

3. With this background, we heard Shri P. Juneja and Shri Himanshu Bansal, learned Counsels for the parties.

4. After hearing both the parties and on perusal of material available on record, it appears that identical issue has come up before the Tribunal in the case of CCE&CGST, Alwar vs. M/s Prayag Polytech Pvt. Ltd. [Final Order No. 51799/2018 dated 10.05.2018] wherein it was observed that :

“3. After hearing both the parties and on perusal of record, it appears that the issue has come up before the Tribunal in the appellant’s own case (Final Order No. 56683-56685/2017 dated 28/08/2017) where it was observed that :-

“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 judgements 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, High Court in the case of Commissioner of Central Excise, Ludhiana v. Ambika Overseas (supra). The Hon'ble Gujarat High Court held that his issue 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(I) 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(I) of Rules says in clear terms that there is no bar on availment of the Cenvat credit on sales promotion services by way of sale of dutiable goods on commission basis. Further, by inserting the Explanation in the Rule 2(I), 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(I) 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(I) of Rules, by Notification No. 2/2016-CX (N.T.) (supra) should be declaratory in nature and effective retrospectively”.

5. In view of the above settled position and law, we do not find any merits in the impugned orders. Accordingly, after setting aside the same, we allow the appeals in favour of the appellants.”

5. By following our earlier order (supra), we find no reason to interfere in the impugned order. Same is sustained for the reasons expressed therein.

6. In the result, the Appeal filed by the Department is dismissed.

(Dictated and pronounced in the open Court)

(C. L. Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Ckp