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

Excise Appeal No. 50059 of 2017

[Arising out of Order-in-Original No. 015-019/2016 dated 29.7.2016 passed by the Commissioner of Customs, Central Excise & Service Tax, Raipur, (CG)]

M/s. Nalwa Steel & Power Ltd. **Appellant**

Vs.

Commissioner of CCE & ST, Raipur **Respondent**

Appearance:

Shri Shreya Dahiya, Advocate for the Appellants
Shri M R Sharma, AR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 2.2.2018

FINAL ORDER NO. 50697 /2018

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed by the appellant against the Order-in-Original No. 15-19/2016 dated 29.7.2016.

2. Brief facts of the case are that the appellant is engaged in the manufacturing of MS ingots and sponge iron. Period of dispute is 2005-2006 to 2014. Five show cause notices were issued. The

appellant is a commission agent for promotion of business in export and domestic sale of goods. Commission agent was paid through account payee cheque. Department has denied the credit of the same. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we heard Ms. Shreya Dahiya and Shri M R Sharma, learned representatives of the parties and gone through the material available on record.

4. After hearing both sides and on perusal of record, it appears that the identical issue has come up before the Tribunal in the case of M/s. ***J K Lakshmi Cement Ltd. & others vs. CCE & ST, Udaipur [Final Order No. 56683- 56685/ 2017 dated 28.8.2017***] where it was observed 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 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. 34*8 (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), we find no justification to sustain the impugned order. Same is hereby set aside.

6. In the result appeal is allowed.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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