IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 77211 of 2019

(Arising out of Order-in-Original No. 05/Commr/Bol/19-20 dated 26.06.2019 passed by the Commissioner of CGST Commissionerate Nanoor Chandidas Road, Sian, Bolpur-731204)

M/s. Birla Corporation Ltd., **: Appellant**
Unit-Durgapur Cement Works,
Near-DSP Slag Bank, Durgapur,
Durgapur Steel Project, Bardhaman-713203

VERSUS

The Commissioner of CGST & CX, Jamshedpur Commissionerate **: Respondent**
Nanoor Chandidas Road, Sian, Bolpur-731204

APPEARANCE:

Smt. Payal Bharwani, Advocate,
Smt. Diya Mal, Advocate, for the Appellant

Shri Sameer Chitkara,
Shri Prasenjit Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75892/2026

DATE OF HEARING / DECISION: 15.07.2026

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed assailing the Order-in-Original No. 05/Commr/Bol/19-20 dated 26.06.2019 passed by the Commissioner of CGST Commissionerate Nanoor Chandidas Road, Sian, Bolpur-731204, wherein denial of CENVAT Credit of Rs. 2,82,06,047/- has been confirmed along with interest and penalty.

2. M/s. Birla Corporation Ltd. ('herein after referred as the Appellant') holding Central

Excise Registration No. AABCB2075JXM016 is engaged in the manufacture of Portland Pozzolana Cement ('PPC') falling under sub-heading 2523 29 of the First Schedule to the Central Excise Tariff Act, 1985. In accordance with the principle of value addition, the Appellant availed CENVAT Credit of various inputs, capital goods and input services and utilized the same for payment of excise duty.

2.1. The Appellant entered into agreements with various commission agents for procuring orders for sale of their finished goods on payment of a sum being 'sales commission' Accordingly, during the underlying period invoices were issued by such commission agents for charging sales commission, along with service tax thereon. Based on such invoices, the Appellant availed CENVAT Credit of the service tax so paid by the commission agents since the said activity was used for the purpose of business and squarely fell within the ambit of definition of 'input service' under Rule 2(l), being 'sales promotion' services. Beyond the sales commission agreements, the Appellant also entered into agreements with such commission agents for procuring various other input services like godown rental for storage, handling charges for carriage as well as maintenance work.

2.2. During EA-2000 audit of the financial records of the Appellant viz., the Balance Sheet, Profit & Loss Account and TDS Certificates, it was pointed out that the Appellant was not eligible to the CENVAT Credit availed on the sales commission. In this regard, the Appellant was first issued Spot Memo No. 5 dated 09.07.2018 followed by a Pre-Show Cause Notice Consultation dated 31.07.2018.

2.3. Subsequently, on the basis of the said audit objection, the Department proceeded to issue the underlying SCN dated 06.08.2018, proposing to disallow the CENVAT Credit availed on the sales commission, totally amounting to Rs. 4,63,29,127/- availed during the period from July 2013 to March 2017, by alleging that sales commission does not fall within the ambit of Rule 2(l) of the CENVAT Credit Rules, 2004 ('**CCR, 2004**').

2.4. On adjudication, the Ld. Adjudicating authority set aside the demand of CENVAT Credit of Rs. 1,81,23,080/-, pertaining to the period from 03.02.2016 to March 2017 based on the amending notification and confirmed the disallowance of the remaining CENVAT Credit of Rs. 2,82,06,047/- availed during the underlying period based on the following findings:

a. Commission agents' services have no relation with manufacturing activity since they are engaged in post manufacturing activity related to the sales of the manufactured goods. Thus, the said services are not used directly/ indirectly in or in relation to manufacturing final products or for clearance upto the place of removal.
b. Commission agents are directly concerned with sales rather than sales promotion.

Hence, they do not fall within the purview of Rule 2(l) of CCR, 2004.

c. Since the Appellant deducted TDS on all the input services received from such commission agents under Section 194H of the Income Tax Act, 1961 all such input services are assumed as sales commission only.
d. As per the decision of the Hon'ble Gujarat High Court in the case of CCE, Ahmedabad-II v. Cadila Healthcare Ltd., 2013 (30) S.T.R. 3 (Guj.), the commission paid to agents cannot be termed as sales promotion expense.
e. The explanation inserted vide Notification No. 2/2016-C.E. dated 03.02.2016 has no retrospective application. It is applicable only prospectively, and hence thedemand for CENVAT Credit of Rs. 1,81,23,080/- availed from 03.02.2016 to March 2017 is set aside.
f. Extended period is rightly invoked since the CENVAT Credit on commission agent services was availed despite knowledge of the same being ineligible

2.5. Aggrieved against the disallowance of Cenvat credit along with interest and penalty, the Appellant has filed this appeal.

3. The submissions made by the Appellant are summarized below:

THE ISSUE IS NO LONGER RES-INTEGRA. CENVAT CREDIT IS ELIGIBLE ON SALES COMMISSION EXPENSES SINCE THE AMENDING

NOTIFICATION IS RETROSPECTIVE IN OPERATION.

A.1 The instant proceedings were initiated against the Appellant based on the allegation that the expenses incurred by the Appellant were in the form of sales commission for which CENVAT credit under Rule 2(l) of the Credit Rules is not eligible.

A.2 In this regard, it is submitted that vide Amending Notification it was clarified that sales commission was included in sales promotion under Rule 2(l) of the Credit Rules. The explanation inserted is reproduced herein below for ease of reference –

> "*Explanation – For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis*."

A.3 The aforesaid explanation was inserted as a clarification, and as a result of which, sale of goods on commission basis also stands covered under the expression '*sales promotion*'. Thus, CENVAT credit of service tax paid is available for sales promotion which also includes sales commission. Therefore, the instant dispute is duly settled by way of insertion of this explanation.

3.1. The Hon'ble Calcutta High Court in the case of ***Pr. Commr. of C. Ex., Kolkata – IV v. Himadri Speciality Chemical Limited – 2022 (9) TMI 1213 - Calcutta High Court*** affirmed the decision of the CESTAT, Kolkata in **2019 (8) TMI 1838 – Cestat Kolkata** in a case wherein on an identical set of facts, it was held that the Amending Notification is applicable retrospectively since it is clarificatory in nature and therefore, CENVAT credit is eligible on sales commission. The said decision was pronounced by the Hon'ble High Court in a case wherein on an identical set of facts, proceedings were initiated against the assessee based on the decision in Cadila Healthcare (supra) by alleging that CENVAT credit is not eligible on sales commission expenses.

3.2. Reliance is also placed on the following decisions wherein the explanation inserted to Rule 2(l) of CCR, 2004 is held to be applicable retrospectively –

- ***Phillips Carbon Black Ltd. v. Commr. of CGST, Bolpur, Final Order No. 75648-75649/2026 dated 21.05.2026***
- ***TDK India Pvt. Ltd v. CCE & CGST, Kolkata North, 2024 (3) TMI 450 - CESTAT Kolkata***
- ***Triveni Turbines Ltd. v. CCE, Bangalore, 2025 (3) TMI 1500 - CESTAT Bangalore***
- ***Commissioner, CGST, Jaipur v. M/s. Bharti Hexacom India Ltd., 2023 (5) TMI 520 – CESTAT New Delhi***
- ***Stanley Seating v. CCE, Bangalore-III, 2017 (3) G.S.T.L. 137 (Tri. Bang.)***
- ***CGST, C & CE, Alwar v. Krishi Icon, 2018 (7) TMI 97 – CESTAT New Delhi***
- ***CCE Alwar v. Nirmal Developers, 2018 (9) TMI 376 - CESTAT New Delhi***

3.3. Therefore, the Appellant submits that based on the settled position of law, explanation to Rule 2(l) of CCR, 2004 is clarifying the term 'sales promotion' to include sale on commission basis and is thus, retrospective in nature.

3.4. Further, reliance is also placed on the **Board Circular No. 943/4/2011-Cx dated 29.04.2011** wherein it has been clarified that Cenvat credit is admissible on the services of sale of dutiable goods on commission basis. It is a trite law that circulars issued by CBEC are binding on the department.

4. The decision of the Hon'ble Gujarat High Court in Cadila Healthcare (supra) is no longer a good law, having been reversed by the Hon'ble Supreme Court. The Appellant submits that the entire proceedings were initiated against the Appellant based on the decision in Cadila Healthcare (*supra*) wherein it was held that services provided by commission agent do not fall within the scope of input services under Rule 2(l) of the Credit Rules. However, the said in Cadila Healthcare (*supra*) is no longer a good law since the the matter back to the Hon'ble CESTAT.Hon'ble Supreme Court in ***Zydus Lifesciences Limited v. CCE, Ahmedabad – II – 2024 (80) G.S.T.L. 338 (S.C.)*** set aside this decision and remanded

5. Accordingly, the Appellant submits that the disallowance of credit availed by the Appellant on sales commission, is legally not sustainable and hence the Appellant prayed for setting aside the same.

6. The Ld. A.R. reiterated the findings in the impugned order.

7. Heard both sides and perused the Appeal documents.

8. We have gone through the records of the case. We find that the issues to be decided in this appeal are:

(i) Whether CENVAT credit of service tax paid is eligible on sales commission paid to commission agents for carrying on marketing of the Appellant's Cement, for the period up to 02.02.2016?

(ii)Whether the amendment to the definition of input services under Rule 2(l) by way of insertion of Explanation, vide the Notification No. 2/2016 dated 03.02.2016, is retrospective, as held by catena of judicial precedents?

8.1. We find that the instant proceedings were initiated against the Appellant based on the allegation that the expenses incurred by the Appellant were in the form of 'sales commission' for which CENVAT credit under Rule 2(l) of the Credit Rules is not eligible. In this regard, we find that Notification No. 2/2016 dated 03.02.2016 amended the definition of input services under Rule 2(l) by way of insertion of Explanation, whereby it was clarified that sales commission was included in sales promotion under Rule 2(l) of the Credit Rules. The explanation inserted is reproduced herein below for ease of reference –

> "*Explanation – For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis*."

8.2. We observe that the aforesaid explanation was inserted as a clarification, and as a result of which, sale of goods on commission basis also stands covered under the expression '*sales promotion*'. Thus, CENVAT credit of service tax paid is available for sales promotion which also includes sales commission. Therefore, we find that the instant dispute is duly settled by way of insertion of this explanation.

8.3. Now, the issue to be decided is whether the amendment to the definition of input services have retrospective effect or not? In this regard, we refer the decision of the Hon'ble Calcutta High Court in the case of ***Pr. Commr. of C. Ex., Kolkata – IV v. Himadri Speciality Chemical Limited – 2022 (9) TMI 1213 - Calcutta High Court*** affirmed the decision of the CESTAT, Kolkata in **2019 (8) TMI 1838 – Cestat Kolkata** in a case wherein on an identical set of facts, it was held that the Amending Notification is applicable retrospectively since it is clarificatory in nature and therefore, CENVAT credit is eligible on sales commission. The said decision was pronounced by the Hon'ble High Court in a case wherein on an identical set of facts, proceedings were initiated against the assessee based on the decision in Cadila Healthcare (supra) by alleging that CENVAT credit is not eligible on sales commission expenses. The relevant portion of the decision is extracted below –

> "*11. As could be seen from the above clarification, the decision in Cadila Health Care was also taken note of by the department and the position stood clarified that sales promotion would include services by way of sale of goods on commission basis. As pointed out by the Hon'ble Supreme Court in Commissioner of Income Tax v. Vatika Township Private Limited [(2015) 1 SCC 1] that if a legislation confers the benefit on some persons but without inflicting the corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the object of the legislature, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. In Commissioner of Income Tax v. Archean Granite Private Limited [(2020) 117 taxmann.com 977 (Madras)] amendment made to Section 40(a)(ia) of the Finance Act, 2010 inserting proviso therein was held to be retrospective with effect from the assessment year 2005-06 and the Court followed the decision in the case of Commissioner of Income Tax v. Calcutta Export Company [(2018) 93 taxmann.com 51]. Therefore, we find that the approach to the issue in the manner done by the Learned Tribunal cannot be faulted.*"

8.4. We also rely on the following decisions wherein it has been held that the explanation inserted to Rule 2(l) of CCR, 2004 is held to be applicable retrospectively –

- ***Phillips Carbon Black Ltd. v. Commr. of CGST, Bolpur, Final Order No. 75648-75649/2026 dated 21.05.2026*** *[Pg. Nos. 61-69 of the Compilation]*
- ***TDK India Pvt. Ltd v. CCE & CGST, Kolkata North, 2024 (3) TMI 450 - CESTAT Kolkata*** *[Pg. Nos. 52-56 of the Compilation]*
- ***Triveni Turbines Ltd. v. CCE, Bangalore, 2025 (3) TMI 1500 - CESTAT Bangalore*** *[Pg. Nos. 57-60 of the Compilation]*
- ***Commissioner, CGST, Jaipur v. M/s. Bharti Hexacom India Ltd., 2023 (5) TMI 520 – CESTAT New Delhi***
- ***Stanley Seating v. CCE, Bangalore-III, 2017 (3) G.S.T.L. 137 (Tri. Bang.)***
- ***CGST, C & CE, Alwar v. Krishi Icon, 2018 (7) TMI 97 – CESTAT New Delhi***
- ***CCE Alwar v. Nirmal Developers, 2018 (9) TMI 376 - CESTAT New Delhi***

8.5. By relying on the decisions cited supra, we hold that explanation to Rule 2(l) of CCR, 2004 is clarifying the term 'sales promotion' to include sale on commission basis and is thus, retrospective in nature.

8.6. Further, we also place our reliance on the **Board Circular No. 943/4/2011-Cx dated**

29.04.2011 wherein it has been clarified that Cenvat credit is admissible on the services of sale of dutiable goods on commission basis. It is a trite law that circulars issued by CBEC are binding on the department.

8.7. Regarding the reliance of Revenue on the decision of the Hon'ble Gujarat High Court in Cadila Healthcare (supra), we observe that the said decision is no longer a good law, having been reversed by the Hon'ble Supreme Court. We find that the entire proceedings were initiated against the Appellant based on the decision in Cadila Healthcare (*supra*) wherein it was held that services provided by commission agent do not fall within the scope of input services under Rule 2(l) of the Credit Rules. However, the said in Cadila Healthcare (*supra*) is no longer a good law since the Hon'ble Supreme Court in **Zydus Lifesciences Limited v. CCE, Ahmedabad – II – 2024 (80) G.S.T.L. 338 (S.C.)** set aside this decision and remanded the matter back to the Hon'ble CESTAT. Thus, we hold that the decision of the Hon'ble Gujarat High Court in Cadila Healthcare (supra) cannot be made applicable to this case.

8.8. Accordingly, we hold that the Appellant is eligible to avail the Cenvat credit of the service tax paid by the commission agents and hence we hold that the disallowance of credit availed by the Appellant on sales commission, is legally not sustainable and hence we setting aside the same.

8.9. As the Appellant is eligible for the Cenvat credit and there is no irregularity in availing the credit, the question of demanding interest or imposing penalty does not arise and hence we set aside the same.

9. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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