IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 50504 of 2019

[Arising out of the Order-in-Appeal No. 1288 (CRM) CE/JDR/2018 dated 27/11/2018 passed by The Commissioner (Appeals), Central Excise & CGST Commissionerate, Jodhpur.]

The Commissioner of Central Excise and Service Tax, **Appellant**
142-B, Hiran Magari,
Sector – 11, Near Shahi Bagh,
Udaipur (Rajasthan) – 313 002.

VERSUS

M/s Secure Meters Limited **Respondent**
RIICO, Bhamashah Industrial Area,
Kaladwas,
Udaipur, Rajasthan – 313 003.

<u>Appearance</u>

Shri V.B. Jain, Authorized Representative (DR) – for the appellant.

Ms. Sukriti Das, Advocate – for the Respondent.

CORAM: **HON'BLE SHRI C.L. MAHAR, MEMBER (TECHNICAL)**
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50980/2019

DATE OF HEARING : 24/07/2019.
DATE OF DECISION:24/07/2019.

<u>C.L. MAHAR :-</u>

The brief facts of the matter are that the appellant is engaged in manufacture of electronic energy meters, accucheck, Apex Rack, metering panel etc. It has been alleged by the Department that the appellant have availed and utilized service tax credit amounting to Rs. 1,19,13,838/- wrongly between the period March 2005 to March 2008 in respect of the sales commission falling under category of Business Auxiliary Service as input services for the final products manufactured by the appellant.

2. We have heard both the sides in this regard.

3. We feel that matter is no longer res-integra as it has already been decided by this Tribunal in several decisions that the Cenvat credit availed by the appellant on the sales commission paid to its sales persons cannot be denied. This Tribunal in the case of **M/s Mangalam Cement Ltd., M/s J.K. Lakshmi Cement Ltd., M/s K.E.I. Industries Ltd. versus CCE, Udaipur** vide final order No. A/56683-56685 of 2017 dated 28 August 2017 has held as follows :-

> "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 :-
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>> "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".

4. In view of above, we hold that order-in-original dated 31 May 2017 does not suffer from any infirmity and therefore we uphold the same and appeal is dismissed.

(Operative part of order pronounced in open court.)

(C.L. Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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