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

**Appeal Nos. E/111, 186 & 187/2010**

(Arising out of Order-in-Original No. LTUC/372 to 374/2009-C dated 8.12.2009 passed by the Commissioner of Central Excise, LTU, Chennai)

M/s. EID Parry (India) Ltd. — Appellant

Vs.

Commissioner of Central Excise, LTU, Chennai — Respondent

Appearance

Shri S. Muthuvenkataraman and
Ms. Minchu Mariam Punnoose, Advocates for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: **15.11.2017**

Final Order Nos. 42924-42926/2017

**Per B. Ravichandran,**

All these three appeals are involving common dispute of the same appellant and are accordingly taken up together.

2. The appellants are engaged in manufacture of sugar, molasses etc. and were registered with the department to pay central excise duty and service tax. They were availing credit of duty / taxes paid on inputs, capital goods and input services in terms of CENVAT Credit Rules, 2004. The dispute in the present appeals relate to eligibility of the appellant to avail

Customs, Excise & Service Tax Appellate Tribunal credit on input services under various categories. Proceedings were initiated against the appellant to deny and recover various input service credit; concluded in the issue of the impugned order. The original authority examined the eligibility of the appellant with reference to 42 activities claimed as input services. He held that the appellants are not eligible for credit of service tax paid on transit insurance, marine insurance, C&F agency services, subscription to associations and dinner expenses. He also imposed penalty of Rs.30,000/- under Rule 15(3) of the CENVAT Credit Rules, 2004.

3. The ld. counsel appearing for the appellants submitted that out of five input service activities, they are not contesting the impugned order on two services namely subscription to association and dinner expenses. Regarding the other three input service activities, the ld. counsel submitted that two services namely transit insurance and C&F agency service are for export of goods and these are availed before the goods are shipped out of country. For export of goods, the port of shipment is the place of removal, has been held in various decisions. He referred to the decision of Hon'ble Gujarat High Court in Commissioner Vs. Dynamic Industries Ltd. – 2014 (307) ELT 15 (Guj.). The same ratio has been followed in various decisions of the Tribunal also.

4. Regarding marine insurance on exported goods, the ld. counsel submitted that it is for safe delivery of exported goods to the port of destination. So in certain cases, they undertake

marine insurance and pay service tax on the same. This will come under overall business necessity and activity; should be rightly considered for credit prior to amendment of Rule 2(l) of CENVAT Credit Rules, 2004 in2011. He also relied on the decision of the Tribunal in Hindustan Zinc Ltd. Vs. Commissioner of Central Excise, Jaipur - 2015 (37) STR 608 (Tri. Del) to submit that insurance on plant and machinery, cash in transit, goods in transit, vehicles and computers etc. are to be treated as an activity relating to business and will be eligible for CENVAT credit. A reference was also made to the decision of the Tribunal in Govind Sugar Mills - 2015 (38) STR 68.

5. The ld. AR reiterated the findings of the original authority and submitted that facts along with the provisions of CENVAT Credit Rules, 2004 have been examined and decided by the original authority.

6. We have heard both sides and perused the appeal records.

7. The appellants are contesting the denial of credit under three input service activities. Regarding transit insurance and C&F Agency service, with reference to export goods, we note that these activities are prior to the shipment of cargo in the port in India. It is by now settled legal position that place of removal in case of export is port of shipment and as such expenses incurred on various input services prior to that shipment are eligible for credit ~~only~~ unless excluded specifically. In

the present case, we note that transit insurance and C&F Agency Service connected to export of goods which were availed prior to shipment of goods are rightly eligible for the appellant. We draw support from the case laws relied on and cited above with reference to this dispute.

8. Regarding marine insurance, we note that the appellants pleaded that the said expenses and the credit on the same is to be considered under overall business activities considering the necessity of such expenses. Reliance placed on the case law also is found to be relevant on this dispute. Since the present case is relating to the period prior to the amendment in Rule 2(l) CENVAT Credit Rules, 2004, which brought in certain restrictions regarding the credit available on business activities, we note that the said credit cannot be denied.

9. In view of the above discussions and analysis, we note that the credit on these three input service activities are rightly available to the appellant and accordingly the appeals restricting these three input services are allowed. Penalties imposed on the appellant are not sustainable and accordingly set aside.

(Dictated and pronounced in open court)

15.11.17

**(B. RAVICHANDRAN)**
Member (Technical)

Sulekha Beevi

**(SULEKHA BEEVI C.S.)**
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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