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: 09/08/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70763-70764/2017-SM[BR] dated 14/07/2017

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/MISC/70154/2017	E/70295/2017	**Uttam Sugar Mills Ltd** Khaikheri MUZAFFARNAGAR UP
2	E/MISC/70155/2017	E/70296/2017	**The General Manager** C/o Uttam Sugar Mills Ltd Khaikheri MUZAFFARNAGAR UP
			Name and Address of Respondent
3			C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005
4			C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

K.VAISH &CO
KRISHNA JANKI PALACE,35-
C,RAMPUR
GARDEN,BAREILLY,
U.P.- 243001

6 Bar Association. CESTAT. Allahabad

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

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

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

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

11 LAWCRUX Advisors Pvt. Ltd., LAW House. 1-8, Sector-10. Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

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

MISC Application Nos. : E/MISC/70154 & 70155/2017
APPEAL Nos. : E/70295 & 70296/2017 – EX[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/Appeal-I/348 & 347/ 2016-17 dated 20/02/17 passed by Commissioner of Central Excise (Appeals-I) Meerut)

1. **Uttam Sugar Mills Ltd.**
2. **The General Manager of Uttam Sugar Mills Ltd.** **Appellants**

Vs.

Commissioner of Central Excise, Meerut **Respondent**

Appearance:

Shri Kapil Vaish (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (AC), AR for Respondent

CORAM:

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

Date of Hearing : 14/07/2017
Date of Decision : 14/07/2017

FINAL ORDER NO- 70763-70764/2017

Per: Anil Choudhary

The issue in these appeals is denial of Cenvat credit of service tax on Sales Commission paid to sugar selling agents.

2. The brief facts are that during the course of audit of the appellant's accounts and record by the Department, it was observed that the appellant have availed Cenvat credit of service tax paid on Sales Commission to sugar selling agent's. The same appeared to be not an input

service under the definition as per Rule 2(l) of the CCR, 2004. Accordingly, for the period June 2007 to December 2010 show cause notice dated 04/10/2011 was issued for disallowance of Cenvat credit Rs. 10,18,345/- and vide show cause notice dated 20/08/2015 for the period February 2012 to March 2015, it was proposed to disallow Cenvat credit Rs. 15,70,005/-.

3. In the impugned order-in-Appeal, the Learned Commissioner (appeals) of dismissed the appeal on limitation, stating that the appeals were received in his office on 2nd May, 2016 whereas the impugned order was served on the appellant on 2nd March 2016. Thus, the appeals have been filed on the 61st day from the date of communication. On perusal of records I find that no defect notice or show cause was issue to the appellant that their appeal is barred by limitation, so as to give them opportunity to move an application for condonation. Further, I find that the computation of the period of limitation by the Learned Commissioner appeal is defective. The appeals are dispatched by the appellant on 29/04/2016 from Noida to the office of the Learned Commissioner (Appeals) to Meerut office by Courier. The said courier delivered the appeals in the office of the Learned Commissioner (Appeals) on 2nd May, 2016 as 1st

May, 2016 was Sunday. Accordingly, in view of the 1st May, 2016 being a Sunday, the said date was required to be excluded for the purpose of counting limitation. Accordingly, I find that the dismissal of appeal on the ground of limitation is bad.

4. Heard the parties on merits.

5. I find that the issue herein is squarely covered by the preceding ruling of this Bench, Final Order No. 71069/2016 dated 18/11/2016 in appeal number E/70758/2016 – SM, wherein under similar facts and circumstances, it was held that Cenvat credit on the sales promotion expenses or sales commission expenses incurred by the assessee are allowable. On a plain reading of Rule 2(l) of the CCR, 2004, it is evident that in the case of a manufacturer 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 etc. Accordingly I hold that the appellant herein is entitled to Cenvat credit of Sales Commission paid to sugar selling agent's as input credit under Rule 2(l) of the CCR, 2004. Accordingly the appeals are ~~is~~ allowed and the impugned order is set aside. The

appellant shall be entitled to consequently benefits in accordance with law. Misc applications also stand disposed of.

(Dictated & Pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Lks