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

Date of hearing/decision: 11.05.2017

**Excise Appeal No. 56601 of 2013-SM**

(Arising out of order-in-appeal No. LTU/CE/77/2012 dated 26.12.2012 passed by the Commissioner (Appeals) Central Excise, LTU, New Delhi).

M/s Simplex Engg. & Foundry Works Pvt. Limited Appellant

Vs.

CCE, New Delhi Respondent

Appearance:

Sh. H. Chawla, Advocate for the appellant
Sh. G. R. Singh, AR for the Respondent

Coram:

Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53290/2017

Per: **B. Ravichandran**:

The appellant is aggrieved by the order dated 26.12.2012 passed by the Commissioner (Appeals) Central Excise, New Delhi. The appellants were engaged in the manufacture of various excisable goods falling under Chapter 72, 73 etc. liable to Central Excise duty. They were also availing credit of duty paid on inputs and capital goods and service tax paid on input service, in terms of provisions of Cenvat Credit Rules, 2004. The dispute in the present appeal relates to eligibility of the appellant to avail credit of service tax paid on the consideration paid to their commission agent, in connection with sale of their excisable goods. Such tax paid on the tax entry "Business Auxiliary Service" was denied by the lower authorities on the ground that the said service by a commission agent is after the goods were cleared by the appellant from their factory and as such cannot be considered as input services in terms of Rule 2(l) of Cenvat Credit Rules, 2004. Accordingly, the credit of Rs.13,11,354/- was denied to the appellant. Penalty of equal amount was also imposed under Rule 15 of Cenvat Credit Rules, 2004. On appeal, the said original order was affirmed by the impugned order.

2. Ld. Counsel appearing for the appellant submitted that the commission agent appointed by them are actually helping the appellant in improving sales of their final product and such sales promotion and marketing activity is covered within the scope of input service for credit purposes. He relied on various decided cases in support of his submission.

3. Ld. AR reiterated the finding of the lower authorities.

4. I have heard both the sides and perused the appeal records.

5. The eligibility of cenvat credit of service tax paid on the activity of sales agent has been subject matter of decision by the High Court and the Tribunal on similar set of facts. In ***Birla Corporation vs. Commissioner of C. Ex. Lucknow – 2014 (35) STR 977 (Tri. Del.),*** the Tribunal applying the ratio of the Bombay High Court in the case of ***Ultratech Cement – 2010 (260) ELT 369 (Bombay)*** allowed credit on such service tax paid on work of commission agent with reference to sale of final product. Hon'ble Punjab & Haryana High Court in the case of ***CCE, Ludhiana vs. Ambika Overseas – 2012 (25) STR 348 (P&H)*** held that canvassing and procuring of orders were in relation to sales promotion and

as such are included in the definition of input service, for the assessee to claim credit of service tax paid on such activities. In fact, it is seen that the Board vide clarification dated 29.04.2011 specifically stated that activity of sales promotion is specifically allowed and on many occasions the remuneration for the same is linked to actual sale. The Board observed that reading the provisions harmoniously, it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis.

6. In view of the above discussions and analyses, I find that the denial of credit by the lower authorities is not justified. Accordingly, the impugned order is set-aside. The appeal is allowed.

(Dictated and pronounced in the open Court).

(B. Ravichandran)
Member (Technical)

Pant