IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 53116 – 53117 of 2016

[Arising out of the Order-in-Appeal No. 37 & 38-16-17 dated 14.09.2016 passed by Commissioner of Central Excise & Service Tax, Alwar]

M/s Kamdhenu Ltd. **Appellant**
M/s Kamdhenu Paints Ltd

Vs.

CCE & ST, Alwar **Respondent**

Appearance:

Shri K K Anand, Advocate for the Appellants
Shri R K Mishra, DR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 07.11. 2017

FINAL ORDER No.57773 -57774 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against Order-in-Appeal No. 37 & 38-16-17 dated 14.09.2016. Period of dispute is from April, 2010 to February, 2016.

2. Brief facts of the case are that the appellant is engaged in the manufacturing of Paints falling under Chapter heading Nos. 3208, 3290, 3213, 3214 and 3824 of the Central Excise Tariff, 1985. For their sales promotion, they engage various commission agents. The

commission was paid to the commission agents for promotion of sales. The claim of cenvat credit was denied to the appellant. Being aggrieved the appellant has filed the present appeals.

3. With this background, we have heard Shri K K Anand and Shri R K Mishra, learned Counsels for the parties.

4. After hearing both the sides and on perusal of record, it appears that the issue has came up before the Tribunal as M/s. J K Lakshmi Cement Ltd. [Final Order No. 57320/2017 dated 05.10.2017] wherein it was observed as under:-

> *"4. After hearing both sides and on perusal of the material available on record, it appears that the commission paid on the 'Sales Promotion' falls under the definition of 'Input Services'. The issue involved in the instant case has already come up before this Tribunal in the assessee-Appellants' own case [**J.K. Lakshmi Cement Ltd. vs CCE, Jodhpur, Final Order No. 56683- 56685/2017 dated 28.08.2017**], wherein the claim was allowed by observing that :*
>
> > *"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 3 A.No. E/51082/15 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".*

5. In view of the above settled position and law, we do not find any merits in the impugned orders. Accordingly, after setting aside the same, we allow the appeals in favour of the appellants."

5. By following our earlier decision (supra) and considering the totality of the facts and circumstances of the case, we set aside the impugned order and allow the appeal."

5. By following our earlier order (supra), we set aside the impugned order and allow the claim of the appellant.

6. In the result, both the appeals filed by the appellant are allowed.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

ss