

**2014 (4) ECS (158) (Tri. - Ahd.)**

In the Customs Excise & Service Tax Appellate Tribunal,  
West Zonal Bench, Ahmedabad

**M/s. LAO MORE BISCUITS PVT. LTD.**

V/s.

**C.C.E. & S.T., AHMEDABAD & VICE VERSA**

**Date of Hearing/ Decision: 26.09.2014**

Appeal No. E/1061,1062/2007, E/59/2010

(Arising out of OIA No. 61-62-2007-AHD-II-CE-RAJU-COMR-A- dt. 28.5.2007 & OIA No. 353-2009-AHD-II-CE-CMC-COMMR-A-AHD dated 12.10.2009 Passed by Commr. (Appeals) C. Excise & Customs, Ahmedabad)

Appearance:

None

Shri J. Nair, A.R.

For the Appellant

For the Respondent

**CORAM:**

Mr. H.K. Thakur, Hon'ble Member (Technical)

*(Order No. A/11711-11713/2014 Dated 26.09.2014)*

**“As per Rule 3(1) of the Cenvat Credit Rules, 2004 a manufacturer of dutiable excisable goods can take credit of input services received by him. In the present facts, freight is paid by M/s. Parle Products Pvt. Limited and not by the appellant. The service tax paid under the challans are reverse charge basis has thus, to be considered as service tax paid by M/s. Parle Products Pvt. Limited and not by the appellant. Cenvat credit of such service tax paid is not admissible to the appellant.” (para 3.2)**

**Per: Mr. M.V. Ravindran:**

Appeal Nos. E/1061/2007 and E/1062/2007 are filed by appellant and Appeal No. E/59/2010 is filed by the Revenue.

2. None appeared on behalf of the appellant when the appeals were called for hearing. There is also no adjournment request. Shri J. Nair (AR) appearing on behalf of the Revenue argued that the entire amount of freight and Service Tax is paid by M/s. Parle Products Pvt. Limited but actual payment of service tax on GTA services under challans is made in the name of the appellant which is not permissible as per the Cenvat Credit Rules, 2004. First appellate authority allowed cenvat credit on inward freight to the job worker against which Revenue has filed appeal.

3. Heard learned AR and perused the case records. The facts of the case are available in Para 27 of the OIO No. 44 to 46/AC/060 dated 31.01.2007 in the statement of Shri Sadhuram J. Phagnani, Director of the appellant and are reproduced below:-

“27. As per the statement of Shri Sadhuram J. Phagnani, Director of M/s. Laomore Biscuits Pvt. Limited, they are manufacturing “Parle” brand biscuits on job work basis out of the raw materials supplied by M/s. Parle Products Pvt. Limited as per the agreement for processing/ job work between the assessee and M/s. Parle Products Pvt. Limited, Mumbai since 1991 and the said agreement is also renewed from time to time and as per the Sr. No. ‘f’ & ‘k’ of the said terms and conditions as mentioned in the show cause notice, the said assessee would avail CENVAT credit of Central Excise duty paid on the raw and packing material and capital goods supplied by M/s. Parle Products Pvt. Limited and the assessee would make the payment of excise duty to the Central Excise department. No other procedural formalities including payment and availment of CENVAT credit on service tax paid on services of GTA under Central Excise Act, 1944 and Central Excise Rules, 1944 is mentioned in the terms and conditions as being agreed upon by M/s. Parle Products Pvt. Limited and the assessee. He has also stated that all the inward and outward freight are paid by M/s. Parle Products Pvt. Limited to the transporters on bill basis and the service tax cheques is being sent to them by M/s. Parle Products Pvt. Limited which is deposited by the said assessee on their behalf.

- 3.2 As per Rule 3(1) of the Cenvat Credit Rules, 2004 a manufacturer of dutiable excisable goods can take credit of input services received by him. In the present facts, freight is paid by M/s. Parle Products Pvt. Limited and not by the appellant. The service tax paid under the challans on reverse charge basis has thus, to be considered as service tax paid by M/s. Parle Products Pvt. Limited and not by the appellant. Cenvat credit of such service tax paid is not admissible to the appellant. Appeals filed by the appellants are thus, required to be rejected and appeal filed by the Revenue is required to be allowed.
4. In view of the above observations appeals filed by the appellant are rejected on merits and for non-prosecution. Appeal filed by the Revenue is allowed.

(Operative part of the order pronounced in the Court)