IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 23.4.2018

Appeal No. E/50760/2018-SM

(Arising out of Order-in-Appeal No. 574(SM)CE/JPR/2017 dated 15.12.2017 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

CCE, Alwar — Appellant

Vs.

M/s S.M. Herbals (P) Ltd. — Respondent

Appearance

Shri K. Poddar, D.R. - for the appellant

None - for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 51584/2018

Per Ms. Archana Wadhwa:

The short issue involved in the Revenue's appeal is as to whether the appellant who is engaged in the manufacture of excisable goods falling under Chapter 13 is entitled to avail the Cenvat credit of service tax paid to sales/commission agents, or not.

2. The appellate authority has granted the benefit to the assessee by following the board's circular as also various decisions of the Tribunal and Gujarat High Court. For better appreciation, relevant para-6 of the order is reproduced below:

"6. I observe from the definition of input service that the services used in relation to sales promotion are covered under the scope of the said definition. Now the question is whether the activities of commission agents can be treated as the services used in relation to sales promotion. I find that the commission agent is a key person who identifies the potential buyers, explain them the positives of the product, convince them to buy and procure orders. His activities are entirely related to sales promotion. Without services of commission agents it is very difficult to sell goods. I observe that the clarification issued by the Board vide its circular No. 943/4/2011-CX dated 29.04.2011 specifically, under point No. 5, contains the wording that "… Moreover activity of sales promotion is specifically allowed and on many occasion the remuneration for same is linked to actual sale. Reading the provisions harmoniously it is clarified that credit is admissible on the services of sales of dutiable goods on commission basis". From this clarification itself it is understood that if a commission agent is paid commission on account of sales of goods, his services are qualify to be input service and cenvat credit of service tax paid on such service is admissible to the recipient of service. I find that the issue stand settled after the said clarification itself. I find that Hon'ble Tribunal in the case of CCE Jallandhar Vs. Ambika Overseas reported in 2010 (20) STR 514 (Tri.- Del.) hold that the subject activity of commission agent is a service used in relation to sales promotion and is covered under the definition of input service. This order of the Hon'ble Tribunal was affirmed by the Hon'ble High Court of Punjab & Haryana as reported in 2012 (25) STR 348 (P&H). Regarding the judgment of Hon'ble High Court of Gujarat in the case of M/s Cadila Healthcare Ltd. reported in 2013 (30) STR 3 (Guj.) relied upon by the adjudicating authorities/reviewing authority, I find that in that case the Hon'ble Court has considered the issue wherein period of demand was prior to year 2008. During the period from year 2008 till date, this issue has been considered by various appellate authorities and the Board has also issued clarification vide circular dated 29.4.2011. Further, an Explanation in the definition of input service has been inserted vide Notification No. 02/2016-CE (NT) dated 3.2.2016 which, as per settled principle of Law, has retrospective effect as the same is in the form of explanation only. Further this issue has also been clarified at point B.30 of the minutes of Tariff Conference of Central Excise held on 28-29 October, 2015 circulated vide F.No. 96/85/2015-CX.1 dated 7.12.2015, wherein subject service has been considered as input service. Since at this point of time, statutory provisions/grounds are available to deal with the issue in the form of clarification, Tariff Conference and Notification as discussed above, conclusion can be drawn beyond the findings of the Hon'ble Gujarat High Court, that the services of commission agent for sales of goods can also be considered as services used in relation to sales promotion that too when the above said notification clearly provides that' … sales promotion includes services by way of sale of dutiable goods on commission basis." In view of the findings narrated in foregoing para, I am of the firm view that the Cenvat credit of service tax paid on the amount of commission paid to the commission agents is available to the appellant."

3. Revenue has not been able to show me any contra decision laying in favour of the Revenue. Inasmuch as the issue is settled, not by one, by plethora of judgments in favour of the assessee, I find no reasons to interfere in the impugned order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

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