(2024) 04 CESTAT CK 0049

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 85881 Of 2022

M/S. Bajaj Allianz General Insurance Company Limited	APPELLANT
Vs	
Commissioner Of Central Excise & Service Tax, Pune-I	RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Citation : (2024) 04 CESTAT CK 0049

Hon'ble Judges : Dr. Suvendu Kumar Pati, Member (J);Anil G. Shakkarwar, Member (T)

Bench : Division Bench

Advocate : Jay Cheda, Priyesh Bheda, Shambhavi Devalkar

Final Decision : Allowed

Judgement

Dr. Suvendu Kumar Pati, Member (J)

1. Confirmation of Service Tax demand of ☐ 31,99,84,269/- by the Commissioner of Central GST, Audit-I, Pune on the ground that Appellant had availed ineligible credits alongwith proportionate interest and penalties under various Sections of Finance Act is assailed by the Appellant before this Forum in the present appeal.

2. Facts of the case, in brief, is that Appellant has been providing General Insurance services and it took registration for Service Tax for that category. Investigation was conducted by the DGCEI, on receipt of intelligence input, that Appellant was availing CENVAT Credit on the basis of bogus invoices issued by Automobile dealers that resulted in issue of show-cause notice cum-demand for recovery of the amount availed on allegedly ineligible credits. Appellant went through the adjudication process after submitting reply to show-cause notice and ultimately approached this Tribunal after getting no relief from the Commissioner, who rather confirmed the demand etc. raised in the show-cause notice and only allowed Appellant to exercise option to pay reduce penalty on fulfilment of conditions of payment of duty and interest within 30 days of the communication of his order.

3. During course of hearing of the appeal, learned Counsel for the Appellant Mr. Jay Cheda submitted that during the course of business Appellant had entered into agreements with motor car dealers for providing infrastructural facilities with space by the dealers to liaison with customers for servicing of its motor insurance business within the premises of the dealers, against which dealers were paid for such provision of extending ‘Business Auxiliary Service’. Service Tax was accordingly collected and paid by the dealers to the Respondent-Department but holding those payments to be made as commission against insurance policies generated by the motor vehicle dealers, without any iota of proof, demand was raised and confirmed, despite the fact that at the dealers’ end who issued the invoices, classification of service was not disputed by the Department which is contrary to the plethora of decisions rendered by this Tribunal namely in the case of Cholamandalam Ms General Insurance Co. Ltd. Vs. CGST & CE reported in 2021 (3) TMI 24 – CESTAT CHENNAI, Cholamandalam Ms General Insurance Co. Ltd. Vs. CGST & CE reported in 2021 (9) TMI 442 – CESTAT CHENNAI, ICICI Lombard General Insurance Co. Ltd. Vs. CGST & CE reported in 2023 (2) TMI 1093 – CESTAT MUMBAI, Future General India Insurance Co. Ltd. Vs.

CC reported in 2023 (4) TMI 922 - CESTAT MUMBAI, Tata AIG General Insurance Co. Ltd. Vs. CGST & CE reported in 2023 (11) TMI 472 - CESTAT MUMBAI. His further submission is on the issue that this demand is based on ‘statement of demand’ dated 24.04.2018 raised for the period from October, 2016 to June, 2017 which is sequel to the original show-cause notice No. 98/2015 dated 16.10.2015, vide which demand was raised for the period from April, 2010 to June, 2015 on the same ground but relief was granted to the Appellant by this Tribunal not only for the said period but also for its subsequent period from July, 2015 to September, 2016 vide final Order No. A/86058-86059/2022 dated 19.10.2022 in Appellant’s own case and the issue is, therefore, no more res integra, for which order passed by the Commissioner is required to be set aside.

4. On the other hand, learned Authorised Representative for the Respondent-Department Mr. Priyesh Bheda supported the reasoning and rationality of the order passed by the Commissioner and took us through para 37 & 38 of the Order-in-Original wherein admission of employees concerning not providing infrastructure expenses, not renting any portion of premises was available to justify that those amount paid were nothing but insurance commission which was not payable to unregistered Agents as per Rule framed by IRDA, for which order passed by the Commissioner need not be interfered with.

5. We have gone through the case record and perused the order passed by this Tribunal in respect of the Appellant for the first show-cause notice since this notice is based on statement of demand issued in pursuance to the said show-cause notice. As could be noticed, this Tribunal vide its order dated 19.10.2022 has taken note of those statement of employees of motor vehicle dealers as discussed in another case namely Cholamandalam Ms General Insurance Co. Ltd.

Vs. CGST & CE reported in 2021 (3) TMI 24 – CESTAT CHENNAI, while passing the order and it had relied upon the judgements passed by this Tribunal in Modular Auto Ltd. Vs. CCE reported in 2018 VIL 541 MAD ST and given the findings that assessment to tax at the hands of the service providers end can’t be questioned at the hands of service receiver (Appellant in this case). This being the consistent finding of this Tribunal and in following the judicial precedent set by this Tribunal in Appellant’s own case, we pass the following order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Central GST, Audit-I, Pune vide Order-in-Original No. PZ/CGST AUD-I/CGST-I/COMMR/03/2021-22 dated 24.12.2021 is hereby set aside with consequential relief, if any.