IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 19 OF 2019

The Commissioner of CGST &
Central Excise .. Appellant

v/s.

Toyo Engineering India Ltd. .. Respondent

Mr. Ram Ochani for the appellant
Mr. Jas Sanghvi I/b PDS Legal for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 3rd JULY, 2019

P.C.

1. This appeal under section 83 of the Finance Act, 1994 (the Act) read with Section 35G of the Central Excise Act, 1944 challenges the order dated 15th May, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The impugned order of the Tribunal allowed the respondent's appeal by following its order dated 23rd March, 2018 in respect of the same respondent assessee on an identical issue.

3. The Revenue being aggrieved by the order dated 23rd March,

2018 passed by the Tribunal had preferred an appeal to this Court being Central Excise Appeal No. 20 of 2019 (Commissioner of CGST Vs. Toyo Engineering India Ltd.) and the same was dismissed by this Court on 18th June, 2019 by passing following order.

> *"2. The Revenue has urged only the following question of law for our consideration :-*
>
> > *"(a) Whether under the facts and circumstances of the case, was it justified to hold that Cenvat Credit of service tax paid on insurance policy is admissible when the policy covers the employees and family members of the employees ?"*
>
> *3. On 19th October, 2011, a show-cause notice was issued to the respondent for the period 2006-07 to 2010-11 proposing to disallow Cenvat credit availed on Medical Insurance Policy. The notice alleges that the mediclaim policy was taken for their employees and their family members. Thus, the service tax paid on the insurance premium was not entitled to Cenvat credit under the Cenvat Credit Rules, 2004 (Cenvat Rules).*
>
> *4. The respondent responded to the show-cause notice and pointed out that it has taken out a mediclaim policy for its employees. Thus, entitled to the benefits of input credit as it satisfied the test of inupts as defined in the Cenvat Rules.*
>
> 5. *The original adjudicating authority i.e. the Commissioner – Service Tax on consideration of the show-cause notice and the reply filed by the respondent records in its order dated 17th September, 2014 that "the short point involved in the show-cause notice is whether the noticee respondent is entitled to avail Cenvat credit of the service tax paid on the premium in respect of the mediclaim policy taken for its employees". On the above issue, the Commissioner – Service Tax proceeds to hold that the respondent assessee is not entitled to take Cenvat credit of the Service Tax paid on the premium paid on the mediclaim policy taken of its employees.*

6. *Being aggrieved with the order dated 17th September, 2014 the respondent filed an appeal to the Tribunal. By the impugned order dated 23rd March, 2018, the Tribunal allowed the respondent's appeal. This by holding that for the period up to March, 2011, the respondent was entitled to Cenvat credit on service tax paid in respect of the insurance premium for mediclaim policies for its employees. This on the basis of the definition of inputs under the Cenvat Rules upto 31st March, 2011.*

7. The Revenue is in appeal before us.

8. From the facts narrated hereinabove, it is clear that the question as proposed by the Revenue does not arise from the impugned order of the Tribunal. The impugned order of the Tribunal was dealing with an appeal filed by the respondent from the order of the Commissioner to the extent it disallowed Cenvat credit of service tax paid on insurance policies taken out for its employees. The impugned order of the

Tribunal on facts was not called upon to deal with the issue of taking of Cenvat credit of service tax paid on insurance policy for the family members of the employees. In fact, the Commissioner – Service Tax who passed the order in original dated 17th September, 2014 after considering the show-cause notice and the respondent's reply to the same, renders a finding of fact that respondent is taking Cenvat credit of service tax paid on insurance policy covering the health of its employees. The Revenue accepted this finding of fact. This is evident as it neither had filed any appeal nor did they filed any cross-objection to the appeal filed by the respondent.

9. Thus, the only question which arises for our consideration from the impugned order of the Tribunal is as under :-

> *"(a) Whether under the facts and circumstances of the case, was it justified to hold that Cenvat Credit of service tax paid on insurance policy is admissible when the policy covers the employees?"*

10. *The aforesaid question which arises from the order of the Tribunal does not give rise to any substantial question of law as the issue stands concluded in favour of the respondent assessee and*

against the Revenue by the decision of this Court in ***Commissioner of Central Excise Vs. Axis Bank Ltd.*** *(Central Excise Appeal No.167 of 2018, rendered on 20th December, 2018). For the reasons indicated in the order passed in Axis Bank Ltd. (supra), the question as arises from the impugned order of the Tribunal does not give rise to any substantial question of law. Thus, not entertained."*

4. It is an agreed position between the parties that the questions raised herein on the facts and in law arising in the present case are identical to the one which arose in Central Excise Appeal No. 20 of 2019 (supra) and for the reasons recorded therein, this appeal is not entertained.

5. Accordingly, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**