CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 51939-51940 of 2016 with
Excise Cross Objection 50787-50788/2017

(Arising out of Order-in-Original No. UDZ-EXCUS-000-COM-069-15-16 dated 10.03.2016 and UDZ-EXCUS-000-COM-071-15-16 dated 17.03.2016 passed by the Commissioner of Central Excise, Udaipur**)**

DATE OF HEARING : 13.10.2017
DATE OF DECISION : 13.10.2017

CCE, Udaipur **….** **Appellants**
(Rep by Sh. R.K. Mishra, DR)

VERSUS

M/s BSL Ltd. **….** **Respondents**
(Rep. by Ms. Priyanka Goel, Adv.)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 57178-57179/2017

PER B. RAVICHANDRAN :

Both the present appeals are filed by the Revenue against the Order-in-Original Nos. UDZ-EXCUS-000-COM-069-15-16 dated 10.03.2016 and UDZ-EXCUS-000-COM-071-15-16 dated 17.03.2016 respectively, passed by the Commissioner of Central Excise, Udaipur. Since an identical issue is involved in both the appeals, they are taken up together for disposal.

2. The Revenue is aggrieved by the impugned orders passed by the jurisdictional Commissioner dropping the proceedings against the assessee-Respondents. The proceedings were to demand and recover Cenvat Credit taken on Service Tax paid on the commission paid towards promoting the sale of goods in foreign countries. Such sales commission under the Service Tax paid thereon was held to be not eligible for Cenvat Credit.

3. The learned DR for the Revenue reiterated the grounds of appeal and relied upon the decision of the Hon'ble Gujarat High Court in the case of **CCE, Ahmedabad vs Cadila Healthcare Ltd.,** 2013 (30) STR 3 (Guj).

4. The learned counsel for the assessee-Respondents submitted that the Service Tax paid on sales commission has been held to be eligible for credit in various decisions of the Tribunal. She relied upon one such decision in the case of **KEI Industries Ltd. vs CCE, Alwar,** Final Order No. 56683-56685/2017 dated 28.08.2017.

5. We note that, in the above mentioned decision (supra), the Tribunal, while discussing the order of the Hon'ble Gujarat High Court (supra), has observed as under :

> **"4. With regard to availment of Cenvat credit on the commission paid for sale promotion activities, the CBEC vide Circular No. 943/4/2011-CX. Dated 29/04/2011 has clarified that Cenvat credit is admissible on the services of the sale of the dutiable goods on commission basis. The said circular was endorsed by the Central Government vide Notification No. 2/2016-CE (NT) dated 03/02/2016. In the case of**

Cadila Healthcare Ltd. (supra), the Hon'ble Gujarat High Court had not referred to the Circular dated 29/04/2011 and also there were divergent views by the Hon'ble Punjab & Haryana High Court in the case of CCE, Ludhiana vs. Ambika Overseas – 2012 (25) S.T.R. 348 (P&H). Considering the conflict in judgments of different High Courts and also the notification dated 03/02/2016, this Tribunal in the case of Essar Steel India Ltd. (supra) has held that the said notification should be considered as declaratory in nature and effective retrospectively. The relevant paragraph in the said decision is extracted herein below :-

> **"20. But, the Hon'ble Gujarat High Court in the case of Cadila Healthcare Ltd. (supra) was unable to concur with the contrary view taken by the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Ludhiana v. Ambika Overseas (supra). The Hon'ble Gujarat High Court held that this issue is concerned, the question is answered in favour of the Revenue and against the assessee. In this background, legislature explained the meaning of the sales promotion by inserting Explanation in Rule 2(l) of Rules, 2004 and declared that sales promotion includes services by way of sale of dutiable goods on commission basis. In other way, Explanation to Rule 2(l) of Rules says in clear terms that there is no bar on availment of the Cenvat credit on sales promotion service by way of sale of dutiable goods on commission basis. Further, by inserting the Explanation in the Rule 2(l), it has confirmed the Board Circular and resolved the different views of the High Courts. Taking into circumstances under which the Explanation was inserted in Rule 2(l) of Rules, 2004 and consequence of the Explanation to extend the benefit to the assessee as per Board Circular, we hold that the Explanation inserted in Rule 2(l) of Rules, 2004 by Notification No. 2/2016-CX (N.T.) (supra) should be declaratory in nature and effective retrospectively".**

6. By following our earlier decision (supra), we find no reason to interfere with the impugned orders and the same are upheld.

7. In the result, the appeals filed by the Revenue are dismissed. Cross-objections also stand disposed of accordingly.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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