IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:31.08.2017
Date of / Decision:09.10.2017

Excise Appeal No. 54397/2015

[Arising out of Order-in-Appeal No.JOD-EXCUS-000-COM-0024-15-16 dated 02.09.2015 passed by the Commissioner of Central Excise, Jaipur.]

M/s. Ultratech Cement Ltd. Appellant

Vs.

CCE, Jodhpur Respondent

Appearance:

Rep. by Shri Anurag Kapur, Advocate for the appellant.
Rep. by Shri R.K. Mishra, DR for the respondent.

Coram: Hon'ble Mr. S.K.Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.57044/2017

Per B. Ravichandran:

The appeal is against order dated 2.9.2015 of Commissioner of Central Excise, Jodhpur. The appellants are engaged in the manufacture of white cement liable to central excise duty. They are also availing cenvat credit on various inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004. The dispute in the present appeal relates to eligibility of the appellant to take cenvat credit of service tax paid on sales commission paid to commission agents in connection with sale of their excisable goods. The Original Authority denied the credit on the ground that the services rendered by the commission agent were not covered by the definition of “input service” in terms of Rule 2 (l) of Cenvat Credit Rules, 2004.

2. Ld. Counsel contesting the findings of the Original Authority submitted that the services of the commission agents are squarely covered by the scope of “input services”. He relied on the clarification dated 29.04.2011 issued by the Board. He further submitted that the explanation inserted under Rule 2(l) through notification no.2/2016-CE (NT) dated 3.2.2016 clearly allows cenvat credit on sales commission agent services. The same is only a clarificatory amendment. The ld. Counsel relies on the various decided cases in support of his claim.

3. Ld. AR reiterated the findings of the Original Authority.

4. We have heard both the sides and perused the appeal records.

5. We note that the similar dispute came before the Tribunal in case of **Mangalam Cement Ltd. & Ors.** The Tribunal vide Final Order Nos.56683-56885 dated 28.08.2017 examined the issue along with the decisions of the Hon’ble Gujarat High Court and Punjab & Haryana High Court. The Tribunal observed as below:-

> “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 :-

"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".

6. Following the ratio, as discussed above, we find that the impugned order cannot be sustained. Accordingly, the same is set aside. The appeal is allowed.

[order pronounced on 09.10.2017……]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.