CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.IV

EXCISE APPEAL NO. 50816/2021

[Arising out of Order-in-Appeal No. 33(SM)/CE/JPR/2021 dated 18.02.2021 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur]

HINDUSTAN COCA COLA BEVERAGES PVT LTD.
SP 39-40, RIICO Industrial Area,
Kaladera, Teh-Chomu, Jaipur — **APPELLANT**

Vs.

COMMISSIONER, CENTRAL EXCISE & CGST, JAIPUR I — **RESPONDENT**

APPEARANCE:

Shri Mrinal Bharat Ram, Advocate for the Appellant
Ms Tamana Alam, Authorised Representative for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: January 31, 2022
DATE OF DECISION: 07-03- 2022

FINAL ORDER No. 50216 /2022

PER RACHNA GUPTA

The appellant herein is involved in manufacturing of water including mineral water and aerated water and was also availing CENVAT Credit facility on inputs, capital goods, and input services under the CENVAT Credit Rules 2004 (hereinafter refer to as CCR, 2004). During the course of audit and on verification of

the sales ledger, it was observed that the appellants had purchased capital goods valued at Rs. 26,72,414/- vide invoice dated 24.03.2004. The said capital goods were cleared by them on declaring the value of Rs.6,14,322/- vide invoice dated 27.04.2017 to its another unit i.e. M/s Hindustan Coca Cola Beverages Pvt. Ltd., Dasna Hapur (appellants unit is in Jaipur). The Department observed that the appellant has not paid the amount equal to the duty leviable on transaction value on the clearance of capital goods, as per proviso to sub rule 5A (a) (II) of Rule 3 of CCR, 2004. Accordingly Show Cause Notice bearing number 239 dated 9.5.2019 was served upon the appellant proposing the recovery of an amount of Rs.75,930/- along with interest and proportionate penalty. The said proposal was initially confirmed vide Order-in-Original No. 04/2019-20 dated 30.11.2019. The appeal thereof was rejected vide Order-in-Appeal No. 33/2021 dated 18.02.2021. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Shri Mrinal Bharat Ram, learned Counsel for the Appellant and Ms Tamana Alam, learned Authorised Representative for the Department.

3. Learned Counsel for the appellant has mentioned that they had purchased a generator set in the year 2004 which was used by them at their Jaipur plant. After 12 years of its use, since the Jaipur plant got closed that the said generator was shifted to another plant of appellant in Hapur. As such, the transfer was nothing but a stock transfer of the said capital goods. Rule 3(5) A (a) of CCR, 2004 is mentioned to not to be applicable to the given facts and circumstances. It is emphasised that for the applicability of said Rule, the value in question is to be the transaction value. Section 4 D of Central Excise Act 1944 defines transaction value which is the value involved during the transaction of sale. Since in the present case, the capital good was transferred from one unit of

the appellant to its another unit, there is no question of sale thereof. The value of Rs. 6,14,322/- as has been assigned during the said stock transfer is mentioned to be the value as required to be notionally affixed in terms of accounting standards. Hence, same cannot be considered as the transaction value. The findings of the Adjudicating Authority Below considering the said value as transaction value and applicability of proviso to aforesaid Rule are alleged to be wrong. It is further submitted that the extended period of limitation has wrongly been invoked by the department. There is no question of any suppression of facts nor of any malafide intent. Hence, the penalty has also been wrongly imposed. The order is accordingly proposed to be set aside and appeal is prayed to be allowed.

4. While rebutting the submissions, learned Departmental Representative has laid emphasis upon the findings of Commissioner (Appeals) in para 8.1 of the Order under challenge which reads as follows:

> "I find that the assessee has cleared used capital goods after 10 years to other unit, therefore, as per calculation @ 2.5% for each quarter, the payable amount is zero and as per transaction value declared in sale documents i.e. Rs. 6,14,322/-, the payable amount is Rs. 75,930/- equal to the duty leviable on the transaction value of the capital goods at the time of clearance of capital goods from the factory premises. Here, the amount so calculated @ 2.5% i.e. zero is less than the amount of Rs. 75,930/- equal to the duty leviable on transaction value. Therefore, I find that the assessee was required to pay an amount of Rs.75,930/- equal to the duty leviable on transaction value as per proviso to sub-rule 5A (a) (ii) of Rule 3 of the CENVAT Credit Rules, 2004."

Appeal is accordingly prayed to be dismissed.

5. After hearing both the parties, the rival contentions and perusing the record of the impugned appeal, it is held as follows:-

The moot controversy to the adjudication is

whether Rule 3(5A)(a) of the CCR, 2004 is applicable to the impugned transfer of Generator set after use by the appellant to its sister concern where the value of Rs.6,14,322/- has been assigned to that transfer.

To appreciate, it is foremost to look into the Rule which reads as under:

"3[(5A) (a) If the capital goods, on which CENVAT credit has been taken, are removed after being used, the manufacturer or provider of output services shall pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of taking the CENVAT Credit, namely :-

(i) for computers and computer peripherals :

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @ 5%
for each quarter in the fourth and fifth year @ 1%

(ii) for capital goods, other than computers and computer peripherals @ 2.5% for each quarter :

Provided that if the amount so calculated is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value."

6. The manufacturer buys the capital goods in order to use it for the manufacture of final products. The manufacturer avails the credit of excise duty on such inputs / capital goods which are utilised while making the final product as per Rule 4 of CCR, 2004. In manufacturing industry, it is a common practice to remove the goods (inputs /capital goods) from the factory place either as such or after use. It is in the later case that Rule 3(5A)(a) of CCR, 2004 , comes into picture. When the inputs/ capital goods are no longer required by the manufacturer, the manufacturer disposes of them.

7. In the present case, apparently and admittedly it is not the case of the appellant because the appellant has transferred the capital goods/ generator set from one of its unit to its another unit. If such a generator set would have been cleared by the appellant to any other unit, appellant definitely would have to reverse the proportionate credit on the depreciated value after deducting 2.5% of credit for each quarter or part of the use of machine from the date of taking of such credit as is apparent from Rule 3 as quoted above. Also the proviso to above said Rule, as quoted above provides that if the amount so calculated by the above method is less than the amount equal to the duty leviable on transaction value, the amount to be paid shall be equal to the duty leviable on transaction value.

8. As emphasised by the learned Counsel, the transaction value provided under section 4(3) (d) of Central Excise Act, 1944 reads as follows:

> d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

9. Learned Counsel also emphasised that since the goods/ generator set was not sold by the appellant but was transferred to its own unit, the calculation of the amount on the value mentioned in the invoice is not required as the same is not for sale, but is stock transfer of the goods. To my opinion, the said submission is not acceptable as apparently and admittedly the appellant has put up a price in the invoice i.e. Rs. 6,14,322/- while transferring the said generator set to its Dasna plant. Whether or not, as

such transfer is not a sale, we have to look into the definition of sale as given in section 2 H of Central Excise Act, 1944. It reads as follows:

> "(h) "sale" and "purchase", with their grammatical variations and cognate expressions, mean any transfer of the possession of goods by one person to another in the ordinary course of trade or business for cash or deferred payment or other valuable consideration;"

The provision makes it clear that the transfer of possession of goods is the essence of sale and transfer of goods between two individuals members takes place during the transfer of goods. Applying the same to the present case it is clear that the possession of the generator set has been transferred from one person to another and from one place to another for cash. The definition don't exempts the transfer between two sister units.

10. Further the appearance of word 'sale' in Rule 9 ad 10 of Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000 dealing with the value of finished goods cleared to related units recognised the clearance to related unit as sale. The adjustment of accounts in respective unit becomes consideration received by the recipient and accordingly the entire process of transfer of the operation of goods is a transaction of sales and the values as mentioned in the invoice becomes the transaction value.

11. The above discussion is sufficient to hold that the above question of adjudication stands answered in affirmative i.e. Rule 3(5A) (a) the proviso thereof is applicable to the impugned transaction of the generator set after use by the appellant from one unit to another. Since the appellant has given the value of Rs. 6,14,322/- in the invoice while making the said transfer, I am of the opinion that the said value has to be considered for calculating the reversal amount.

In view of these discussion, I do not find any infirmity in the findings in para 8.1 of order under challenge.

12. Coming to the plea of show cause notice being barred by time, no doubt the Commissioner (Appeals) has been silent as far as this issue is concerned. But from the above discussion, it is clear that the appellant has tried to mislead on the pretext of stock transfer. Such misleading has benefitted him evading the amount of Rs. 7,15,930/- for which he would have been liable being the amount equal to the duty leviable on the transaction value on clearance of capital goods . The plea of the learned Counsel that it was an interpretational error is not acceptable. It is a settled law that what is stated in the plain language in the statute has to be understood as it is. It is not permissible to assume any different intention or a different governing purpose than what has been mentioned in the statute. For the purpose, I rely upon the decision of Tribunal Kolkata in the case of **Seven Star Steels Ltd. vs. CCE Kolkata** as was passed in Appeal No. **ST/21/2011 dated 7.12.2012**. With these observations I am of opinion that no error has been committed by the Department while invoking the extended period of limitation. Penalty has also been rightly imposed.

13. As a result of entire above discussions, the order under challenge is hereby upheld. Consequent thereto appeal stands dismissed.

(pronounced in the open court on 07-03-2022)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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