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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1418/2011 - EX[DB] Date **13/03/2012**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
THE SEKSARIA BISWAN SUGAR FACTORY LTD
THE GENERAL MANAGER, BISWAN, DISTT-SITAPUR(UP)

THE SEKSARIA BISWAN SUGAR FACTORY LTD Appellant

Vs

C.C.E. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/275/ 2012 EX[DB]** dated 12-3-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.KAPIL VAISH
B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, 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. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 1418 of 2011

[Arising out of Order-In-Appeal No.78/CE/LKO/2011, dated 17.03.2011 issued by CCE, Lucknow]

Date of Hearing / Decision : 01.03.2012.

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should 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 Departmental authorities?	Yes

M/s. Seksaria Biswan Sugar Factory Ltd. — Appellants
Vs.
Commissioner of Central Excise
Lucknow — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Appearance:
Shri Kapil Vaish, Chartered Accountant for the Appellants
Shri S.R.Meena, DR for the Respondent

FINAL **ORDER NO.** A/275 **/2012-Ex** (BR)

Per Ms. Archana Wadhwa:

Duty of Rs.32,83,102/- stands confirmed against the applicant by denying them the benefit of Modvat Credit of service tax paid on various services. In addition, penalties stands imposed upon him under various sections of Finance Act, 1994.

2. After hearing both sides, we find that the appellants are engaged in the manufacture of sugar. For sale of their final product, they availed the services of the commission agent, and were ~~are~~ paying Service Tax on the said services under the category of Business Auxiliary services. They availed the Cenvat credit of Service Tax so paid by them on the services of commission agent. Revenue is of the view that they are not entitled to avail Cenvat credit inasmuch as commission agent services cannot be considered to be eligible cenvatable services. Accordingly, proceedings were initiated against the appellants by way of issuance of show cause notice dated 01.02.10 raising demand of duty for the period February, 2005 to September, 2009. The show cause notice stand culminated into the impugned order passed by the original adjudicating authority and upheld by the Commissioner (Appeals). Hence, the present appeal.

3. The short question required to be decided is as to whether the service tax paid on commission agent services is available as Cenvat credit to the appellants by treating the same as input services in terms of Rule 2(ℓ) of Cenvat Credit Rules, 2004. The lower authorities have held that inasmuch as the said activities are post manufacturing and post clearance activities, they do not satisfy the definition of inputs services. On the other hand, it is the appellant's contention that services of commission agent are, in fact, received prior to the clearance of goods, and it is based upon the orders procured by them, the goods were cleared from their factory. As such, the Revenue's stand that the same are related to post clearance activities cannot be upheld.

In any case, submits the learned advocate that there are number of Tribunal's decisions laying down that such activities have direct nexus with the business activities of the assessee and as such have to be treated as input services.

4. We find from the impugned order of the Commissioner (Appeals) that it is accepted fact that there are different orders of the Tribunal adopting two different views. He has accepted that the Tribunal's decision in the case of CCE, Raipur vs. Bhilai Auxiliary Industries as reported in [2009 (14) STR 536 (Tri-Delhi)] holds commission agent services as eligible input services for the purpose of modvat, though he has preferred to rely upon the Single Member Bench decision in the case of Chemplast Sanmar Ltd. vs. CCE, Salem as reported in [2010 (250) ELT 46 (Tri-Chennai)] laying to the contrary.

5. We find that Tribunal's decision in the case of Bhilai Auxiliary Industries referred supra stands passed before the decision in the case of Chemplast Sanmar Ltd. The said judgement in the case of Bhilai Auxiliary Industries relies upon the Division Bench judgement of the Tribunal in the case of Metro Shoes Pvt. Ltd. vs CCE, Mumbai -I as reported in [2007 (8) STR 502] as also in the case of CCE Ludhiana vs. Abhishek Industries Ltd. as reported in [2008 (9) STR 562 (Tri-Del) and the decision in the case of Chemplast Sanmar Ltd. has not taken note of either Bhilai Auxiliary Industries decision or the Division Bench judgement in the case of Metro Shoes. We also note that there are another Division Bench judgement in the case of Lanco Industries Ltd. vs. CCE, Tirupathi as reported in [2010 (17) STR

350 (Tri-Bang.)] laying down, after taking note of the Division Bench judgement in the case of Metro Shoes that Service Tax paid on commission agent in respect of sales made through such agent is admissible for Cenvat credit. It seems that the said Division Bench judgment in the case of Lanco Industries Ltd. escaped the attention of the Single Member Bench deciding the issue in the case of Chemplast Ltd. Further, the Tribunal's decision in the case of Cadila Healthcare Ltd. vs. CCE, Ahmedabad as reported in [2010 (17) STR 134 (Tri-Ahmd.)] also held that the Foreign Commission agent service for sale promotion, are input services and credit on Service Tax paid on the same is admissible. As such, we note that there are catena of judgments laying down that the Service Tax paid on the commission agent services is available as modvat credit. Accordingly, we are of the view that the applicant has been able to make out a good prima-facie case to dispense with the condition of pre-deposit of duty and penalty.

6. Apart from the decisions as discussed above, we also take note of a recent Circular No. 943/4/2011-CX dated 29.4.2011 issued by the Board clarifying that even after the deletion of expression "activities related to business" from the definition of input services, the credit of Service Tax paid on the sales promotion activities and on the services of sales of dutiable goods on commission basis would be admissible as credit. As such, it is the contention of the learned advocate that even after the "activities related to business" stand deleted from the definition of inputs credit, as per the Board's Circular, the Service Tax paid on commission agent services would be available. However, he

clarifies that period involved in the present case is prior to the amendment to the definition of input services &, the precedent decision of the Tribunal would cover the disputed issue in his favour.

7. In view of the above, we set aside the impugned order, denying the benefit of credit and allow the appeal with consequential relief to the appellants.

(Pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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