

Central Excise Explanation to definition of “input service” is declaratory Trib

The Appellant entered into "International Market Service Agreements" with various companies overseas for rendering sales promotion service.

During the course of Audit, it was noticed that the Appellant had availed input service credit of Service Tax paid on commission to overseas agents for rendering the services during the period November 2005 to March 2008.

According to the Revenue, the services were received and utilized by the Appellant for selling of the goods and not in relation to the manufacture of the goods and clearance of the final product from the place of removal, which could not be considered as 'input service' as defined under Rule 2(l) of the CCR, 2004.

A total of nine more SCNs covering the period April 2008 to February 2014 came to be issued and all were majestically confirmed along with interest and penalty citing the Gujarat High Court decisions in - 2013-TIOL-12-HC-AHM-ST & 2014-TIOL-237-HC-AHM-ST.

Thankfully, a day before the appeal was heard by the CESTAT, the Central Government came out with a bunch of acche din notifications. One such notification was 2/2016-CE(NT) dated 03.02.2016 and which did the following -

In the CENVAT Credit Rules, 2004, in rule 2, in clause (l), after sub-clause (C), the following Explanation is inserted:-

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

We had covered the implication of the notification in DDT 2779 and opined that retroactivity to this notification would do a whole lot good.

Fortuitously, this is what the CESTAT held -

- After reading the Board Circular No. 943/04/2011-CX dt.29.04.2011 and the Explanation by Notification No.2/2016-ST harmoniously, it is clear that the agent's remuneration linked with sale of goods would cover sales promotion.
- In the present case, the Explanation inserted in Rule 2(l) of Rules 2004, is in conformity with the Board Circular dt.29.04.2011, and extended the benefit to the Assessee. [CIT Vs Podar Cement (P) Ltd - 2002-TIOL-445-SC-IT-LB , Commissioner of Central Excise, Ludhiana VsAmbika Overseas - 2011-TIOL-951-HC-P&H-ST refers]
- Explanation to Rule 2(l) of Rules says in clear terms that there is no bar on avilment 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-CE(NT) should be declaratory in nature and effective retrospectively.
- In the present case, the expressions in the Explanation as inserted by Notification No.2/2016-CE (NT), make it clear that it is for explaining the meaning of clause 'sales promotion' in the context of Rule 2(l) of the Rules, 2004. It is to provide an additional support to the dominant object of the word 'sales promotion' in Rule 2(l) in order to make it meaningful and purposeful. The language of the Explanation is consistent with Board Circular to the benefit of the Assessee and it would be effective retrospectively.

The order denying CENVAT credit was set aside and the appeal was allowed with consequential relief.