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

Excise Appeal No. E/52497/2016-E[SM]
[Arising out of Order-In-Appeal No. DDN/EXCUS/000/APPEAL-I/69/2016-17 dated 18.05.2016 passed by Commr. (Appeals) Meerut]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

C.C.E. & S.T. Meerut - I …Appellant(s)

Vs.

M/s Plastiblends India Ltd. (Unit-I) …Respondent(s)

Appearance:
Mr. H.C. Saini (DR) for the Appellant
Mr. Ragesh S. Mehta (Advocate)for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing. 06.10.2016
Date of Decision.02.02.2017

Final Order No. 50645 /2017

Per S. K. Mohanty:

Revenue is in appeal against the impugned order dated 18.05.2016 passed by the Commissioner (Appeals), Central Excise, Meerut.

2. The grievance of Revenue is that service tax paid on sales commission agent's service is not eligible for cenvat credit, since the expenses incurred are in connection with sales and not confirmed to 'sales promotion' as specified in the inclusive part of definition of input service contained in Rule 2(l) of the Cenvat Credit Rules, 2004.

3. Heard both the sides and perused the records.

4. The appellant has produced various certificates issued by the Commission agents to submit that the services provided by it are confirming to sales commission service. The activities undertaken by the commission agents pursuant to the agreement entered with the appellant are basically for promoting and boosting the sales of the appellant. scope of work in respect of the agent by M/s Supreme Marketing as indicated in the certificate dated 17.03.2015 are extracted herein below:-

> "1. I take it upon myself to spend the maximum possible time to reach out to various customers on behalf of our firm. It is my experience that without regular follow up and coxing, it is not possible to maintain a steady flow of business. The competition in this industry is growing rapidly and I have to draw upon my expert knowledge and experience to convince the customer about the advantages of buying the goods manufactured by Plastiblends as opposed to those manufactured the competitors of plastiblends. Being industrial goods, the buyers of such goods are themselves fairly knowledgeable and therefore I have to take personal efforts to interact with them and provided them with suitable products to meet their needs.
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> 2. Very often, as a dealer of Plastiblends, the existing customers as well as prospective customers approach me seeking solutions for their specific needs and requirements. In such cases, I do my best to provide them with workable solutions. There have been several occasions where I have had detailed discussions with the technical staff of Plastiblends in an effort to either modify the standard varieties of goods manufactured by Plastiblends or to provide the customer with new insights into the various ways in which the goods could be used to meet certain manufacturing goals. I have also attended several plastic product manufacturing companies to witness the manufacturing trials involving goods manufactured by Plastiblends and to render my advice. I have neither charged Plastiblends nor the consumers for such efforts.
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> 3. We have a practice of keeping small quantities of stocks of many varieties of goods manufactured by Plastiblends. These stocks are purchased from Plastiblends by us and are handed over in small sample sizes free to the customers of Plastiblends as and by way of sales of promotion.
>
> 4. All technical & commercial material concerning the goods manufactured by Plastiblends are always at hand

> and it is our constant effort to distribute & supply the same to as many industrial consumers of the said goods as possible so that there is greater awareness about the range of products manufactured by Plastiblends.
>
> 5. At all times, our firm is stead fast in its aim of promoting the sales of goods manufactured by Plastiblends."

5. On perusal of the above certificate, it reveals that the job performed by the commission agent is for promoting the sales of the appellant's products and not related to mere selling of goods. Since the phrase 'sales promotion' is finding place in the definition of input service for the purpose of availment of cenvat credit, I am of the view that the credit taken by the respondent is in conformity with the cenvat statute.

6. Therefore, I do not find any merits in the appeal of the Revenue and accordingly, the same is dismissed.

(Pronounced in open court on 02.02.2017)

(S. K. Mohanty)
Member(Judicial)

Neha