**(2024) 07 CESTAT CK 1517**

**In the Customs, Excise And Service Tax Appellate, New Delhi**

**Case No :** Excise Appeal No. 55391 of 2023

M/s. Graintech Foods (India) Pvt. Ltd. APPELLANT

Vs

Commissioner of C.G.ST. & Central Excise, Bhopal RESPONDENT

**Date of Decision :** 04-07-2024

**Acts Referred:**

Central Excise Act, 1944 — Section 4

**Citation :** (2024) 07 CESTAT CK 1517

**Hon'ble Judges :** Ashok Jindal, Member (J)

**Bench :** Single Bench

**Advocate :** Rinki Arora, Mahesh Bhardwaj

**Final Decision :** Disposed of

## Judgement

Ashok Jindal, J

1. The appellant is in appeal against the impugned order wherein Cenvat credit has been denied of Rs. 10,81,225/- for the period April 2017 to June 2017 availed by the appellant on various grounds:

(a) Appellant has taken Cenvat credit on packing material which is used for dutiable as well as non-dutiable products, therefore, they are not entitled to take Cenvat credit.

(b) Further, invoice does not bear invoice number, therefore, they are not entitled to take Cenvat credt on the said invoice.

2. Cenvat credit of Rs.10,03,635/- sought to be denied on the ground that the Cenvat credit distributed by the ISD is not related to the manufacturing activity of the appellant, therefore, the appellant is not entitled to take Cenvat credit. The show cause notice was issued by invoking extended period of limitation and the matter was contested by the appellant before the authorities below confirmed the demand proposed in the show cause notice along with interest and the penalty was also imposed. Aggrieved from the said order, the appellant is

before me.

3. Learned counsel appearing on behalf of the appellant submits that for denial of Cenvat credit on packing material, the appellant has already reverse proportionate Cenvat credit attributable to exmpted final product and challan thereof is enclosed along with paper book filed by them and they have filed calculation sheet. For denial of Cenvat credit of Rs.6,282/-, the appellant has admitted that they have wrongly taken Cenvat credit and reverse the same. With regard to denial of Cenvat credit of Rs.32,149/-, it is the contention of the appellant that the same has been denied on the ground that invoice number was not mentioned in the invoice against which Cenvat credit has been taken but they have produced the invoice showing the invoice number. Therefore, it is her submission that they are entitled to take Cenvat credit.

4. With regard to Cenvat credit of Rs. of Rs.10,03,635/-, it is her contention that the Cenvat credit has been distributed by the Head Office for the service relating to marketing and promotional expenses which does not segregate the product which are not manufactured by the appellant as the Head Office incurred expenses for marketing and promotional activities and the same has been distributed on the basis of turnover of the appellant, therefore, they are entitled to take Cenvat credit. To support her contention, she relied on the decision of Larger Bench of this Tribunal in the case of M/s. Krishna Food Products, M/s. Mariamma R. Iyer, M/s. Parle Biscuits Pvt. Ltd. Vs. The Additional Commissioner of CGST & C.Ex. reported as 2021 (5) TMI 906 – CESTAT NEW DELHI. Therefore, it is her prayer that the Cenvat credit cannot be denied on the Cenvat credit distributed by the ISD.

5. On the other hand, learned Authorized Representative supported the impugned order and submitted that the appellant has not provided the calculation sheet for reversal of Cevat credit, the same is required to be verified by the adjudicating authority. With regard to denial of Cenvat credit on account of not mentioning the invoice number on invoice, he agreed that invoice provided by the appellant was bearing invoice number, therefore, he did not disputed the availment of the said Cenvat credit of Rs.32,149/-. With regard to denial of Cenvat credit of Rs.10,03,635/-, it is his contention that as per Rule 7 of the Cenvat Credit Rules, 2004, the input service distributor shall distribute the Cenvat credit in respect of service tax paid on input services to its manufacturing units or units providing output service or an outsource manufacturing units subject to the conditions and conditions states that Cenvat credit can be distributed only to such units to which the input services attributable. Therefore, the product manufactured by the appellant are not whole of the products for which the advertisement or marketing and promotional expenses incurred by the Head Office.

6. Heard both sides and considered their submissions.

7. I find that in this case main denial of the Cenvat credit of Rs.10,03,635/- on

 

the basis of ISD invoices issued to the appellant for promotional and marketing expenses alleging that the said promotional and marketing expenses are not wholly for the product manufactured by the appellant. I find that the said issue has been examined by the Larger Bench of this Tribunal and the penalty in the case of M/s. Krishna Food Products(supra)wherein this Tribunal observed as under:

32. It also needs to be remembered that CENVAT credit scheme seeks to avoid cascading effect, as would be clear from the press release dated 12.08.2004 issued by the Press Information Bureau, Government of India Ministry of Finance, relating to the draft CENVAT credit rules. The relevant portion is reproduced below:

“(iii) In principle, credit of tax on those taxable services would be allowed that go to form a part of the assessable value on which excise duty is charged. This would include certain services which are received prior to commencement of manufacture but the value of which gets absorbed in the value of goods. As regards services received after the clearance of the goods from the factory, the credit would be extended on services received upto the stage of place of removal (as per section 4 of Central Excise Act). In addition to this, services like advertising, market research etc. which are not directly related to manufacture but are related to the sale of manufactured goods would also be permitted for credit.”

33. A reading of the aforesaid press release shows that the intention behind the framing of the Credit Rules was to allow credit of taxes paid on all services, which form part of the assessable value. Thus, advertisement, market research, sales promotion and marketing, of which credit has been distributed by Parle to the appellant and which services have also been specifically referred to in the press release, should be allowed.

34. According to the Department Parle, which has its own manufacturing units and also operates through contract manufactures, can distribute credits to its own units but cannot distribute credits to contract manufacturers who manufacture the goods for and on behalf of Parle though they operate on identical basis as the units of Parle. The interpretation put by the Department clearly seeks to dilute the spirit behind the CENVAT Rules and the Registration Exemption Notification. The whole purpose of CENVAT credit is to capture all costs so as to evade the cascading effect of duties and taxes.

35. A narrow and a literal interpretation of the phase its manufacturing units should, therefore, be avoided, more particularly when the Registration Exemption Notification provides for authorisation for manufacture of goods on behalf of the principal manufacturer. There appears to be no good reason as to why CENVAT credits should not be allowed to be distributed to a job worker in the facts and circumstances of the present case.

36. In this connection reliance can be placed on the decision of the Karnataka

 

High Court in CCE vs. Millipore India Pvt. Ltd.15, wherein it was held that if the cost of various services availed forms part of the assessable value of the goods manufactured and sold, there is no reason to deny CENVAT credit of duty and taxes paid on various inputs/ input services availed. The relevant portion of the judgment is reproduced below:

“7.5 The principle of law that the services which form a part of the assessable value on which excise duty is discharged, would be available as Cenvat credit has also been accepted by the Hon?ble Karnataka High Court in the Case of CCE v. Milipore India P. Ltd. reported on 2012 (26) S.T.R. 514 wherein, it was held that if service tax is paid in respect of any of the service which for a part of the cost of the final product, certainly the assessee would be entitled to Cenvat credit of the tax so paid. In the appellant?s own case this Tribunal has in its Order No. A/225/14/EB/C-II, dated 3-3-2014 [2014 (36) S.T.R. 467 (Tribunal)] held that if the cost of various services availed if it forms part of the assessable value of the goods manufactured and sold by the appellant, there was no reason to deny Cenvat credit of the duty/taxes paid on various inputs/input services availed, for undertaking the business operations. The ratio laid down by the Hon?ble Tribunal has been accepted by the Revenue and no appeal has been filed against the same. 8.1 It can be seen from the above reproduced relevant paragraphs from the judgment of the Hon?ble High Court the ratio is very clear inasmuch as the Cenvat credit has to be allowed in respect of the service tax which has been paid and which forms a part of the value of the finished goods on which excise duty is charged.”

(emphasis supplied)

37. In the present case the appellant is paying duty on the sale price fixed by the principal, which includes all costs including sales promotions and marketing.

8. Relying on the decision of M/s. Krishna Food Products(supra), I hold that appellant is entitled to take Cenvat credit of Rs.10,03,635/-. Therefore, the said Cenvat credit is allowed.

9. With regard to availment of Cenvat credit of Rs.32,149/-, the appellant has produced the invoice bearing invoice number and the learned Authorized Representative also admitted that invoice number mentioned in the invoice, therefore, the said Cenvat credit is correctly taken by the appellant. Accordingly, Cenvat credit of Rs.32,149/- is allowed to the appellant.

10. With regard to availment of Cenvat credit on packing material of Rs.39,159/-, it is the contention of the appellant that they have reversed proportionate Cenvat credit attributable to exempted final product and produce a table thereof. I hold that the reversal of proportionate Cenvat credit is sufficient for the appellant to avail Cenvat credit of Rs.39,159/-. If there is any discrepancy in the availment of Cenvat credit, the adjudicating authority shall verify from the records and if some calculation error is there, the appellant shall reverse the said proportionate Cenvat credit. In view of this, I hold that the appellant is entitled

 

to take Cenvat of Rs.39,159/- also if there is no calculation error found by the adjudicating authority.

11. I hold that in the facts and circumstances of the case, no penalty is imposable on the appellant.

12. Accordingly, the appeal is disposed of.

[Dictated and pronounced in the open Court]

 