

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
BANGALORE**

Appeal(s) Involved:

**E/20080/2018-SM**

[Arising out of Order-in-Appeal No. 326/2017 dated  
13/10/2017 passed by Commissioner of Central Tax, North  
West Commissionerate, BANGALORE (Appeal-II).]

**Beloorbayir Biotech Limited**

No.40&43, Sathyamangala Industrial Area,  
TUMKUR - 572104  
KARNATAKA

Appellant(s)

**Versus**

**Commissioner Of Central Tax,  
Bangalore North West  
Commissionerate**

2nd Floor, South Wing,  
BMTc Bus Stand Complex  
Shivaji Nagar  
Bangaluru - 560051  
Karnataka

Respondent(s)

**Appearance:**

**Mr. GOWRI SHANKAR H.R.,  
Advocate**

NO.163, GROUND FLOOR, 6TH  
MAIN ROAD, 4TH PHASE, 7TH BLOCK,  
BSK 3RD STAGE  
BANGALORE - 560085  
KARNATAKA

For the Appellant

**Mr. Pakshirajan, AR**

For the Respondent

Date of Hearing: 25/04/2018

Date of Decision: 25/04/2018

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

**Final Order No. 20686 / 2018**

**Per : S.S GARG**

The present appeal is directed against the impugned  
order dated 13.10.2017 passed by the Commissioner (A)

whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture and clearance of herbal extracts glucosamine and other drugs falling under subheading 1302 1919, 2815 1110 and 29420090 of Central Excise Tariff Act, 1985. During the audit of the financial records of the appellant by the internal audit team, it was observed that the appellant had availed CENVAT credit on 'sales commission' paid to the commission Agents during the period of March 2010 to November 2014 which is ineligible. It was noticed from the CENVAT credit register, input/input service invoices that the appellant have availed CENVAT credit to the tune of Rs.2,04,542/- on sales commissions paid to M/s. Medilux Laboratories Pvt. Ltd. M/s. Deep Nutraceuticals, M/s. Shivas Farma Casa (P) Ltd. M/s. Shah Pharmaceuticals who are their 'Commission Agents', involved in sales of the goods manufactured by the appellant. M/s. Beloorbayir Biotech Limited, Bangalore has agreed to pay commission to them on percentage basis on actual quantities sold and M/s. Medilux Laboratories Pvt. Ltd. M/s. Deep Nutraceuticals, M/s. Shivas Farma Casa (P) Ltd. M/s. Shah Pharmaceuticals are merely acting as agents for sale of goods

manufactured and cleared by the appellant and not carrying out any sales promotional activity for the advancement publicity and/advertising of the said excisable goods, which means that the sales of the goods has not gone up by the efforts of M/s. Medilux Laboratories Pvt. Ltd. M/s. Deep Nutraceuticals, M/s. Shivas Farma Casa (P) Ltd. M/s. Shah Pharmaceuticals. Since service tax paid on commission paid to domestic agents does not fall under the scope and definition of input service, appellant appears to be liable to reverse the wrongly availed credit of Rs.2,04,542/- along with interest and penalty. On these allegations, a show-cause notice dated 6.8.2015 was issued to the appellant and after following the due process, the adjudicating authority vide Order-in-Original dated 20.1.2016 demanded the recovery of CENVAT credit availed on sales commission along with interest and penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner (A) who rejected the appeal of the appellant and hence, the present appeal.

3. Heard both the sides and perused the records.
4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without considering the factual and the legal position and without following the binding judicial precedent. He further

submitted that the Board Circular No.943/4/2011-cx dated 29.4.2011 clarifies that the definition of 'input service' allows all services used for clearance of final products up to the place of removal. Moreover, the activity of sales promotion is specifically allowed and on many occasions, the remuneration for the same is linked to actual sale. Reading the provisions harmoniously, it is clarified that the credit is admissible on the services of sale of dutiable goods on commission basis. He also submitted that the Notification No.2/2016-CE dated 3.2.2016 inserted *Explanation* to 'input service' definition "for the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis". He also submitted that the *Explanation* added to the definition of 'input service' vide Notification No.2/2016 is declaratory in nature and therefore, applicable retrospectively. For this submission, he relied upon the decision in the case of *Essar steels India Ltd. vs. CCE: 2016-TIOL-520-CESTAT-AHM*. It is his further submission that in this case, the appellant was paid commission for doing the sales promotion activity and hence, the CENVAT credit is eligible. In this regard, he relied upon the following decisions:

- *Stanley Seating vs. CCE, Bangalore: 2017 (3) GSTL 137 (Tri.-Bang.)*
- *Bhuruka Gases Ltd. vs. CCE, Bangalore: Final Order No.20176-20183/2014 dated 31.1.2014*

- *Jodhani Papers Ltd. vs. CCE, Bangalore: Final Order No.26720/2013 dated 15.10.2013*
- *CCE, Ludhiana vs. Ambika Overseas: 2012 (25) STR 348 (P&H)*

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the evidence on record and after going through the various decisions cited supra, I am of the considered opinion that the impugned order is not sustainable in law and the case of the appellant is squarely covered by the various decisions cited supra. Further, I find that the sales commission is directly attributable to sales of the products. Any activity which amounts to sale of the products is deemed to be sales promotion activity in the normal trade parlance. The commission is paid on sales of the products/services with an intention to boost the sale of the company. In view of the same, the sales commission has a direct nexus with the sales which in turn is related to the manufacture of the products. It is to be understood that there need not be manufacture unless there is sale of product. To increase the manufacturing activity encouragement is being given for increased sales. Hence, the commission paid on sales becomes

part of sales promotion resulting in increased manufacturing activity.

6.1 Further, I follow the ratio of *Essar Steels India Pvt. Ltd.* cited supra, wherein the Division Bench of this Tribunal after discussing all the previous cases and the Rules of interpretation, has held that the '*Explanation*' inserted in Rule 2(l) of CCR, 2004 by Notification No. 2/2016 is declaratory in nature and is applicable retrospectively. Therefore, in view of the discussions above, the impugned order is not sustainable in law and therefore I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced  
in Open Court on **25/04/2018**)

**S.S GARG**  
**JUDICIAL MEMBER**

rv...