the period thereafter the show cause notice issued to the appellant by other jurisdictions had been allowed by the first appellate authority or dropped by the original authority which precludes contrary stand that has actuated the impugned order.

4. It was further submitted that the ‘place of removal’ was the premises of buyer and that all the sales were effected ‘free on road (FoR)’ basis. It was further submitted that the documents evidencing terms of the contracts, though placed before the original authority, was disregarded.

5. We find that the issue of eligibility prior to 1st March 2008 stands settled thus enabling availment of credit on ‘outward transportation’ in view of the order of Hon’ble Supreme Court in *re Vasavadatta Cements Ltd*. Demand for the period will not sustain. For the period thereafter, on examination of the several decisions cited by Learned Counsel, we find that show cause notices dropping the

demand at the original stage or at the first appellate stage, had been issued long after the order now impugned before us. It would appear that the contrary stand taken by the adjudicating/appellate authorities, since the passing of the impugned order, is at variance with stand of Revenue in order before us. Besides, it is on record the original authority had failed to scrutinize the documents with due diligence. It would, therefore, be appropriate that this be undertaken for which purpose the demand pertaining to recovery of credit of tax paid on 'goods transport agency service' for the period from 1st March 2008 is set aside for a fresh determination.

6. Insofar as the eligibility of credit on 'outdoor catering service' is concerned, it would appear that one of the issues in dispute is the extent to which such cost has been recovered from employees. Though the Learned Counsel argued that this had not been a ground raised in the show cause notice, we, nonetheless, are of the opinion that applicability of the law as settled by judicial decisions needs ascertainment and, therefore, the facts must be subjected to evaluation.

7. Insofar as the other portion of the demand is concerned which is availment of credit of tax paid on charges levied by Mumbai International Airport Ltd in connection with the vending machines and kiosks installed in the airport premises being denied on the

ground that the goods themselves are exempt from duty of central excise, it would appear that the activity towards which the availment was claimed, pertains to trading which, being an exempt service, would not be entitled to the benefit of CENVAT credit of any input service. It is the contention of the Learned Counsel that the authorization for operation of these counters/kiosks issued by Mumbai International Airport Ltd contains details of the responsibilities of the appellant. It was submitted that the availment had been permitted in decisions of the Tribunal elsewhere in relation to their activities within those jurisdictions. It would appear that the impugned order has not examined the context in which the activities were undertaken by the appellant and had not examined the scope of availability of credit in accordance with CENVAT Credit Rules, 2004.

8. Learned Authorised Representative also placed several decisions for our perusal.

9. Considering the lack of detailed examination of the submissions of the appellant herein in relation to the several heads on which CENVAT credit was directed to be recovered, it would be appropriate for the matter to be decided afresh for which purpose, we set aside the impugned order and remand the dispute back to the original authority for fresh determination. Needless to say, appellant herein shall be given an opportunity to present their submissions and the adjudicating

authority shall, thereafter, determine the scope and extent of recovery proposed in the show cause notice in terms of settled law and the factual matrix.

10. Appeal is accordingly allowed by way of remand.

(Order pronounced in the open court on 01/11/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*