CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 85672 of 2016

[Arising out of Order-in-Original No. 39-45/STC-V/SKD/15-16 dated 27.11.2015 passed by the Commissioner of Service Tax-V, Mumbai.]

PARLE Products Private Limited **.... Appellants**
North Level Crossing, Vile Parle (East)
Mumbai – 400 057.

VERSUS

Commissioner of Service Tax-V, Mumbai **.... Respondent**
(Presently Mumbai West CGST & Central Excise Commissionerate)
BSNL Administrative Building, 6th Floor, D Wing
Juhu Tara Road, Santacruz (West)
Mumbai – 400 054.

APPEARANCE:

Ms. Padmavati Patil, Advocate for the Appellants

Ms. S.Varalakshmi, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86964/2025

Date of Hearing: 25.06.2025

Date of Decision: 25.06.2025

PER: M.M. PARTHIBAN

This appeal has been filed by M/s PARLE Products Private Limited, Mumbai (herein after referred together as 'the appellants' for short) assailing the Order-in-Original No. 39-45/STC-V/SKD/15-16 dated 27.11.2015 (referred to, as 'the impugned order') passed by the Commissioner of Service Tax-V, Mumbai.

2. The appellants are presently located under the territorial jurisdiction of the Commissioner of CGST & Central Excise, Mumbai West, Mumbai in terms of appointment of officers, imposing the powers and jurisdiction of the Central Goods and Services Tax (CGST)/Central Tax Commissioners issued under Sections 3, 5 of the CGST Act, 2017 vide Notification No.02/2017-C.T. dated 19.6.2017 and Notification No. 13/2017-C.E. (N.T.) dated 09.06.2017 read with Trade Notice No.01/2017-Central Tax dated

21.07.2017 of Mumbai Zone-I, as amended, read with Section 174(2)(f) of the CGST Act, 2017.

3.1 Briefly stated, the facts of the case are that the appellants manufacturer M/s PARLE Products Private Limited, Mumbai are engaged in manufacture of excisable goods viz., Biscuits, Confectionary etc., at various factories situated at Vile Parle, Mumbai; Bhuj in Gujarat; and Bangalore in Karnataka, and are individually registered with the Central Excise department. The appellants are also registered as provider of taxable services with the jurisdictional Service Tax authorities under the category of Business Auxiliary Services (BAS) and as person liable to pay tax for Goods Transport Agency (GTA) service. The appellants avail CENVAT credit of duty paid on inputs, capital goods and input services used for manufacture of final products and utilize the said credit for payment of duty on their final products.

3.2 The appellants are also getting some of their excisable goods manufactured by their own subsidiary units such as Parle Biscuits Private Limited (PBPL, for short) situated at Bahadurgarh, Haryana; Neemrama, Rajasthan; Sitarganj, Uttaranchal; and Nashik, Khopoli in Maharashtra. These products are cleared on payment of applicable Central Excise duty on the basis Retail Sale Price (RSP) to their depots for further sale to retail customers, all over India. Since all their branded biscuits, confectionaries and chocolates etc., manufactured by the appellants, as well some of the products manufactured by their subsidiary units, bear common brand name such as *Parle-G, Krack Jack, Monaco, Chox, Eclairs*, for Biscuits; *Melody; Eclairs* for Chocolates, *Orange Candy, Role-a-Cola, Parle-Lite, Mango Bite* for Confectionaries, the department had interpreted that the advertisement and sales promotion expenses incurred by the appellants and sharing of it with their subsidiary unit, as provision of services under the taxable category of 'Business Auxiliary Services' (BAS) by the appellants to their subsidiary unit. On the above basis, the department had initiated show cause proceedings for recovery of service tax from the appellants. However, the appellants have contended that there was no services rendered by the appellants; and they had duly paid the service tax along with the invoice for the amount charged by various service providers while availing the advertising services.

3.3 During the disputed period from October, 2004 to March, 2014, seven Show Cause Notices (SCNs) dated 19.10.2009 invoking extended period of limitation; and periodical SCN cum demand notices dated 09.09.2010, 18.10.2011, 04.10.2012, 22.04.2013, 11.11.2013 and 27.03.2015 had been issued by the department demanding service tax along with interest under Section 73 of the Finance Act, 1994 and proposing for imposition of penalties under Section 76, 77 and 78 ibid on the appellants. In adjudication of the aforesaid SCNs by a common impugned order dated 27.11.2015, learned Commissioner had confirmed all the proposals made in the SCN. Feeling aggrieved with the said impugned order, the appellants have preferred this appeal before the Tribunal.

4. Heard both sides and perused the records of the case. We have also perused the additional written submissions presented in the form of paper books for this case.

5. The issue under dispute is whether the expenses incurred by the appellants for advertisement of their own manufactured products, and part of such amounts received by the appellants, on cost sharing basis, from their own subsidiary units manufacturing some of their common branded products, can be termed as consideration liable for payment of service tax under the head "Business Auxiliary Services", for the services provided by the appellant to their subsidiary unit.

6.1 Rule 3 of the CENVAT Credit Rules, 2004 is the enabling provision, which entitles a manufacturer to take CENVAT Credit of various duties paid on the inputs and service tax on the input services. In the present case, each of the manufacturing unit of the appellants are having their individual central excise registration with jurisdictional authorities and discharge central excise liability on the goods manufactured by them. Since, all the products manufactured by the appellants and some of such products manufactured by their subsidiary units are having common brand name viz., *Parle-G, Krack Jack, Monaco, Chox, Eclairs*, for Biscuits; *Melody; Eclairs* for Chocolates, *Orange Candy, Role-a-Cola, Parle-Lite, Mango Bite* for Confectionaries, the expenses incurred for advertisement to their end consumers being made on pan-India basis, were shared among the appellants and the subsidiary units by raising debit notes periodically, as per the production ratio as approved by the Board of Directors of the appellants company.

6.2 In the impugned order, learned Commissioner had stated that the activity of advertisement and sales promotion procured and provided by the appellants to their subsidiary units manufacturing common branded products, is covered under the definition of 'input service'; sharing of expenses incurred on such advertising indicates that a nexus is flowing from the appellants to their subsidiary unit, as the services are not directly obtained by the subsidiary units. Thus, he concluded that the subsidiary units are clients to the appellants, and the services are taxable under the category of 'Business Auxiliary Services' and liable for payment of service tax. Learned Commissioner had also disregarded the submission made by the appellants that on the advertisement and sales promotion services availed by them, they had already paid the service tax charged by individual advertisers, and the same activity cannot be taxed once again. The relevant paragraph of the said order is quoted below:

> *"22. The above contention of the noticee is also not acceptable due to the fact that the services performed by one company for other company even if they are group companies would be considered as the services performed to an external person as companies being separate entities in the eyes of Law, Also the service tax paid be one unit is available as input service for another and is eligible to take credit under Cevat Credit Rules, 2004. Thus the assessee M/s PPPL failed to discharge service tax liability which was available as a input service credit to M/s PBPL. The system adopted by the assessee is nothing but adjustment done by them in the name of 'sharing of expenses' thereby evading the payment of service tax."*

7. On the issue of service tax liability on Business Auxiliary service, the Central Board of Excise & Customs vide Circular No.120(a)/2/2010-S.T. dated 16.04.2010 had clarified as follows:

> *"3. As per the provision of the Finance Act, 1994, insurance as well as reinsurance are subject to service tax. The Board has received representations that notices have been issued demanding service tax on the amounts deducted by the insurance company (in other words paid by the reinsurance company) on the ground that it is the consideration for the insurance company providing Business Auxiliary Service (BAS) to the re-insuring company. The notices alleged that the insurance companies are promoting the business of re-insurers thereby providing them the BAS.*
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> *4. The issue has been examined. As explained in para 2 above, the arrangement between the insurance company and the reinsurer is only sharing of expenses and there is no service provided by the insurance company to the re-insurer for a consideration. Since the policy holder may not even be aware of the operations of the re-insurer, it cannot be said that the payment made by the re-insurer to the insurance company is for its business promotion or a service on behalf of the re-insuring company (i.e. Business Auxiliary Service). In fact, it is the reinsurer which provides insurance service to the insurance company. As both the insurance company and reinsurer pay service tax on the entire amount of premium charged by them, the question of charging service tax under any other taxable service does not arise."*

On reading of the above clarification issued by CBEC, it transpires that arrangement between two entities which are sharing the expenses and when there is no service was provided by one person to another, then there will no question of charging service tax on such activity. In the present case also, there is no service provider and service receiver, as the expenditure incurred on advertising and sales promotion are for products manufactured by the appellants which are bearing common brand name, and since some of such products are also manufactured by the group entities/subsidiary units, the common expenses have been shared based on the production ratio. Therefore, in our opinion there is no element of service involved in the transactions between the appellants and their subsidiary units.

8.1 We also find that the Co-ordinate Bench of the Tribunal in the case of *Reliance Securities Limited Vs. Commissioner of Service Tax, Mumbai-II* - 2019 (20) G.S.T.L. 265 (Tri. - Mumbai) have held that there is only one transaction and appellant therein and their group affiliate cannot be demanded with service tax as it would be double taxation on the same services. The relevant paragraphs of the said order is quoted below:

> ***"6.*** *We also find that on the one hand the show cause notice has demanded tax under the category of "Business Support Service" on the ground that the Appellant made available its infrastructure namely its internet based trading platform to clients of M/s. RMIL and on the other hand the impugned order confirmed the demand on the ground that Appellant is providing stock broking service to investor. This amounts to confirmation of demand beyond the scope of show cause notice which is not permissible under law. Also it is to be seen that the amount of 95% has been received by the Appellant from M/s RMIL and not from the clients. M/s. RMIL has already discharged tax on the said amount. The Appellant is not providing any service to the RMIL. RMIL collects card fees from the investors and discharges service tax on the total card fees collected. It retains only a part and transfers the balance to the Appellant. Thus in respect of receipt by the Appellant there is only one transaction i.e. the services provided by the Appellant to the investor and service tax has been discharged by RMIL on behalf of Appellant. Once the service tax on entire value has been discharged there cannot be double taxation. The demand of service tax from the Appellant would be double taxation on same amount which itself is erroneous. Hence the demand is not sustainable for this reason as held in case of Dinesh M. Kotian - 2016 (91) TMI 973 - CESTAT-MUMBAI = 2016 (42) S.T.R. 772 (Tribunal), India Gateway Terminal (P) Ltd. - 2010 (20) S.T.R. 338 (TRI.), Lone star Engineers - 2017 (47) S.T.R. 133 (TRI.) and CCE, Meerut-II v. Geeta Industries P. Ltd. - 2011 (22) S.T.R. 293 (TRI.). Even the Hon'ble Apex Court has upheld the above position in case of Sri Krishna Das v. Town Committee, Chirgaon - 1990 (3) SCC 645.*
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> ***7.*** *We also find that the demand pertains to the period 2008-09 to 2009-10 is hit by limitation of time. The discharge of service tax on entire card fee by M/s. RMIL clearly shows that the Appellant had bona*

fide belief that M/s. RMIL is only liable to tax. We also find that no element of fraud, suppression or intention to evade service tax has been brought on record. We thus are of the view that extended period of limitation is also not invokable and no penalty is payable.

8. *We also find that assuming contentions of Revenue regarding levy of service tax is accepted, the whole of the service tax paid by RMIL shall be available to the Appellant as Cenvat Credit which will result into revenue neutrality on this count also demand does not sustain.*

9. *We therefore hold that the impugned order is required to be set aside and we do so…"*

8.2 Furthermore, we also find that in the case of *Superior Drinks Private Limited Vs. Commissioner of Central Excise, Nagpur-I* vide Final Order No. A/86068/2019 dated 04.06.2019 have held that there is no service involved in the marketing and sales promotion activity undertaken on the appellant's own account. The relevant paragraphs of the said order is extracted and given below:

"5.9 There cannot be more convoluted application of the decision of the High Court and stretching the provisions in an agreement for purpose of levy of tax. If the arguments of the Commissioner were to be accepted then in that case every manufacturer/ producer/ supplier of the goods who purchases and material/ inputs is promoting the sale of his input supplier. Since as the sale of his finished goods goes up automatically consumption of inputs will go up and accordingly he promotes the sale of input manufacturer/ supplier. In our view such an interpretation is neither logical or rational. Both input suppliers and the finished product manufacturer are independent business entity acting in the interest of their business….

5.12 For the period from 01.07.2012, a entirely different regime for taxing the services was introduced. As per Section 65B(44) of the Finance Act, 1994,- "service" means any activity carried out by a person for another for consideration, and includes a declared service, but does not include - …………

5.13 From the definition of "service" as per section 65B(44), the essential ingredient of same are "any activity carried out by a person for another" and "consideration for undertaking such and activity". Admittedly the dispute is not in respect of declared services or negative list of services or those falling in the exclusion clause. Hence these are left out from our consideration in subsequent paragraphs. 5.14 The phrase "any activity carried out by a person for another", is very clear that the activity sought to be taxed, should be the activity carried out by one person for the another person. Thus any activity which has been undertaken by a person on his own account for himself cannot be said to be covered by the said phrase even if this activity is undertaken by the person with the financial assistance/ support of other person either partially or completely….

5.15 In the present case the appellants were undertaking the marketing and sales promotion activity on their own account, Coca Cola India was

only providing certain financial assistance in undertaking such activity. The activity undertaken were not performed by the appellant for Coca Cola India, but was performed for themselves. Since no activity has been performed by the appellant for Coca Cola India, we are of view that mere receipt of amounts under the head "Market Support Received" will not qualify them as "service" under Section 65B(44).
5.16 We do not find any merits in the order of the Commissioner for the period after 01.07.2012 also.

5.17 Since we are deciding the issue on the merits itself and dropping the demand as not maintainable we do not take other issues of limitation and penalty argued before us in this appeal."

8.3 In this regard, we find that the issue under dispute on the issue of sharing of expenses among group entities, has already been examined by the Co-ordinate Bench of the Tribunal in the case of *Haldiram Marketing Private Ltd. Vs. Commissioner of CGST & Central Excise, GST Delhi East Commissionerate* – (2023) 4 Centax 26 (Tri.-Delhi), and it was held that part of the consideration received from the associated enterprise would not be leviable to service tax. The relevant paragraph of the said order is quoted below:

"23. The next issue is that required to be considered is as to whether permitting an associated enterprise to use a part of the premises for the sale of the product would amount to sub-letting and, therefore, the consideration received would be leviable to service tax under the category of 'renting of immovable property'.

24. It needs to be noted that the appellant had entered into a rental agreement with DIAL for leasing out premises at the airport, for which it paid a rental amount to DIAL. It also transpires that from the property leased out to the appellant, the appellant sells its own goods as well as goods of the associated enterprise purchased by the appellant. The appellant claims that as the goods of the associated enterprise are also being sold from the same premises, it receives certain portion of the rent from the associated enterprise as the associated enterprise is also economically benefiting from the space taken on rent by the appellant. According to the appellant, this is an internal arrangement between the appellant and the associated enterprise for sharing of expenses and for this there is no privity of contract between the appellant and its associated enterprise. The associated enterprise is also not a party to the agreement between the appellant and DIAL for renting out the premises of the appellant. It is for this reason that the appellant claims that in the absence of a contractual relationship between the associated enterprises either with the appellant or DIAL, the amount paid by the associated enterprise cannot be subjected to service tax. According to the appellant, the amount paid by the associated enterprise to the appellant is not for any service but cost sharing between the associated enterprise and the appellant.

25. The contention of the appellant that the consideration received by the appellant from the associated enterprise would not be leviable to *service tax under the category of 'renting of immovable property' deserves to be accepted.*

26. The goods of the associated enterprises are also being sold from same premises and certain portion of the rent is received from the associated enterprise. The associated enterprises is benefiting with respect to the space. This arrangement would, therefore, fall under the category of sharing of expense. In this connection reference can be made to the decision of the Supreme Court in Gujarat State Fertilizers & Chemicals Ltd. v. Commissioner of C. Ex. 2016 (45) S.T.R. 489/[2016] 76 taxmann.com 357/59 GST 240 (S.C.). In M/s. Historic Resort Hotels (Pvt.) Ltd. v. CCE, Jaipur-II 2017 (9) TMI 1066-CESTAT New Delhi = 2018 (9) GSTL 422 (Tri.) a division of the Tribunal also held that sharing of expenditure cannot be treated as service rendered by one to another."

The department not satisfied with the above order, had filed an appeal against the said order before the Hon'ble Supreme Court in Civil Appeal Nos. 6147 of 2023. The said appeal was dismissed by the Hon'ble Supreme Court by upholding the order of the Tribunal and observing that they do not find any merit in the department's appeal in its judgement delivered on 25.09.2023.

9. On the basis of the above decisions of the Tribunal and the judgement delivered by the Hon'ble Supreme Court, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands of service tax along with interest and its recovery along with imposition of penalty on the appellants. Accordingly, we are of the considered view that the impugned order is liable to be set aside as the same does not stand the legal scrutiny.

10. In the result, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of the order pronounced in the open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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