IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/70314/2016-EX[DB] With
MISC Application No. E/MISC/70307/2017

(Arising out of Order-in-Original No. 23/Commissioner/HPR/2015-16 dated 28/01/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Meerut [Now Hapur])

M/s Simbhaoli Sugar Ltd. Appellant
Vs.
Commissioner of Central Excise,
Meerut-II (Now Hapur) Respondent

Appearance:
Shri Rajesh Chhibber, Advocate,
for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:
Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 14/12/2017

FINAL ORDER NO. 70579/2018

Per: Anil Choudhary

The issue in this appeal is whether, the appellant is entitled to avail Cenvat credit of Service Tax on commission paid to sales commission agent who causes sale of Sugar & Molasses, manufactured by the appellants.

2. Cenvat credit has sought to be denied to the appellant relying on the decision of Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise, Ahmedabad-II Versus Cadila Healthcare Ltd. reported at 2013 (30) S.T.R. 3 (Gujarat) wherein it has been held that such commission agents are not engaged in the activity of sales promotion. The said judgment has been examined by this Tribunal in the case of Essar Steel India Ltd. Versus Commissioner of Central Excise & Service Tax, Surat-I reported at 2016 (335) E.L.T. 660 (Tri. – Ahmedabad) after examining the issue of sales promotion activity, as per Section 65(19) of the Finance Act, 1994 which defines the Business Auxiliary Service. While examining the definition of Business Auxiliary Service, where the agent is engaged in either promotion or marketing or where sale of goods produced or provided by or belonging to the appellant, the Hon'ble High Court has considered the issue of sales promotion and has not considered the issue of marketing or sale of goods and this Tribunal has examined that issue in the case of Essar Steel India Ltd. (supra) wherein it has been held that the assessee is entitled to avail Cenvat credit for commission paid to the commission agent who effected the sale of goods manufactured by the appellant. Further, I find that Hon'ble High Court of Punjab & Haryana in the case of Commissioner of Central Excise, Ludhiana Versus Ambika Overseas reported at 2011 (07) LCX 0196 has held that Cenvat credit on service tax paid to selling agent for sale of goods is admissible as Cenvat credit. Therefore, as there are contrary judgments,

in that circumstance without relying on either of the judgment of the Hon’ble High Courts, we decide the issue independently in the light of the decision of this Tribunal in the case of Maheshwari Solvent Extraction Ltd. Versus Commissioner of Central Excise, Nagpur reported at 2014 (299) E.L.T. 116 (Tri. – Mumbai) wherein it has been held that if there are contrary view of the Apex Court, in that circumstance the Adjudicating Authority is independent to take any view on merits of the case. Therefore, we are taking independent view and hold that appellants are entitled to avail Cenvat credit on commission paid to the selling agent for selling the goods in terms of Rule 2(l) of the Cenvat Credit Rules, 2004.

3. In view of the above terms, impugned order is set aside and the appeal is allowed with consequential relief, if any. Miscellaneous Application also stands disposed of.

(Dictated & Pronounced in Court)

Sd/- Sd/-

(Anil G. Shakkarwar)
Member (Technical) (Anil Choudhary)
Member (Judicial)Ansari

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Ex. Appeal No. 70314/16 With
MISC Application 70307/17