FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 29/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71069/2016-SM[BR] dated 18/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1	E/Stay/70398/2016	E/70758/2016	**Commissioner of CUSTOMS-Meerut-ii** OPPOSITE SHAHEED SMARAK, DELHI ROAD...BHANSALI GROUND,MEERUT, UTTAR PRADESH
			Name and Address of Respondent
2			DWARIKESH SUGAR INDUSTRIES LTD DWARIKESH NAGAR,BUNDAKI,, BIJNORE ,UP

Copy To

3 Advocate(s) / Consultant(s): SH AALOK ARORA,ADV
82- MISSION COMPOUND
SAHARANPUR, UP

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
12 The ICFAI society, 52, Nagarjuna Hill,Panjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

5-12-16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

APPEAL No. E/70758/2016-EX[SM] With
Stay Application No. E/Stay/70398/2016

(Arising out of Order-in-Appeal No. HPU/EXCUS/000/APPL-I/30/2016-17 dated 25/04/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

For approval and signature:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Commissioner of Central Excise & Service Tax, Meerut-II — **Appellant**

Vs.

M/s Dwarikesh Sugar Industries Ltd. — **Respondent**

Appearance:

Shri D.K. Deb, Assistant Commissioner, (AR), for Appellant
Shri Aalok Arora, Advocate, for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 18/11/2016

FINAL ORDER NO. 71069/2016

Per: Anil Choudhary

The present appeal is filed by the Revenue – Commissioner of Central Excise & Service Tax, Meerut-II, against Order-in-Appeal No. HPU/EXCUS/000/APPL-I/30/2016-17 dated 25/04/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut. The issue in this appeal is whether the respondent assessee is entitled to Cenvat credit on sales promotion expenses incurred by them during the period 2009-10 to 2013-14.

2. The appellant is a manufacturer of excisable goods, namely, Sugar & Molasses falling under Chapter heading No. 17011190 & 17031100 respectively. The Show Cause Notice was issued dated 15/12/2014, as pursuant to Audit, Revenue observed from scrutiny of Balance Sheet/Ledger that the assessee was availing Cenvat credit of Service tax on commission paid to various Commission Agents for sale of their final products during the Financial Year 2012-13 & 2013-14 (up to August 2014). The Superintendent vide letter dated 03/04/2014 directed the assessee to comply with the audit report and deposit the particulars. The assessee vide their letter dated 29/05/2014 & 26/08/2014 showed their disagreement with the audit objection. Further, on being asked, the respondent assessee furnished details of commission paid to Commission Agents for the period

2009-10 (up to August 2014). It appeared to Revenue that the payments made by way of Sales commission to Commission Agents do not qualify as input service for taking Cenvat credit in terms of Rule 2(l) of Cenvat Credit Rules, 2004 and accordingly the same appeared to be inadmissible. Invoking the larger period of limitation the appellant was required to show cause as to why Cenvat credit amounting to Rs.46,12,034/- availed on Service tax paid on commission and brokerage paid to dealer/agent/broker for sale of their finished products should not be demanded and recovered from them under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to Section 11A(1) & 11A(4) of Central Excise Act, 1944 along with interest. Further, penalty was also proposed under Rule 15 of Cenvat Credit Rules, 2004 read section 11AC of Central Excise Act, 1944.

3. The Show Cause Notice was adjudicated on contest and the proposed demand was confirmed by the Joint Commissioner along with interest and equal penalty was imposed under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who have been pleased to allow the appeal of the respondent assessee setting aside the Order-in Original relying on Notification No. 2/2016-CE (N.T.) dated 03/02/2016 wherein, in exercise of powers, the Cenvat

Credit Rules, 2004 were amended and vide Rule 2 of the amendment rules, in Rule 2(l) after Sub-clause C explanation was inserted, namely: -

"Explanation – For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis."

The ld. Commissioner (Appeals) has observed that from the expression inserted in Rule 2(l) of Cenvat Credit Rules, 2004. It is clear, now, that sales promotion includes services by way of sale of dutiable goods on commission basis. Since this insertion has been a beneficial grant and not curtailing it, there cannot be presumption of its prospective application and the explanation has been issued to clear the ambiguity regarding this issue. Reliance was placed on the ruling of this Tribunal in the case of Needle Industries (India) Ltd *Versus* Commissioner of Central Excise, Salem reported at 2016 (41) S.T.R. 641 wherein it had been observed: –

"Subordinate legislation commonly amended by substitution, if such substitution not causing any anomaly – instant case, since substitution has a beneficial grant and not curtailing it, there cannot be presumption of its prospective application – benefit of increased ceiling available *Ab-initio* from retrospective effect."

The ld. Commissioner also took notice that the respondent assessee had incurred the commission expenses or sales promotion expenses paid to Commission Agents for procuring orders and promoting sales of sugar and the same have been debited under sale promotion account.

4. The ld. A.R. relies on the grounds of appeal of the Revenue. He, further, states that the explanation will have prospective effect and not retrospective effect. Accordingly, for the period prior to 03/02/2016 being the date of Notification No. 2/2016-CE (N.T.) the respondent assessee have been rightly denied the benefit of Cenvat credit on sales promotion expenses and prays for setting aside the Order-in-Appeal.

5. The ld. advocate for the respondent assessee have relied on the Order-in-Appeal. He, further, states that that is no error or impropriety in the findings of the ld. Commissioner (Appeals). He, further, relies on the ruling of this Tribunal in the case of Essar Steel India Ltd *Versus* Commissioner of Central Excise & Service Tax, Surat-I reported at 2016 (335) E..T. 660 (Tri. – Ahmedabad) wherein interpreting the retrospective effect of the inclusion of explanation, vide Notification NO. 2/2016-CE (N.T.) dated 03/02/2016 the Division Bench have observed – an explanation inserted in Section/Rules, is generally to explain the meaning of the words contained in the Section/Rules. The purpose of explanation is to explain the meaning and content of the Section/Rule. Sometimes, the explanation may be inserted to

clarify a doubtful point of law, which would be effective retrospectively.

6. Having considered the rival contentions and after perusing the impugned order I find that the ld. Commissioner (Appeals) have rightly allowed the Cenvat credit on the sales promotion expenses or sales commission expenses incurred by the respondent. On a plain reading of Rule 2(l) of Cenvat Credit Rules, 2004, it is evident that in case of a manufacture, 'input service' means any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to............ sales promotion, market-research,...........

7. Thus, under the facts and circumstances of this appeal it is evident that there can be no removal of the final products unless the assessee has sales orders in their hands. Thus, I hold that the sales commission/sales promotion expenses incurred by the appellant is expenditure or input service incurred or received prior to the removal of their final product. Accordingly, the said expenditure is allowable as an input service. Accordingly, I also hold in view of the sales promotion expenses duly recorded in the Books of Accounts maintained in the ordinary course of business, as found by

the Revenue, the extended period of limitation is not applicable.

7. Thus, the appeal of the Revenue is dismissed. The respondent assessee will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

Sd/-

(Anil Choudhary)
Member (Judicial)

Ansari

प्रमाणित प्रति / Certified True Copy

38, M. G. MARG, ALLAHABAD-211001