
(2021) 04 CESTAT CK 0041

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 12702 Of 2018

Solvay Specialities India Pvt Ltd

APPELLANT

Vs

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

RESPONDENT

Date of Decision : 16-04-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(1)

Citation : (2021) 04 CESTAT CK 0041

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Advocate : Dhawal Shah, V. Lukose

Final Decision : Allowed

Judgement

1. The issue involved in the present case is that whether the appellant is entitled for the Cenvat Credit in respect of Group Insurance Services for

insurance of staff. The adjudicating authority as well as the Commissioner (A) denied the Cenvat Credit on the ground that the input services were not

used either in or in relation to the manufacture of final product and it is not covered under inclusion category of input services and it fall in the

exclusion category provided from 01/04/2011.

2. Shri Dhawal Shah, learned counsel appearing on behalf of the appellant submits that the Group Insurance Policy was taken in respect of the

employees of the company and the policy was issued in the name of the appellant. He submits that this Group Insurance is mandatory under the

statute for the employees. Therefore, it is not optional for the assessee. Accordingly, it is related to overall business activity. He submits that as regard

to reliance of the Revenue on the exclusion category, first of all the Group Insurance does not fall under the exclusion category. Secondly, all the

invoices on which the credit was taken was issued from June 2009?"2011 though credit was taken in March, 2014. He further submits that even for

the period post 01/04/2011, the Honâ??ble High Court and the Tribunal in the considered this issue and allowed the Cenvat Credit in respect of

Group Insurance Services. He placed reliance on the following judgments:

(1) M/s Ganeshan Builders Ltd. vs. The Commissioner of ST 2018 (10) TMI 269- Madras High Court

(2) M/s Reliance Industries Ltd. vs. CCE & S.T. Vadodara 2019 (6) TMI 194- CESTAT Ahmedabad

(3) M/s Transformers & Electricals Kerala Ltd. vs The CCE, Customs & S.T., Cochin

(4) M/s Panchmahal Steel Ltd. vs CCE & S.T., Vadodara 2019 (4) TMI 120- CESTAT Ahmedabad

(5) C.C.E., Vadodara vs. Parry Enterprise India Ltd.2014 (4) TMI 263- CESTAT Ahmedabad

(6) KMPG India Ltd. vs CCE, Delhi-IV 2017 (9) TMI 1261-CESTAT Chandigarh

(7) CCE, Bangalore-III vs. Stanzen Toyotetsu India (P) Ltd. 2011 (23)STR 444 (Kar)

3. Shri V. Lukose, learned Counsel appearing on behalf of the Revenue reiterates the findings of the impugned order. He also submitted a detailed

submission dated 05/04/2021 wherein he placed reliance on the following judgments:

(1) Mercedes Benz India P. Ltd (2018 (364) ELT 1019 (Tri-Mum)

(2) Nutrine Confectionary Co Ltd. (2012(280)ELT 516 (Tri- Bang)

(3) Semco Electric P Ltd. 2012 (276) ELT 94 (Tri-Mum)

4. I have carefully considered submission made by both sides and perused the records. I find that very same issue even for the period post amendment

in Rule 2(I) of Cenvat Credit Rules, whereby certain services were excluded from the ambit of input services has been considered by the Honâ??ble

Madras High Court in the case of M/s Ganeshan Builders Ltd. (supra) wherein after interpreting the term â??Group Insuranceâ?? with the exclusion

clause held that the group insurance service is admissible input service and credit was allowed. The relevant portion of the judgment is reproduced

below:

9. In our considered view, the Tribunal missed a very significant point, while

taking a decision as to whether the credit availed by the assessee is eligible or not? The first and foremost factor, which should have weighed the mind of the Tribunal Is the nature of the policy availed by: the assessee; the beneficiary of the policy, and the Statute, under which, the policy is required to be availed. These three are very important factors in the instant case.

10. As noticed above, the assessee is rendering commercial or industrial construction services, construction of residential complex, works contract service and GTA Service (as a recipient) and the assessee is registered with the Service Tax Commissionerate. The copies of a few policies, which have been availed by the assessee, have been produced before us, which show that they are Workmen Compensation

Policies. The name of the insured is the assessee, namely, M/s. Ganesan Builders Limited. The policies specify the area, where the construction works are being carried on and in the copies given to us the addresses are : No.144, Rajiv Gandhi Salai, Chennai- 41 and (ii)

SIPCOT Industrial Park, Irungulam, Podur Village, Siriperumbudur. The description of the employees for whom premium has been paid are not described, by their names, but by their vocation/skill, namely, Mason, Helper, Stone Cutter, Barbender and his Helper, Carpenter and

his Helper, Painter and his Helper, Store Keeper, Electrician, Supervisor, Plumber, Welder, Tiles Mason, etc. Therefore, we are required to

consider as to why the assessee is required to avail such a policy This is so because of a statutory requirement under the Building and Other

Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (in short, the 1996 Act). Under the said Act,

the Workmen's Compensation Act, 1923 has been included in the Second Schedule of the 1996 Act and the provisions of Workmen's

Compensation Act, 1923 has been made applicable to the building Workers.

11. Thus, the inclusion of the Workmen's Compensation Act in the 1996 Act, a beneficial Legislation, is for the purpose of protecting

workmen, who generally belong to unorganized sector. The policy does not name the employees, but categorized the employees based on

their vocation/skill. The Insured is the assessee and the intention of the policy is, to protect the employees, who work in the site and not to

drive them to various forums for availing compensation in the event of an injury or death. Therefore, even viewed from this angle, the

availment of the policy appears to be a statutory requirement and as? rightly contended by the assessee, this service is not used primarily

for personal use or consumption of an employee and this, being the statutory requirement, it is insured (assessee) specific and not

employees specific.

12. Before us, learned counsel for the assessee had referred to the decision of the Tribunal in the case of Sundaram Fasteners Limited V.

CCE, Chennai-II, 2016 (43) S.T.R. 454 (Tri- Chennai), wherein, Pest Control Service, which was availed and service tax paid to avail such

services was held to be eligible to CENVAT Credit.

12.1. In Hindustan Coca Cola Beverages Pvt. Ltd V CCE, Hyderabad, 2017 (49) S.T.R. 88 (Tri-Hyd.), Outdoor Catering Services provided

to employees/labourers within the factory premises, in compliance of statutory requirement under the Factories Act, 1948, was held to be

eligible to input service credit even after amendment dated 01.04.2011 in Rule 2(I) of CENVAT Credit Rules, 2004.

12.2. In Hydus Technologies India Pvt. Ltd. V. CCE, Hyderabad, 2017 (52) S.T.R. 186 (Tri.-Hyd.), input service to Group Gratuity

Insurance, employee deposit linked Insurance and employee health were held to be not insurance services used primarily for personal use

or consumption of the employee and all insurance services availed under various Labour Legislations enacted for welfare of

employees/workers, being the benefit bestowed by one legislation cannot be taken away or made highly difficult and impractical to be

adhered to by another field of law. In the said decision, the Tribunal held that though in the definition, of input services it is mentioned that

life insurance health insurance, etc., are excluded, it is subject to the condition that such services are primarily for personal use or

consumption of employee and none of the insurance services, which were subject matter in the said cases can be said to be used primarily

for personal use or consumption of employee.

12.3. The above referred decisions, though rendered by the Tribunals, have been relied on to impress upon this Court that consistently the

Tribunals, in several cases, have uniformly held that they are eligible input service credits even after the amendment dated 01.04.2011.

13. In the preceding paragraphs we have analyzed the Workmen's Compensation Act policy which has been filed by assessee as being the statutory requirement with the laudable object to protect the employees/workmen in the unorganized sector, in the instant case the construction sites of the assessee. The assessee is shown as "insured" and the beneficiaries are not individual employees, but they are covered by their vocation/skill.

14. Thus, in our considered view,, the Tribunal fell in error in dismissing the appeal filed by the assessee and equally the First Appellate Authority as well as the Original Authority failed to interpret the statutory provisions, in the matter it is required to be done.

15. For the above reasons, the appeal filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee and against the Revenue. There will, be no order as to costs.

From the above judgment it can be seen that identical issue has been considered by the Hon'ble Madras High Court in detail after interpreting the definition of input services and also the inclusion clause. Therefore, there is nothing more to add after the aforesaid judgment was passed.

Accordingly, following the above judgment, I am of the clear view that Group Insurance Service is admissible for Cenvat Credit. The impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 16.04.2021)