

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11102 of 2018

(Arising out of OIA-VAD-EXCUS-002-APP-613-2017-18 dated 21/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Prayosha Healthcare Pvt Ltd

Plot No. 6209, Gidc, Ankleshwar,
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1ST FLOOR... ROOM NO.101,
New Central Excise Building,
Vadodara, Gujarat
390023

.....Respondent

APPEARANCE:

Sh. Vinay Kansara (Adv.) for the Appellant

Sh. R P Parekh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 12368 /2021

DATE OF HEARING: 21.09.2021
DATE OF DECISION: 21.09.2021

RAMESH NAIR

Brief facts of the case are that the appellant have availed the Cenvat Credit in respect of service tax paid on sales commission. The audit officers have raised objection that the sales commission is not an admissible input service. On the objection of the audit party, the appellant have reversed the Cenvat credit. Thereafter, they have filed refund claim within one year from the date of reversal on the ground that as per subsequent development of law in case of M/s. Essar Steel India Ltd. V/s. CCE-2016-TIOL-520-CESTAT-AHM the Cenvat credit is admissible on sales commission. The adjudicating authority has rejected the refund claim on the ground that sales commission is not input service and also on the ground that the appellant have admittedly reversed the amount without under protest hence, the appellant had agreed to the audit, on the basis of which the audit para was closed and the queries were settled. Being aggrieved by the Order-In-Original, the appellant filed appeal before the Commissioner (Appeals) who rejected the appeal only on the ground that the sales commission is not an admissible input service referring to the definition of input service. Therefore, the appellant is before this tribunal.

2. Shri. Vinay Kansara, learned counsel appearing on behalf of the appellant submits that as regards the objection of non admissible of the Cenvat credit on sales commission the department has not issued the show cause notice. Therefore, the refund cannot be rejected. As regard the issue on merit that whether the Cenvat credit is admissible on sales commission, he submits that the issue is pending before the Hon'ble Gujarat High Court in the case of M/s. Essar Steel India Ltd. and also before the Hon'ble Supreme Court in the case of M/s. Cadila HealthCare Pvt. Ltd. He further submits that even though the protest was not lodged while reversing the credit the appellant has within right to file a refund claim within a stipulated period of one year as provided under section 11B of Central Excise Act,1944. Therefore, only because the under protest reversal was not made refund cannot be rejected on this ground.

3. Shri. R.P. Parekh, Learned Authorized Representative appearing on behalf of the revenue reiterates the finding of the impugned order. He filed written submission dated 08.09.2021 which is taken on record. He also relies on the judgment of this Tribunal vide final order No. A/11238/2018 dated 14.06.2018 in the matter of M/s. Amar Engineering Co. Versus C.C.E. and S.T.-Vadodra-i. Taking support of this judgment he submits that once an assessee paid the amount admittedly that attained finality and it is closure of the case therefore no refund claim can be entertained.

4. I have carefully considered the submission made by both the sides and perused the records. I find that the issue involved is whether the appellant is entitled for refund claim against the reversal of Cenvat Credit made as per the audit objection in respect of sales commission or otherwise. I find that the reversal was made on the objection of the audit party. Though the reversal was not made under protest but the appellant has right to claim refund within one year as mandated under section 11B of Central Excise Act,1944., therefore only on the ground that the appellant has not filed under protest letter while reversing the credit refund cannot be rejected on this ground. As regard the merit that whether the sales commission is admissible input service or otherwise the issue is subjudice before the Hon'ble High Court of Gujarat in the case of Essar steel India Ltd. and also before the Hon'ble Supreme Court in the case of the Cadila Health Care Ltd. Therefore, at this stage the merit cannot be decided.

5. Accordingly, I set aside the impugned order and allow appeal by way of remand to the Adjudicating Authority for passing a fresh order after the legal issue is settled on the admissibility of the Cenvat Credit on sales commission by the Hon'ble Apex Court in the case of M/s. Cadila HealthCare Ltd. and also by the Hon'ble High Court in the case of Essar Steel India Ltd.

6. Appeal is allowed by way of remand in above terms.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

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