Website : www.cestat.gov.in

Mail : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/411-412/2010-EX[DB]
E/S/415-416/2010-EX

Dated: **23/07/2012**

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

BIRLA CORPORATION LTD.
UNIT RAEBARELI CEMENT WORKS,
UPSIDC INDL. AREA, PHASE-II,
AMAWAN ROAD, RAEBARELI.

BIRLA CORPORATION LTD. (Appellant)

VS

C.C.E. LUCKNOW (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/827-828/2012-EX[DB]**, Stay Order No. **SO/1088-1089/2012** dated **10/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

2. Advocate(s) / Consultant(s):
Bipin Garg
B-1/1289,A-Vasant Kunj, New Delhi

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications 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. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 10.07.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal Nos. 411 & 412 of 2010 and
Excise Stay Nos. 415 & 416 of 2010
(Arising our of order-in-appeal No. 187-188-CE/LKO/2009 dated 06.11.2009 passed by the Commissioner (Appeals), Central Excise, Lucknow}

M/s Birla Corporation Ltd. Appellants

Vs.

CCE, Lucknow Respondent

Present Sh. Mayank Garg, Advocate for the appellants.
Present Sh. I. Baig, AR for the respondent.

Coram: **Hon'ble Mr. Justice Ajit Bharihoke, President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

STAY order No. 1088-1089/2012-Ex(BR)
FINAL ORDER NO. A/827-828/2012—Ex(BR)

Per: Rakesh Kumar (Oral)

The appellants are manufacturers of Cement. They avail cenvat credit on inputs, capital goods and input services. One of the service in respect of which cenvat credit has been taken is the service of commission agent for procuring the orders for sale of cement. In respect of this service, the appellant took cenvat credit of Rs. 1810115/- during 2004-05, 2005-06 & 2006-07 and cenvat credit of Rs. 8,94,801/- from May 2007 to June 2008. The department was of the view that this service is not covered by the definition of 'input service' and issued show cause notices for disallowing the cenvat credit, its recovery alongwith interest and also imposition of penalty. Vide order in original dated 23.04.2009 and 6.11.2009, passed by the Deputy Commissioner and Additional Commissioner respectively, the cenvat credit demands of Rs. 8,94,801/- and Rs. 18,10,115/- respectively were confirmed alongwith interest and penalties of equal amount under Rule 15(2) of the Cenvat Credit Rules, 2004 were imposed.

2. On appeal to Commissioner (Appeals) these orders of the original adjudicating authorities were upheld vide order-in-appeal No. 187-188-CE/LKO/2009 dated 06.11.2009. Against the above order of the Commissioner (Appeals), these appeals have been filed alongwith the stay applications. Though these matters are listed for hearting of stay applications only, after hearing the same for some time, we were of the view that since a short issue is involved, the appeals themselves can be taken up for final disposal. Accordingly, the requirement of pre-deposit is waived and with the consent of both the sides the matter is heard for final disposal.

3. Heard both the sides.

4. Shri Mayank Garg, Advocate the ld. Counsel for the Appellants, pleaded that the service of commission agents had been availed for procuring sales orders for the appellant's final product–cement; that the commission agents procured sales orders on commission, against which the appellant made the supplies of cement, that the service is covered by the main definition of the 'input service' as given in Rule 2(l), as the same is in respect of clearance from the place

of removal, that the same is also covered by the inclusive portion of the definition of input service, as it is an activity related to sales promotion and also activity related to manufacturing business; that in this regard he relies upon the judgements of the Tribunal in the cases of **Commissioner vs. Abhishek Industries Ltd. -2008 (9) STR 562 (Tri. Del.), Commissioner vs. Bhillai auxiliary Industries (Final Order No. 1611/2008-SM (BR) dated 10.12.2008, - CCE, Ludhiana vs. Rightway Fabrics Pvt. Ltd. -2011 (24) STR 505 (Tri. Del.) and Lanco Industries Ltd. vs. CCE, Tirupathi reported in 2010 (17) STR 350 (Tri. Bang.)** wherein the Tribunal has held that the commission agent's service is covered by the definition of 'input service' ~~cenvat credit~~ as defined under Rule 2(l) of the Cenvat Credit Rules.

5. Shri I. Baig, ld. SDR defended the impugned order and reiterated the finding of the Commissioner (Appeals) and emphasized that this service is not eligible for cenvat credit.

6. We have carefully considered the submissions made from both the sides. The point of dispute in this case is as to whether the services of commission agents for procuring sales orders received by the appellant is an input service or not for the purpose of availing cenvat credit. Though, in the order-in-original dated 27.02.2009 the Additional Commissioner has given a finding that the Commission and brokerage paid to the commission agents and brokers was the payment made for the service provided after the removal of cement from the place of removal and as such the said service does not fall within the 'input service', as defined under rule 2(l) of the Cenvat Credit Rules, we find that no basis for this finding has been given. The services of commission agent /brokers are availed for procuring the sales orders against which the manufacturer makes direct supplies to the customers and the commission agents /brokers get the commission. These

services of commission agents/ broker are as in the nature of sales promotion, an activity specifically covered in the inclusive portion in the definition of input service. This service, in our view, would also be covered by the term "activity related to business" which was also covered by the definition of 'input service' during the period of dispute. We, therefore, hold that the services, in question, are covered by the definition of 'input service'. We are supported in this view by the Tribunal's judgements in the cases of **Commissioner vs. Abhishek Industries Ltd. -2008 (9) STR 562 (Tri. Del.), Commissioner vs. Bhillai auxiliary Industries (Final Order No. 1611/2008-SM (BR) dated 10.12.2008, - CCE, Ludhiana vs. Rightway Fabrics Pvt. Ltd. -2011 (24) STR 505 (Tri. Del.) and Lanco Industries Ltd. vs. CCE, Tirupathi reported in 2010 (17) STR 350 (Tri. Bang.)** wherein it has been held that the services of commission agent for procuring sales orders for a manufacturer on commission is an activity related to business of manufacture and is covered by the definition of input service.

7. In view of the above discussions, the impugned order disallowing the cenvat credit in respect of commission agents service is not sustainable. The same is set aside. Appeals as well as stay applications are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant