

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH : COURT NO. 3

EXCISE Appeal No. 12858 of 2018-SM

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEALS-PS-191-2018-19 dated 31.07.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Sunrise Containers Limited

...Appellant

(now Tpac Packaging India Pvt Ltd.) Survey No. 45/10,
Dehri Umbergaon Station Road,
UMBERGAON
GUJARAT

VERSUS

C.C.E. & S.T.-Surat-i

...Respondent

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT- 395001

APPEARANCE:

Present For the Appellant : Shri S.J. Vyas, Advocate

Present For the Respondent : Shri H.K. Jain, Assistant Commissioner (AR)

CORAM:

HON'BLE MEMBER (JUDICIAL) , RAMESH NAIR

FINAL ORDER NO. A/12366 / 2021

DATE OF HEARING: 02.06.2021

DATE OF DECISION: **22.09.2021**

RAMESH NAIR

The brief facts of the case are that the appellant is engaged in the manufacture of Pet preforms, jars, containers with caps falling under chapter heading 39239090, 39233090, 39235010 of Central Excise Tariff Act, 1985. They are also availing Cenvat Credit in respect of duty paid inputs, input services, as well as capital goods under the Cenvat Credit Rules, 2004. During course of audit under EA-2000 by the Central Excise Audit officers, on verification of the Cenvat credit records maintained by the appellant it was noticed that they had availed Cenvat Credit of Service Tax Rs. 24,19,434/- paid on legal consultancy services under reverse charge mechanism. It was observed that the bills for legal consultancy services were issued by advocate Shri Murari B. Madekar to M/s Sunrise Containers Pvt. Ltd., Umbergaon. The bills were raised for the services given in a legal case of Distiller's Association of Maharashtra vs. State of Maharashtra and ors. On enquiry from the appellant they had informed that there was one case filed by the Distiller's Association of Maharashtra against State of Maharashtra in the High Court, Mumbai vide WP no. 557 of 2016 and M/s Sunrise Containers Pvt. Ltd. is one of the

members of the said Distiller's Association of Maharashtra. The case of the department is that since the legal case for which the legal services of advocate was provided, it is to Distiller's Association of Maharashtra and not to M/s Sunrise Containers Pvt. Ltd. exclusively because they are only one of the members of the said Distiller's Association of Maharashtra. It was further observed that the service does not fall under 'input services' given under Rule 2(I) of Cenvat Credit Rules, 2004 for the reason that the legal service was not used in or in relation to manufacture of final products of the appellant. The service was used by Distiller's Association of Maharashtra in the legal case filed against the State of Maharashtra. Accordingly, the Show Cause Notice was issued proposing denial of Cenvat Credit to the appellant. The Adjudicating Authority has disallowed the Cenvat Credit vide Order in Original dated 20/03/2018. Being aggrieved by the said OIO, appellant filed an appeal before the Commissioner (Appeal). The learned Commissioner (Appeals) upheld the Order-in- Original and Appeal filed by the appellant was rejected. Therefore, the present appeal filed before this Tribunal.

2. Shri S.J. Vyas, learned counsel appearing on behalf of the appellant filed a detailed synopsis. In his argument he submits that even though the case was filed in the name of Distiller's Association of Maharashtra but bills were raised by service provider, i.e. Advocate Shri Murari B. Madekar to the appellant and the entire payment was made by the appellant only. Therefore, the appellant is a sole recipient of the service. He submits that before the Hon'ble High Court to have a better weightage instead of challenging by individual, case was filed in the name of Distiller's Association of Maharashtra. But the service was received by appellant which is evident from the bills raised by the Advocate. He placed reliance on the following judgments:

- (1) Bhoruka Extrusions Pvt. Ltd. vs C.C., C.E. & S.T.-Mysore 2021 (1) TMI138 – CESTAT Bangalore
- (2) M/S Coca Cola India Pvt. Ltd. vs The Commissioner of Central Excise, Pune-III 2009 (8) TMI 50- Bombay High Court
- (3) Ultratech Cement Limited vs. Commissioner of Central Excise & ST, Surat

3. On the other hand, Shri H.K. Jain, learned Assistant Commissioner (Authorised Representative) appearing on behalf of the Revenue reiterated the findings of the impugned order. He submits that since the case was admittedly filed by Distiller's Association of Maharashtra on behalf of the members of the association, the appellant is not the service recipient but it is the association which is the service recipient. Therefore, merely issuance of invoice in the name of appellant has no help to the appellant.

4. I have carefully considered the submission made by both the sides and perused the records. I find that there is no dispute that the legal case was filed by the Distiller's Association of Maharashtra which consists of many member manufacturers. Therefore, the beneficiary of the outcome is not only the appellant but all the members which means that the service was availed by all the members of the association. Though the invoice was raised in the name of appellant but the services availed against the said bills has benefitted to all the members of the association. I agree with the submission of the learned counsel that even though the case was filed in the name of Distiller's Association of Maharashtra but since the bill was raised in the name of the appellant, appellant is prima facie entitled for Cenvat Credit but only to the extent of portion of services related to the appellant. In this position, the Cenvat Credit attributed to the appellant needs to be re-worked out. Therefore, entire case needs a reconsideration. As regard the issue whether legal service is an input service or otherwise, I find that legal service is directly for the case related to manufacture of the final product. Moreover, the legal service is prescribed as input service in the inclusion clause of definition of input service. Accordingly, I hold that the legal service is an admissible input service. Hence, I set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing a fresh order by taking into account my above observation.

*(Pronounced in the open court on **22.09.2021**)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

Diksha