IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/197/2011

(Arising out of Order-in-Appeal No.438 & 439/2010 dated 28.9.2010 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Shri Ramalinga Mills Ltd. Appellant

Vs.

CCE, Madurai Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **23.08.2018**

Final Order No. **42297 / 2018**

Per Bench

The matter is being taken up for hearing pursuant to the order dated 13.4.2018 by the Hon'ble Supreme Court in Civil Appeal No. 3792 of 2018 filed by the appellant. By the said order, the Hon'ble Supreme Court has condoned the delay in filing the appeal before the Tribunal.

2. Today, when the matter came up for hearing, with the consent of both sides, the appeal is taken up for final hearing.

3. On behalf of the appellant, ld. counsel Shri M. Kannan submits that the issue in dispute relates to engagement of agents in foreign countries by the appellant for promoting, sales, securing orders. The department has taken a view that the commission paid to such foreign agents would come within the scope of commission agent and the amounts so received would therefore be exigible to service tax under Business Auxiliary Service under Section 65(19) of Finance Act, 1994; that the issue is no longer res integra; that in their own case for subsequent period, this Tribunal in a batch of appeals vide Final Order Nos. 40733 to 40755/2015 dated 24.6.2015 relying up the earlier Tribunal's order in Texyard International Vs. Commissioner of Central Excise, Trichy reported in 2015 (40) STR 322 (Tri. Chennai) had allowed the appeal in their favour.

4. On behalf of Revenue, ld. AR Shri S. Govindarajan reiterated the findings in the impugned order.

5. Heard both sides.

6. We find that the ld. counsel is correct in his assertion that the issue has already been decided in their favour by the case law relied upon by him. Even in a recent decision, this Tribunal in the case of Maxican Exports Vs. Commissioner of Central Excise, Tiruchi reported in 2018 (8) TMI 819, decided on

9.8.2018, has followed the earlier order of the Tribunal in Texyard International(supra) and allowed the appeal. In the circumstances, we find in favour of the appellant. The impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex