



TAX ALERT

Service tax charged by commission agent on sales have been in disputes. One school of thought arising out of plethora of judicial pronouncements holds that the definition of input service specifically covers “sales promotion” in the inclusive part and service of commission agents are generally availed to procure sales order, thus these are rendered for sales promotion. Thus, such services are squarely covered by the definition of input service. However, another school of thought is arising out of judgement of Gujarat High Court in the case of **CCE, Ahmedabad-II vs Cadila Healthcare Ltd. [2013 (30) STR 3 (Guj)]**, wherein the Hon’ble Court held that the definition of input service refers to “any service used by the manufacturer directly or indirectly in relation to manufacture of final product and clearance of the final product upto the place of removal”. Since the service of commission agent is directly concerned with sales and not with production, it cannot be covered within the quoted expression. Further, the Hon’ble Court had denied treating the activity as sales promotion, since there was no material on record to indicate that the Commission agents were involved in the activity of sales promotion as covered under the inclusion part of the definition.

The reason for disallowing the credit under the activity of sales promotion was due to non availability of record to prove that the commission had been paid for sales promotion. However, ignoring the core reason for disallowing in the above referred judgment, cenvat credit on service tax paid on commission agent’s service has been disallowed in number of cases.

- **CCE, Daman vs Paras Motors MFG Co.[2013 (31) STR 81 (Tri-Ahmd)]**
- **Gujrat State Fertilizers & Chemicals Ltd. vs CCE & ST, Surat-II[2016(41)STR191(Tri-Ahmd)]**

Recently vide Notification No. 2/2016-CENT dated 03.02.2016 Cenvat credit Rules, 2004 has been amended whereby an explanation has been added in the definition of input service. In terms of said explanation it has been provided that sales promotion would include service provided by sales agent on commission basis.

Conclusion: It seems that above amendment would set right the disputes in relation to applicability of cenvat on sales commission agent service, however, such prospective amendment effective from 3rd February, 2016 creates doubts about fate of such credit prior to such amendment or whether such amendment by way of explanation is clarificatory in nature and has retrospective effect.