

2020-TIOL-978-CESTAT-KOL

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA**

Appeal No. E/77576/2018

Arising out of Order-in-Appeal No. 37/HWH/XAP-50/2017-18, Dated: 08.03.2018
Passed by the Commissioner of CGST & Central Excise, Kolkata North

Date of Hearing: 20.06.2019

Date of Decision: 20.06.2019

**COMMISSIONER OF CGST AND CENTRAL EXCISE
HOWRAH, M. S. BUILDING, CUSTOMS HOUSE
15/1 STRAND ROAD, KOLKATA-700001**

Vs

**M/s HINDUSTAN NATIONAL GLASS AND INDUSTRIES LTD
2, PANCHU GOPAL BHADURI SARANI PRAVAS NAGAR RISHRA
HOOGHLY, WEST BENGAL**

Appellant Rep by: Shri A K Biswas, Suptd. (AR)

Respondent Rep by: Shri Ankit Kanodia, CA

CORAM: P K Choudhary, Member (J)

CX - Assessee is engaged in business of manufacture of "Glass & Glassware" viz. Glass Bottles - The dispute relates to the Cenvat credit availed by assessee on commission paid to its agents situated in and outside India and appointed for the sale and marketing of their goods - The issue stands already settled and decided in favour of assessee - It is also seen that the First Appellate Authority has extended the benefit on the basis of the decision of Tribunal in the case of **Essar Steel India Ltd. [2016-TIOL-520-CESTAT-AHM](#)** - No infirmity found in the impugned order and the same is hereby sustained: CESTAT

Appeal rejected

Case laws cited:

Birla Corporation Ltd. versus Commissioner of C. Ex., Lucknow [2013 (288) E.L.T. 427 (Tri.-Del.)]... Para 3

Commr. Of Cus. & S.T., Bangalore versus GE Medical System Pvt. Ltd. [2015 (40) S.T.R. 697 (Tri.-Bang.)]... Para 3

Stanley Seating versus Commissioner of Central Excise, Bangalore – III [2017 (3) G.S.T.L. 137 (Tri.-Bang.)]... Para 3

Essar Steel India Ltd. v. CCE, Surat - [2016-TIOL-520-CESTAT-AHM](#)... Para 3

CCE, Ludhiana v. Ambika Overseas - [2011-TIOL-951-HC-P&H-ST](#) ... Para 3

FINAL ORDER NO. A/75791/2019

Per: P K Choudhary:

The present appeal is filed by the Revenue against the Order-in-Appeal No37/HWH/XAP-50/2017-18 dated 08/03/2018 passed by the Commissioner of CGST & Central Excise, Kolkata-North Commissionerate Kolkata by which the Commissioner (appeals) dropped the demand of CENVAT Credit amounting to Rs.18,02,465/- on CENVAT taken on service tax charged by agents on commission during the period September 2010 to May 2015 along with interest and penalty by the respondent herein.

2. The facts of the case in brief are that the Respondent, M/s. Hindustan National Glass & Industries Limited, is engaged in the business of manufacture of "Glass & Glassware" viz. Glass Bottles classifiable under Central Excise Tariff Sub-Heading 70109000 of the Central Excise Tariff Act. The dispute in the present case relates to the Cenvat credit availed by the Respondent on commission paid to its agents situated in and outside India and appointed for the sale and marketing of their goods. Cenvat credit has been availed on the service tax paid under reverse charge mechanism (RCM) on such commission paid by the Respondents during the period Sep 2010 to May 2015. The department took the view that such CENVAT credit of Service tax does not qualify as an input service as per the definition under the Cenvat Credit Rules, 2004 and accordingly Show Cause Notice dated 23.09.2015 was issued for recovery of the said amount along with interest and penalty. The Adjudicating Authority vide the Order-in-Original rejected the plea of the Respondent and confirmed the demand along with interest and penalty. On appeal by the Respondent before the Commissioner (Appeals), the Commissioner (Appeals), allowed the appeal of the Respondent. Vide the impugned order and the OIO dated 26/02/2016 was set aside in totality. This is being challenged by the appellant department in the present appeal.

The Ld. D.R. reiterates the grounds of appeal and justifies the Orderin- Original.

3. The Respondent assessee is represented by Shri Ankit Kanodia, Ld. CA. He submitted that the definition of input services under Rule 2(l) of the Cenvat Credit Rules, 2004 explicitly states that sales promotion activities shall include the services by way of sale of dutiable goods and that the services received by commission agent falls under the category of sales promotion as without the service of such agents, the Respondent would not be able to market their goods and thus is a pre removal expense and is covered in the inclusive definition of input service. He further submitted that the adjudicating authority's allegation that no documentary evidence was put forward by the Respondent to prove that the agents were engaged in sales promotion was totally misrepresented as the Respondent had provided the agreements of with its agents. It is stated in the agreement that the agents were to be engaged in procuring sale orders and the same was also taken in to account at the time of issuance of Show Cause Notice by the department. He relied upon various case laws, in which identical question has been considered and settled in favour of the assessee viz.

- A. *Birla Corporation Ltd. versus Commissioner of C. Ex., Lucknow [2013 (288) E.L.T. 427 (Tri-Del.)]***
- B. *Commr. Of Cus. & S.T., Bangalore versus GE Medical System Pvt. Ltd. [2015 (40) S.T.R. 697 (Tri-Bang.)]***
- C. *Stanley Seating versus Commissioner of Central Excise, Bangalore – III [2017 (3) G.S.T.L. 137 (Tri-Bang.)]***
- D. *Essar Steel India Ltd. v. CCE, Surat - [2016-TIOL-520-CESTAT-AHM](#)***
- E. *CCE, Ludhiana v. Ambika Overseas - 2012 (25) S.T.R. 348 (P&H) = [2011-TIOL-951-HC-P&H-ST](#)***

4. Heard both sides and perused the appeal records.

5. The short issue that arises for consideration in the instant appeal is with respect to availment of CENVAT credit of service tax availed by the Respondent/assessee on the commission paid to various agents for procuring sale orders and marketing of the Respondent's goods. After going through the case laws cited by the Respondent, I find that the issue stands already settled and decided in favour of the Respondent assessee. It is also seen that the First Appellate Authority has extended the benefit on the basis of the decision of the Tribunal in the case of ***Essar Steel India Ltd. v. CCE, Surat – as reported in [2016-TIOL-520-CESTAT-AHM](#)***.

Further, I find that the Tribunal in the case of STANLEY SEATING Versus COMMISSIONER OF CENTRAL EXCISE, BANGALORE-III (supra) held as under:-

"6. I find that the sales commission is directly attributable to sales of the products. Any activity which amounts to sale of the products is deemed to be sales promotion activity in the normal trade parlance. The commission is paid on sales of the products/services with an intention to boost the sale of the company. In view of the same, the sales commission has a direct nexus with the sales which in turn is related to the manufacture of the products. It is to be understood that there need not be manufacture unless there is sale of product. To increase the manufacturing activity encouragement is being given for increased sales. Hence, the commission paid on sales becomes part of sales promotion resulting in increased manufacturing activity.

6.1. Further, I also find that the Hon'ble High Court of P & H in the case of Ambika Overseas cited supra have clearly held that the sale and manufacture are directly interrelated and the commission paid on sales needs to be taken as services related to sales promotion. Further, I follow the ratio of Essar Steels India Pvt. Ltd. cited supra, wherein the Division Bench of this Tribunal after discussing all the previous cases and the Rules of interpretation, has held that the 'Explanation' inserted in Rule 2(l) of CCR, 2004 by Notification No. 2/2016 is declaratory in nature and is applicable retrospectively..."

6. I find that the facts of the present case are squarely covered by the decisions of the Tribunal cited Supra and also as held by the Hon'ble High Court of Punjab & Haryana.

7. In view of the above discussions, I do not find any infirmity in the impugned order and the same is hereby sustained. The appeal filed by the appellant Department is rejected.

(Dictated and pronounced in the open court

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