IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 75361 of 2017

(Arising out of Order-in-Original No.23/Commissioner/CE/Adjn/Kol-V/2016 dated 01.12.2016 passed by Commissioner of Central Excise, Kolkata)

Commissioner of CGST & C.X, Kolkata **: Appellant**
180, Shanti Pally, Rajdanga Main Road, Kolkata-700107.

VERSUS

M/s. CI Laboratories **: Respondent**
24-B, Basantlal Shah Road, Mohabirtola, Hoglapara, New Alipore, 23, Indrani Park, Kolkata-700 033.

APPEARANCE:

Shri P.K.Ghosh, Authorized Representative for the Appellant

Shri Sushil Kr. Goyal, C.A. for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75715/ 2025

DATE OF HEARING :17.03.2025

DATE OF DECISION:17.03.2025

Order : [Per Shri Ashok Jindal]

The Revenue is in appeal against the impugned order. The Respondent has also filed the cross objection to the appeal filed by the Revenue.

2. The facts of the case are that the Respondent was engaged in manufacturing of Medicament. The impugned Show Cause Notice was issued to the Respondent to deny Input Service Credit availed on Business Auxiliary Service to bills raised by the Commission agents for the period from 2010-11 to 2014-15.

3. It was alleged that Business Auxiliary Service i.e. input service charged on commission bills paid to the commission agents. As Cenvat Credit on Service

Tax paid on commission paid to the commission agents causing sale of goods is ineligible for input service credit. Therefore, the Show Cause Notice was issued to the Respondent by invoking extended period of limitation on 10.02.2017 to deny the Cenvat Credit under the category Business Auxiliary Service for the service tax paid on commission paid to the commission agent. Matter was adjudicated. The Adjudicating Authority dropped the proceedings against the Respondent.

4. Against the said order Revenue is before us.

5. Relying on the decision of the Hon'ble Gujarat High Court in the case of M/s. Cadila Healthcare Ltd. [2013(30)STR. 3 (Guj.)], to say that a commission agent is a person who acts on behalf of another person and cause sale or purchase of goods. Therefore, he is directly responsible for selling and purchasing on behalf of another person and that such activity cannot be considered as sales promotion. Therefore, there is a clear distinction between sales promotion and sale and commission agent is directly concerned with sales rather than sales promotion.

6. We have gone through the impugned order. The facts of the case are not in dispute that commission has been paid by the Respondent for selling the goods by the commission agent manufactured by the appellant. In that circumstances the commission paid to the commission agent is none other than a sale commission which is covered under Business Auxiliary Service. Therefore, the Respondent is entitled to take Cenvat Credit of commission paid to the commission agent. In that circumstances we do

not find any infirmity in the impugned order. Therefore, same is upheld.

7. In result, appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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