CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. I

Excise Appeal No.42371 of 2016

(Arising out of Order-in-Original No. LTUC 503/2016-C dated 24.08.2016 2016 passed by Commissioner of Central Excise & Service Tax, Large Taxpayer Units, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar West Extension, Chennai-600 101)

M/s. Tamilnadu Petroproducts Ltd., **.... Appellant**
Manali Express Highway,
Manali,
Chennai-600 068.

VERSUS

Commissioner of GST & Central Excise **... Respondent**
Large Taxpayer Units
1775, Jawaharlal Nehru Inner Ring Road
Anna Nagar West Extension
Chennai 600 101

APPEARANCE :

Ms. S. Vishnupriya, Advocate for the Appellant
Mr. M. Selvakumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.40663/2025

DATE OF HEARING : 10.02.2025
DATE OF DECISION :26.06.2025

Per: Shri Ajayan T.V.

M/s. Tamilnadu Petroproducts Ltd., the appellant herein has preferred this appeal contesting the Order-in-Original No. LTUC 503/2016-C dated 24.08.2016 issued by the Adjudicating Authority where by the Adjudicating Authority has confirmed the demand of Rs.68,31,452/- being the cenvat credit taken wrongly during the period from April 2011 to December 2014 along with appropriate interest and imposing a penalty of Rs.34,15,726/-.

2. Briefly stated, the facts are that during the course of audit it was noticed that the appellant had availed cenvat credit of service tax paid on the sales commission paid to domestic marketing agents for the sale of finished goods during the period from 01.04.2011 to 31.12.2014. The appellant has availed such credit on the basis of invoices raised by their marketing agents namely M/s. Industrial Chemicals Agency and M/s. Trimurti Galaxy Enterprises P. Ltd. The department was of the view that as per the definition of input services as defined in Rule 2(l) of CCR, 2004 read with the definition of "place of removal" as defined in Section 4(3)(c) of Central Excise Act, 1944, the services which are enumerated in the inclusive clause of definition of input service are also required to have been used up to "place of removal". That to say, only the taxable services used by the manufacturer in relation to the

manufacture of final product and clearance of the final product up to the place of removal would be eligible as input services.

3. The Department was therefore of the opinion that the commission expenses on the domestic sales were not relating to manufacturing activity undertaken by the appellant, but was related to sales activities after manufacturing and further that the said services have been availed after the goods had been cleared from the place of removal. It was also the view of the department that the service of domestic marketing agent as a sale commission agent do not appear to fall under the category of sales promotion.

4. Thus, being of the view that the services of the marketing agent do not have any relation with the manufacturing activity and also do not appear to fall within the ambit of definition of 'input services' as defined under Rules 2(l) of CCR, 2004, the department issued a Show Cause Notice dated 31.07.2015 proposing demand of an amount of Rs.68,31,452/- being the cenvat credit wrongly taken during the period from April 2011 to December 2014, along with appropriate interest as well as proposal to imposing penalty under Rule 15(2) of the CCR, 2004 read with section 11AC of the Central Excise Act, 1944. After

following due process of law the Adjudicating Authority confirm the demand of Rs.68,31,452/- as proposed in the Show Cause Notice along with appropriate interest and imposed penalty of Rs.34,15,726/- as above mentioned. Aggrieved by the same the appellant has preferred this appeal and is thus before this Tribunal.

5. Ms. S. Vishnupriya, Advocate appeared for the appellant and has submitted under:

i) that the marketing agency agreement dated 28.01.2009 entered into between M/s. Industrial Chemicals Agency(hereinafter referred to as the marketing agent) and the appellant, was entered in order to procure orders for the finished products of the appellant, i.e., Linear Alkyl Benzene, Epichlorohydrin etc. Drawing attention to clause (4) of the said agreement it was submitted that the said clause clearly states that the marketing agents shall be required to procure orders/achieve collection targets as fixed by the appellant from time to time. It is therefore submitted that the intention of the parties to the agreement was to engage the marketing agents for "sales promotion".

ii) that Ld. Adjudicating Authority erred in holding that canvassing and procuring orders are post removal activities

and therefore credit cannot be availed on the same by the appellant. That the appellant does not remove the goods from the factory without procuring the orders and in fact the marketing agent fixes the target for the next month's sales by the 28th day of every month and consequently even the production for the same is also planned accordingly by the appellant.

iii) the Ld. Adjudicating Authority has relied upon the decision in **CCE Ahmedabad vs. Cadila Healthcare Ltd** reported in 2013 (30) STR 3 and has denied the benefit of cenvat credit to the appellant. That the above said decision the Hon'ble Gujarat High Court has not considered the circular of the CBEC No.943/4/2011-CX dated 29.04.2011. The Ld. Counsel would submit that the said circular has clarified that cenvat credit is available for the commission paid to commission agents. It is also contended that the Hon'ble Gujarat High Court in the above said decision has disagreed with the view taken by the Hon'ble Punjab and Harayana High Court in the case of **CCE vs. Ambika Overseas** reported in 2012(278) LT 524. That on account of the confusion between the above said decisions of the Hon'ble High Courts the CBEC has come up with an explanation after the sub-clause (c) of clause (i) to Rule 2 of CCR, 2004 which stated that for the

purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis. That the said explanation brought in by notification No.02/2016-CE(NT) dated 03.02.2016 clarificatory/retrospective and has in fact only endorsed the circular dated 29.04.2011 which grants credit on the sales commission paid to marketing agents. It is submitted that the said notification would also apply to the disputed period and the Ld. Adjudicating Authority ought not to have denied the benefit. Reliance is placed on the decisions in:

a) ***Essar Steel India Ltd. vs CCE and ST, Surat reported in 2016 (335) ELT 660***
b) ***M/s. Mitsubishi Heavy Industries India Precision Tools Ltd Vs The Commissioner of GST and CE CGST and CE, North Commissionerate, Nungambakkam reported in 2020 (11) TMI 349(Tri-Chennai)***
c) ***CGST, C.C and CE, Jodhpur -I Vs Ultratech Cement reported in 2019 (1) TMI 971 (Tri-Del)***
d) ***M/s. ElectrosteelCastings Ltd. Vs The Commissioner of GST and CE, Chennai Outer Commissionerate reported in 2018 (11) TMI 1375 (Tri-Chennai)***

e) ***M/s. Stovecraft Pvt Ltd Vs The CCE, Bangalore III Commissionerate reported in 2024 (10) TMI 503 (Tri-Bglr)***

f) ***The Commissioner of GST and CE, Chennai Vs Intimate Fashions India (P) Ltd -2019 (8) TMI 1311(MAD HC)***

g) ***Principal Commissioner of CE, Kolkata -IV Vs M/s. Himadri Speciality Chemical Ltd - 2022 (9) TMI 1213 (CAL HC)***

h) ***Zydus Lifesciences Ltd Vs The CCE, Ahmedabad-II - 2023 (12) TMI 6-SC***

iv) that the Ld. Adjudicating Authority erred in invoking the extended period of limitation as the appellant has made a disclosure of the credit availed in their ST3 returns. That extended period can also not be invoked because the issue involved interpretation of the provisions of the Act. Reliance is placed on the decision in ***International Merchandising Company, LLC(Earlier known as International Merchandising Corporation) vs Commissioner, Service Tax, New Delhi*** reported in ***(2023) 3 SCC 641.*** That the demand is thus completely bar by limitation.

6. Mr. M. Selvakumar, Ld. AR appeared and argued for the respondent. He reiterates the findings in the impugned Order-in-

Original. He contends that the ratio of the decision of the Hon'ble High Court of Gujarat in the case of Cadila Health care has been rightly relied upon by the adjudicating authority to deny the entitlement to cenvat credit and therefore the demand is in order and that the appeal deserves to be rejected.

7. Heard both sides and perused the appeal records as well as the citations submitted as relied upon.

8. On a perusal of the agreement dated 28th January 2009 between the appellant and M/s. Industrial Chemicals Agency, produced, it is seen from clause 4 that the marketing agent is tasked with procuring orders from time to time for the products of the company and the company shall make available the said product to the marketing agent/customer subject to availability and standard terms and conditions of sale for the time being in force. The marketing agent is required to communicate a monthly sales plan by 28th of every month relating to the next month and adhere to the performance of the same. Clause 6 stipulates that the marketing agent shall coordinate with end use industries as identified by them from time to time in their territory to procure orders, extend customer service and arrange dispatch of the material besides recovery of payments. Clause 8 categorically

requires the marketing agent to use their endeavor to promote the sale of the said products. Clause 9 requires the marketing agent to display appropriate advertisement or hoardings in a prominent position and shall also display the correct and up-to-date price list at such places in their warehouse/godown. Thus, from the terms of the agreement it is evident that the activities undertaken by the marketing agent involves the entire gamut of services of sale, advertisement and sales promotion.

9. Having ascertained the facts as to the activities of the marketing agent, in order to appreciate the issue, it is necessary to examine the definition of input service as it existed in the Cenvat Credit Rules, 2004 (CCR) during the relevant period that is April 2011 to December 2014. The definition of "input service" in Rule 2(l) of the CCR came to be substituted by the Cenvat Credit First Amendment Rules, 2011 notified vide notification No.3/2011 C.E.(NT) dated 01.03.2011 with effect from 01.04.2011 and stood further amended vide Notification No.28/2012 C.E.(NT) dated 20-6-2012 with effect from 01-07-2012.

10. What constitutes 'input service' stood defined during the relevant period under Rule 2(l) as under: -

"Input Service" means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes,

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11. On an analysis of the above definition, it is seen that the same is broadly in three parts; First part, which is the main part, covers

input services used for providing output service or used by manufacturer, directly or indirectly, in relation to manufacture or clearance of final product upto the place of removal; **Second part is the inclusive part of the definition which expands the scope beyond the coverage of the first part, the word 'includes' enlarging the scope, without being exhaustive or restrictive**, and the Third part covers specific exclusions.

12. Thus, on a plain reading of the definition, it is evident that advertisement or sales promotion service has been specifically included in the scope of input service as defined in Rule 2(l) of the CCR. That apart, we also notice that the Central Board of Excise and Customs, vide Circular No.943/4/2011-CX dated 29-04-2011, on the subject of clarification on issues relating to Cenvat Credit Rules, 2004, has at sl.no.5 of the clarifications presented in tabular format, in response to the issue stated as "Is the credit of Business Auxiliary Service (BAS) on account of sales commission now disallowed after the deletion of expression "activities related to business"?", given the clarification that "The definition of input services allows all credit on services used for clearance of final products upto the place of removal. Moreover activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale.

Reading the provisions harmoniously it is clarified that credit is admissible on the services of sale of dutiable goods on commission basis."

13. Thus, it is evident that the contemporaneous exposition of the Department, through its circular, has clearly clarified that credit is admissible on the services of sale of dutiable goods on commission basis. It is a settled principle in law that the Department cannot argue against its own circular.

14. Therefore, given the discussion above, in light of the fact situation arising in the instant case being that the activities undertaken by the marketing agent of the appellant involves the entire gamut of services of sale, advertisement and sales promotion, when the definition of input services prevailing for the relevant period as given in Rule 2(l) is applied to the aforesaid facts and circumstances, evidently the services of the marketing agent is clearly covered in the inclusive part of advertisement and sales promotion service. Such application of law to the facts of the case, coupled with the Department's circular that has clearly clarified that credit is admissible on the services of sale of dutiable goods on commission basis, leads us to the inevitable conclusion that the appellant is entitled to take cenvat credit of the service tax paid on the commission paid to the

marketing/sales commission agents of the appellant. Thus, we find that the impugned order in original is unsustainable on merits and is liable to be set aside.

15. We notice that the SCN as well as the adjudicating authority in the impugned order has heavily placed reliance on the decision of the Gujarat High Court in the case of Cadilla Health Care limited. We notice that on facts, in Cadila Health Care Limited, the Hon'ble High Court has found no material on record to indicate that the commission agents were involved in the activities of sales promotion. Whereas the facts of this case, as we have found above, evidence that the marketing agents of the appellant are engaged in the activities of sales promotion. There is also no dispute or any finding in the impugned order that the commission being paid to the marketing agents of the appellant are for any purposes other than that entered into as per the terms of the agreement.

16. We are fortified in our aforesaid conclusion, by the various citations including that of the Jurisdictional High Court of Madras relied upon by the appellant as stated above, which we find are applicable in the facts and circumstances of the appellant's case. Nevertheless, to seal the inexorable conclusion of our discussion in favour of the appellant on merits, we deem it appropriate to

reproduce relevant portions of the decision in ***Principal Commissioner of CE, Kolkata -IV Vs M/s. Himadri Speciality Chemical Ltd - 2022 (9) TMI 1213 (CAL HC) : 2022 (66) G.S.T.L. 264 (Cal.)*** as under:

> "9. As pointed out earlier, the basis for issuance of the show cause notice was the decision in the case of Cadila Health Care Limited. The said assessee was engaged in the manufacture of medicaments and had availed CENVAT Credit on service tax paid on the technical and analysis service, commission paid to the foreign agents, courier service etc. The revenue took a stand that CENVAT Credit of service tax paid on the above services is not admissible. Challenging the findings of the adjudicating authority, appeal was filed before the tribunal. Ultimately the matter travelled to the High Court. The High Court held that in the absence of any material on record, there is nothing to indicate that commission agent were involved in the activities of sales promotion and that the claim of the assessee was accordingly rejected. Thus, the Court took note of the factual position in the case that there was nothing to indicate that the commission agents were involved in the sales promotion activities, contrary to the case on hand where agreements were produced before the authority to show what is the nature of services rendered by those commission stockists.
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> 10. Mr. Bhattacharyya referred to the sample invoices and submitted that in the invoices, it has been stated under the column description "commission for sales". The correctness of such an identical submission made before the tribunal was tested and after considering all the facts, the terms and

conditions of the agreement and the nature of services rendered by the commission stockist the tribunal recorded an independent finding that the activities of the commission stockist is towards sales promotion as well. **Therefore, the reliance placed on the decision in the case of Ambika Overseas by the respondent assessee was well justified. Further, on and after the insertion of the explanation in Section 2(l) vide notification dated 03.02.2016, the position has become much clearer. The explanation seeks to clarify the intention of the legislature with a view to extend the benefit of credit on services of commission agent as was indicated in the circular dated 29.04.2011 which is to the following effect**.

B.30 – Meerut Zone – Cenvat Credit – Admissibility of Cenvat Credit on Service Tax Paid on Sales Agency Commission Service:

Issue:

C.B.E. & C. Vide its Circular No. 943/4/2011-CX., dated 29.04.2011 at point No. 5 [2011 (267) ELT (T19)] has clarified that credit of service tax paid on sales commission services (Business auxiliary services) used in relation to manufacture/sale of finished goods is admissible under Cenvat Credit Rules, 2004. However, there are conflicting judgments of Hon'ble High Courts in this regard. Hon'ble High Court of Gujarat in case of ***Cadila Health Care [2013 (30) S.T.R. 3]*** *has disallowed the said Cenvat credit whereas Hon'ble Tribunal in case of* ***Birla Corporation Ltd. [2014 (35) S.T.R. 97]*** *followed the*

judgment of Hon'ble High Court of Bombay and allowed the credit. Board may be requested by the conference to issue necessary clarification on the subject to avoid further litigation and to achieve uniformity in the practice of assessment.

Discussion & Decision:

The conference discussed the issue in detail and the facts of both the cases where apparently conflicting judgements have been delivered. It was noted that the judgment of Hon'ble High Court of Gujarat was in a very specific set of circumstance where the sales commission agent seemed to be only trading in the goods i.e. buying and selling the goods without undertaking any sales promotion or advertising. In the said judgment, Hon'ble Court noted that "there is nothing to indicate that such commission agents were actually involved in any sales promotion activities as envisaged under the said expression. Obviously, commission paid to the various agents would not be covered in this expression since it cannot be stated to be a service used directly or indirectly in or in relation to the manufacture of final products or clearance of final products from the place of removal". Board Circular No. 943/4/2011-CX., dated 29.04.2011 at point no. 5 on the other hand has explained the situation where the commission agent renders the service of sales promotion in following words".....Moreover the activity of sale promotion is specifically allowed and on many occasions the remuneration for same is linked to actual sale.....". Board circular directs that input service credit would be available when there is an element of sales promotion as sales

promotion is a service. Thus, the conflict between the judgment and the circular is not as large as is perceived. ***Both the Board circular and case laws on the subject allow credit of input service, when the activity of the sales commission agent involves an element of sales promotion.***

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 Versus 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 Versus 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 2005-2006 and the Court followed the decision in the case of ***Commissioner of Income Tax Versus 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.

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14. The respondent had also resisted the show cause notice by contending that extended period of limitation could not have been invoked. On plain reading of the show cause notice, it is clear that except for the use of the word "suppression of material facts", that there is nothing on record to indicate as to on what basis the adjudicating authority invoked the extended period of limitation. More so, when the assessee had disclosed all the materials in their returns and the assessee was also subjected to audit earlier and there was no objection raised by the audit department. Therefore, on the said ground also the assessee is entitled to succeed." (emphasis supplied)

17. That apart, we also find the contentions of the appellant against invocation of extended period of limitation tenable in as much as neither the SCN nor the adjudicating authority has alleged that the appellant has not filed the statutory returns or have stated or found any positive act of wilful suppression or misstatement of facts with intent to evade payment of duty indulged in by the appellant. On the contrary, there is a specific finding that the details of the transactions are recorded in the specified records. We also hold that the issue involved herein is interpretational in nature and thus the reliance placed by the appellant on the decision in ***International Merchandising Company, LLC(Earlier known as International Merchandising Corporation) vs Commissioner, Service Tax, New Delhi***

reported in ***(2023) 3 SCC 641***, to contend that extended period cannot be invoked, is tenable in this context.

18. In light of our discussions and findings above, we hold in favour of the appellant on merits as well as the plea on invocation of extended period of limitation. The impugned Order-in-Original No. LTUC 503/2016-C dated 24.08.2016 being untenable is therefore hereby set aside.

The appeal is allowed with consequential relief in law, if any.

(Order pronounced in the open court on 26.06.2025)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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