IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 1.5.2017

Appeal No. E/56342 & 56344/2013-SM

(Arising out of Order-in-Appeal No. LTU/CE/Appeal/74 & 72/2012 dated 11.12.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), New Delhi)

M/s Dalmia Chini Mills Ltd. Appellant

Vs.

CCE, LTU, New Delhi Respondent

Appearance

Shri Arun Pathak, Advocate - for the appellant
Shri Prashant Shukla, Advocate

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 53170-53171/2017

Per Ashok K. Arya :

Dalmia Chini Mills Ltd. is in appeal against the Order-in-Appeal No. 74 & 72/2012 both dated 11.12.2012 whereunder Cenvat credit on the service tax paid for commission on the sugar selling agent service has been denied.

2. Both sides represented by ld. Counsels, Shri Prashant Shukla and Shri K. Poddar have been heard.

3. Ld. Counsel for the Revenue Shri Poddar refers to Tribunal's decision in the case of *Chemplast Sanmar Ltd. Vs. CCE, Salem* – 2010 (250) ELT 46 (Tri.-Chennai) whereunder service concerning sale of goods has not been considered the input service.

3. After hearing both the sides and perusal of the facts, it appears that the matter is covered by the Tribunal's decision in the case of *Carrier Air Conditioning & Refrigeration Ltd. Vs. CCE, Gurgaon* - 2016 (41) STR 1004 (Tri.-Del.) where Tribunal observes as under:

> "**9.** As regards the Cenvat credit demand of Rs. 3,34,60,922/- this demand is in respect of the service tax paid by the commission agents on the service of procuring sales orders provided by them to the appellants. The Department's contention is that the Commission Agent service received by the appellant for procuring sales orders is not covered by the "input service". We are of the view that this service is nothing but sales promotion service which is specifically mentioned in the definition of "input service". This issue has been discussed at length by the Hon'ble Punjab & Haryana High Court in its judgment in the case of *Ambika Overseas* (supra) and by the Tribunal in the case of *Birla Corporation* (supra), wherein it has been held that this service is covered by the definition "input service" and would be eligible for Cenvat credit. In view of this, the Cenvat credit demand of Rs. 3,34,60,922/- is also not sustainable."

4. In the light of above observations of the Tribunal in the case of *Carrier Air-conditioning & Refrigeration Ltd. (supra),* I am of the view that service of sugar selling agents is covered by the definition of input service given under 2(l) of Cenvat Credit Rules, 2004. Rule 2(l) of CCR during the relevant period defined input service as under:

> "Rule 2(l) of Cenvat Credit during the disputed period
>
> "Input service" means any service,

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether **directly or indirectly, in or in relation to the manufacture of final products** and clearance of final products up to the place of removal,

> and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or office relating to such factory or premises, advertisement or **sales promotion**, market research, storage up to the place of removal, procurement of inputs, **activities relating to business**, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal."

In the light of definition of input service where 'sales promotion' and 'activities relating to business' have been included as input service, and following Tribunal's decision in the case of *Carrier Air-conditioning & Refrigeration Ltd. (supra),* service of sugar selling agent is part of the sales promotion and the service tax paid for commission paid to such selling agents would be eligible for claiming Cenvat credit by the appellant.

5. In the light of above the impugned orders are set aside and both the appeals are allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

RM