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

COURT-I

Date of hearing/Decision: 21.09.2017

Appeal No. E/55685-55689/2014
[Arising out of the Ord/er in Appeal No. 46/CE/APPL/MRT-I/2014, OIA-50/CE/APPL/MRT-I/2014, OIA-49-CE-APPL-MRT-I-2014, OIA-47-CE-MRT-I-2014, OIA-48-CE-APPL-MRT-I-2014 dated 15/05/2014 Passed by The Commissioner (Appeals), Central Excise, Meerut (U.P.)]

M/s Shri Sidhbali Steel Ltd. & Ors … Appellant

Vs.

CCE Meerut-I … Respondent

Appearance:
Present Shri Hemant Bajaj, Advocate for the appellant
Present Shri M.R. Sharma, DR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble V. Padmanabhan, Member (Technical)

FINAL ORDER No. 56942-56946/2017

Per: Justice Dr. Satish Chandra

1. The present appeal is filed against impugned Order in Appeal No. 46/2014 dated 15/05/2014. Period of dispute is financial year 2005-2006.

2. The brief facts of the case are that the main appellant, M/s Shri Sidhbali Steels Ltd. is engaged in the manufacture of CTD/TMT bars ('finished goods') falling under the Central Excise Tariff Act, 1985. During the period under consideration, the appellant has shown additional income under the heading of "other sources", being commission received from M/s Shadilal; and M/s Shri Gopal Sugar Company. It is the allegation of the department that the commission shown by the appellant is bogus but in fact this is the route for selling the TMT bars without invoices. So, department has demanded the duty for the difference and also levied the penalties

on the appellants too. Being aggrieved, the appellants have filed the present appeal.

3. With this background Shri Hemant Bajaj, Ld. Counsel submits that the commission payment was received through cheques against the invoices. The appellant was doing market research work regarding the availability of molasses from various sources. He submitted that the appellant never had any contract with the seller of the molasses viz M/s Shadilal. The role of the appellant was just to pass on the information about the availability of molasses to the parties who need it and received commission from seller of molasses after order is placed by the buyer. He submits that on the commission received the Service Tax has already been paid and the department has accepted the same without placing objection. Lastly, he submits that the commission received cannot be held as payment to the appellant for sale of TMT bars. So, he made a request to set aside the impugned order.

4. On the other hand, the Ld. Counsel justified the impugned order. He submits that in the impugned order (para 5.5), it is mentioned that M/s Bhagpat Co-operative Sugar Mills had reported that molasses of all cooperative sugar mills is sold by U.P. State Sugar Co-operative Chini Mills Sakoti Ltd. Lucknow and thus there is no question of sale of molasses to or thorough appellant. The submission of the Ld. Representative is that when there is an agency for sale of molasses, then the services rendered by the appellant was not required and are fictitious.

5. After hearing both the parties and on perusal of record, it appears that in the instant case, the payment is received by the account cheque by the appellant. The service Tax has been paid against the

regular invoices. Hence, the consideration received is towards commission as a sales agent.

6. Regarding the U.P. Co-operative Chini Mill Sons Ltd. it appears that the pool was created only for cooperative mills but from the Vouchers, it appears that there were some other sugar mills which were not cooperative mills, and have sold the molasses to M/s Shadilal. Moreover, in the instant case, the role of the appellant was to provide the information about buyers to the sugar mills. Even in the cooperative sugar mills, the preference will have to be given by the prudent businessman to the nearby sugar mill so that transportation charges will be reduced.
7. Hence, we are of the view that the information provided by the appellant was vital information for M/s Shadilal. Moreover the identical issue has come up in the case of M/s Shri Shadilal Distillery V/s CC in Final Order No.A53910-53915/2014 where the sales commission was considered as genuine income.
8. When it is so, then we find no reason to sustain the impugned order. In the light of above discussion and considering the facts of the case we set aside the impugned order and allow the appeals filed by the appellant.
9. In the result, all the appeals filed by the appellant are allowed

[Order Dictated and Pronounced in the open court]

(V.Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

Rekha