CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89277 of 2013

(Arising out of Order-in-Original No. 03-04/COMMR/M-III/WLH/2013-14 dated 24.06.2013 passed by the Commissioner of Central Excise, Mumbai-III.)

Commissioner of Central Excise, Mumbai-III .... Appellant
3rd & 4th Floor, Vardan Trade Centre, MIDC,
Thane (W) – 400 604.

Versus

M/s Cadbury India Ltd. .... Respondent
1st Pokhran Road, off Eastern Express Highway,
JK Gram, Thane – 400 606.

APPEARANCE:

Shri Mahesh Patil, Authorized Representative for the Appellant
Ms. Ginita Bodani, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87115/2024

Date of Hearing: 18.11.2024
Date of Decision: 18.11.2024

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Distribution of CENVAT Credit on the disputed services by the Head Office of the respondent among other manufacturing units, is the subject matter of present dispute. The show-cause notices dated 25.05.2012 and 25.10.2012 issued by the department had alleged that the respondent had not complied with the requirement of Rule 4A(2) of the Service Tax Rules, 1994, inasmuch as the invoices/bills or challans issued by them in distributing the credit

among the manufacturing units did not contain the reference, required to be incorporated in the invoices. Further, it has been alleged that the respondent, as an Input Service Distributor (ISD), had not complied with the requirement of CENVAT statute inasmuch as they were required to distribute CENVAT Credit among the manufacturing unit and since it was distributed to the Badi Unit, which are not manufacturing any excisable goods, such distribution of credit is not in conformity with the CENVAT statute. The show-cause notices issued by the Department were adjudicated by the learned Commissioner of Central Excise, Mumbai-II vide the impugned order dated 24.06.2013, wherein the proposals made in the show-cause notices were dropped. In support of dropping the proposed demands on the respondent, the impugned order at paragraphs 14 and 15 has recorded the following observations: -

> *"14. Regarding 13(a) above, the reason cited by the notice that the details are voluminous and huge due to which they cannot be accommodated in printed from on the ISD invoice appears to be valid. In principle, the assessee's contention has to be appreciated subject to the correctness of the data submitted by them. Factual verification of the data (i.e name, address and registration number of service providers), submitted by Cadbury in electronic form in CD during the adjudication proceedings, was done by the jurisdictional divisional/range authorities. The verification report in this regard has indicated that the full details of each invoice have been submitted and found to be in order vis-à-vis the two show cause notices issued.*
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> *15. Regarding 13(b) above, factual verification of the data submitted by Cadbury during the adjudication proceedings in electronic form in CD was also done by the jurisdictional divisional/range authorities. It has been verified that the distribution of service tax credit on ISD invoices during the period covered in SCN1 and SCN2 has been done correctly; that every unit has been allocated its proportion on the basis of its ratio in total production; that due allocation has been made to Baddi unit based on its production but that its proportion has not been distributed to other units for credit; and that there was no excess availment on account of the Baddi unit and other ineligible services."*

3. On perusal of the case records, more particularly, the finding recorded by the adjudicating authority vis-à-vis the grounds of appeal urged by the Revenue, we find that the Revenue has entirely raised a new ground, which was not canvassed in the show-cause notices. Since, upon verification of the records maintained by the respondent, the learned adjudicating authority has arrived at the

conclusion that distribution of credit is in conformity with the CENVAT statute, in our considered view, denial of such benefit to the respondent would not stand the judicial scrutiny. Therefore, we do not find any merits in the appeal filed by the Revenue. Accordingly, the appeal is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha