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: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70080/2017-SM[BR] dated 13/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/52132/2015	**L H Sugar Factories Ltd** The General Manager, Civil Lines, PHILIBHIT UP 262001
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-ii OPPOSITE SHAHEED SMARAK,DELHI ROAD...BHANSALI GROUND, MEERUT, UTTAR PRADESH-

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Copy To

3Advocate(s) / Consultant(s):

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

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,Punjagutta 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

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal No. : ST/52132/2015-ST[SM]

Arising out of OIA No. HPU/EXCUSS/000/Appeals-I/121/2014-15 dated 30.01.2015 passed by Commissioner, Central Excise Appeals-I, Meerut.

L H Sugar Factories Ltd. ...APPELLANT

VERSUS

C.C.E. -Meerut-II ...RESPONDENT

APPEARANCE

Shri Kapil Vaish, C.A. for the appellant.
Shri Pawan Kumar Singh, (Supdt.) (A.R.) for the Department.

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 13.01.2017

FINAL ORDER NO. 70080/2017

Per Mr. Anil G. Shakkarwar :

The present appeal is directed against the OIA No. HPU/EXCUSS/000/Appeals-I/121/2014-15 dated 30.01.2015 passed by Commissioner, Central Excise Appeals-I, Meerut.

2. The brief facts of the case are that the appellants were engaged in the manufacture of sugar. They have been availing benefit of Cenvat credit & Service Tax paid on inputs services in terms of Cenvat Credit Rules, 2004. The appellants were availing Cenvat credit on Service Tax paid on commission and brokerage paid to their dealers/agent/brokers as Cenvat credit. It appeared to Revenue that

Service Tax paid on commission and brokerage is not admissible for availment of Cenvat credit. Therefore a show cause notice dated 17.09.2013 was issued to recover Cenvat credit of Rs. 11,41,370/- availed on Service Tax paid on commission and brokerage for the period from September, 2008 to March, 2009. The appellant contended before the Original Authority that Board Circular No. 943/4/2011-CX dated 29.04.2011 clarified at Serial No. 5 that Cenvat credit of Service Tax paid on sales commission is admissible as Cenvat credit. The Original Authority adjudicated the said show cause notice through Order-in-Original No. 19/ADC/M-II/2014-15 dated 17.07.2014 and confirmed the demand of Cenvat credit of Rs. 11,43,370/-. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Commissioner (Appeals) decided the appeal through impuqned Order-in-Appeal No. HPU/EXCUSS/000/Appeals-I/121/2014-15 dated 30.01.2015 wherein learned Commissioner (Appeals) upheld the said Order-in-Original dated 17.07.2014 and dismissed the appeal. Aggrieved by the said Order-in-Appeal, the appellant is before this Tribunal.

3. Heard the learned counsel for appellant who has submitted that under similar circumstances, the Single Member Bench of this Tribunal through Final Order No. 71069/2016 dated 18.11.2016 has allowed Cenvat credit of Service Tax paid on sales commission as Cenvat credit in the case of Commissioner of Central Excise & Service Tax, Meerut-II vs. M/s. Dwarikesh Sugar Industries Ltd.

4. Heard the learned D.R., who has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and on perusal of records, I find that the facts and circumstances of the present case are squarely covered by the facts and circumstances of the case of Commissioner of Central Excise & Service Tax, Meerut-II vs. M/s. Dwarikesh Sugar Industries Ltd. decided through Final Order No. 71069/2016 dated 18.11.2016. I find that in the said Final Order this Tribunal has held that " Cenvat credit on the sales promotion expenses or sales commission expenses incurred by the assessee are admissible as Cenvat credit". Following the precedent decision of this Tribunal, I hold that in the present case Cenvat credit of Rs. 11,43,370/- availed on Service Tax paid on commission and brokerage was admissible to the appellant as Cenvat credit. Therefore, I allow the appeal by setting aside the impugned Order-in-Appeal. The appellant shall be entitled for consequential relief as per law.

(Pronounced and dictated in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001