CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.71197 of 2018-EX[SM]

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1603-1604-17-18 dated 11/01/2018 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida)

M/s Merino Industries Ltd., ...**Appellant**

(Village-Achheja, PO-Hapur)

VERSUS

Commissioner of Central Excise, ...**Respondent**

(Noida)

APPEARANCE:

Written submission, for the Appellant
Shri Shiv Pratap Singh, Authorised Representative for the Respondent

CORAM: HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-71970 / 2019

DATE OF HEARING : 05 December, 2019
DATE OF PRONOUNCEMENT : 09 December, 2019

PER: ANIL G. SHAKKARWAR

The appellant have submitted written submission. The said written submissions were served to revenue on the last date of hearing. Today revenue have also submitted their written submissions.

2. Brief facts of the case are that the appellant are engaged in the manufacture. They availed Cenvat credit of Rs.1,17,583/- of service tax paid on tour packages provided to their dealers. It

appeared to revenue that tour packages provided to dealers had nothing to do with the sales promotion and therefore, Cenvat credit of service tax paid on tour packages to dealers was not admissible as Cenvat credit of the appellant. The Original Adjudicating Authority confirmed the demand and imposed equal penalty. The said order of the Original Adjudicating Authority was upheld by learned Commissioner (Appeals) through the impugned order. Aggrieved by the said order, appellant are before this Tribunal.

3. The appellant had relied upon the decision of this Tribunal in the case of M/s Simbhaoli Sugar Ltd. Vs Commissioner of Central Excise, Meerut-ii reported at 2018 (363) ELT 1172 (Tri.-All.). It was submitted by the appellant that learned Commissioner (Appeals) has relied upon the ruling by Hon'ble Gujarat High Court in the case of Gujarat State Fertilizers & Chemicals Ltd. reported at 2016 (041) STR 0794 (Guj.). The said ruling is not applicable in the present case because Hon'ble Gujarat High Court had only examined the issue of availability of credit of service tax paid to sales agents. However, in the present case there are no sales agents.

4. Revenue through their written submissions have submitted that impugned order is sustainable.

5. I have carefully gone through the submissions from both the sides and perused the records. I have also gone through the ruling by Hon'ble Gujarat High Court in the case of Gujarat State

Fertilizers & Chemicals Ltd. (supra). I note that Hon'ble Gujarat High Court in the said case had examined the particular agreement and it was clear that as per the said agreement the agents were appointed as stockiest. I note that in the present case the tour packages were arranged for dealers. I further note that this Tribunal in the case of M/s Simbhaoli Sugar Ltd. (supra) have held that if commission is paid to sales commission agent for effecting sale of goods manufactured by the assessee then service tax paid on such commission would be available as input service credit to the manufacturer. I note that it was possible for the appellant to pay in cash expenses for tour. Instead they have provided them tour packages. Therefore, the said tour packages can be considered as dealer's commission. Therefore, Cenvat credit of service tax paid on tour packages are admissible as Cenvat credit in the present case.

5. I, therefore, set aside the impugned order and allow the appeal.

(Pronounced in open court on- 09 December, 2019)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

akp