

(2014) 04 KAR CK 0274
In the Karnataka High Court
Case No : C.E.A. No. 13 of 2013

Commissioner of Service Tax

APPELLANT

Vs

Team Lease Services Pvt. Ltd.

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 38

Citation : (2014) 73 VST 129

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : Shashikantha C, Advocate for the Appellant; P.B. Harish, Advocate for the Respondent

Judgement

B. Manohar, J.—This Central excise appeal is by the Revenue being aggrieved by the Order No. 755/2012 dated December 18, 2012¹ passed in Appeal No. ST/270/2012 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short, "the Tribunal") wherein the Tribunal held that the assessee is liable to avail of CENVAT credit towards the service tax paid on the group personal accident and group medical policies for the employees while setting aside the order dated November 30, 2011 passed by the Commissioner of Service Tax for the period from April 2007 to September 2010. The Revenue has raised the following substantial question of law for our consideration in the present appeal:

"Whether, the Tribunal was correct in allowing CENVAT credit on insurance services for payment of service tax on output service, viz., "manpower recruitment or supply agency services" wherein such services do not have any nexus for providing the output service and do not qualify as "input service" as per rule 2(1)(i) of the CENVAT Credit Rules, 2004?"

2. Sri P.B. Harish, learned counsel appearing for the respondent, at the outset, submitted that the Substantial question of law raised in this appeal is fully covered by two judgments of the Division Bench of this court reported in

Commissioner of C. EX. and S.T., Bangalore Vs. Micro Labs Ltd., and Commissioner of Central Excise Vs. Stanzen Toyotetsu India (P) Ltd., and made available the copies of the judgments passed by the Division Bench of this court.

3. We have carefully considered the arguments addressed by the parties and perused the order impugned and the Division Bench judgments relied upon by the advocate appearing for the respondent.

4. The Division Bench of this court in Commissioner of Central Excise Vs. Stanzen Toyotetsu India (P) Ltd., , had considered the issue "whether the assessee is entitled to claim CENVAT credit for the service tax paid on insurance/health insurance policy". Paragraph 14 of the said judgment reads thus (pages 240 and 241 in 44 VST):

"14. In so far as insurance coverage to the employees is concerned in the course of employment if the employees suffer injury or dies, there is a vicarious liability imposed on the employer to compensate the employee. If the employer employs its own transportation facility in order to cover the risk which also includes the risk of workers who are covered in that statutory establishment. He has to take the insurance policy without which the vehicle cannot go on the road. Under the Workmen's Compensation Act he has to obtain the insurance policy covering the risk of the employees. The Employees State Insurance Act takes care of the health of the employees also and casts an obligation on the employer to provide insurance services. Under these circumstances, this group insurance health policy though is also a welfare measure is an obligation which is cast under the statute that the employer has to obey. Section 38 of the Employees State Insurance Act, 1948, mandates that subject to the provisions of the Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. May be the employees also have to contribute but the employer is under an obligation to take an insurance policy and contribute his share. Therefore, the said group insurance health policy taken by the assessee is a service which would constitute an activity relating to business which is specifically included in the input service definition."

5. Further another Division Bench of this court in Commissioner of C. EX. and S.T., Bangalore Vs. Micro Labs Ltd., while considering the issue with regard to "whether the assessee is liable to avail of Cenvat credit towards the payment of service tax on the group insurance health policy" had followed the judgment in Commissioner of Central Excise Vs. Stanzen Toyotetsu India (P) Ltd., , held that the assessee is entitled to avail of Cenvat credit for service tax on group medical policy and group insurance health policy. The issue involved in this appeal is similar to the one raised in the above judgments. We are in respectful agreement with the order passed by the two Division Benches of this court referred to above. Following the said judgments, this appeal is dismissed and the order passed by the Appellate Tribunal is confirmed.