



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 24.05.2024

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THE HONOURABLE MR.R.MAHADEVAN, ACTING CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition Nos. 31725 and 31726 of 2023
and
W.M.P.Nos.31354 and 31356 of 2024

WP No. 31725 of 2023

Royal Sundaram General Insurance Company Limited
represented by its Authorised Signatory
Mr. Vaibhav Kabra
Vishranti Melaram Towers
No.2/319, Rajiv Gandhi Salai (OMR)
Karapakkam, Chennai - 600 097

.. Petitioner

Versus

1. Commissioner of Central Excise and Service Tax
Large Taxpayer Unit
1775, Jawaharlal Nehru Inner Ring Road
Anna Nagar Western Extension
Chennai - 600 101
2. Assistant Commissioner of GST and Central Excise
Sholinganallur Division, Chennai South
692, MHU Complex, Nandanam
Anna Salai, Chennai - 600 035

.. Respondents



WP No. 31726 of 2023

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Royal Sundaram General Insurance Company Limited
represented by its Authorised Signatory
Mr. Vaibhav Kabra
Vishranti Melaram Towers
No.2/319, Rajiv Gandhi Salai (OMR)
Karapakkam, Chennai - 600 097

.. Petitioner

Versus

The Commissioner of GST Central Excise
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai
Nandanam, Chennai - 600 035

.. Respondent

Writ Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order bearing Interim Order number 40007-40008/2023 dated 25.07.2023 passed in Appeal Nos. ST/40810/2017 and ST/40198/2020 by the Customs, Excise and Service Tax Appellate Tribunal, Chennai to the extent it is prejudicial to the petitioner and quash the same.

For Petitioner : Mr. Arvind P. Datar, Senior Advocate
for Mrs.R.Charulatha
M/s. Lakshmi Kumaran and Sridharan Attorneys
in both the writ petitions

For Respondents : Mr. Rajnish Pathiyil
Senior Panel Counsel
in both the writ petitions

COMMON ORDER

THE ACTING CHIEF JUSTICE

Both the writ petitions are filed by M/s. Royal Sundaram General

Insurance Company Limited, Chennai questioning the validity and/or



correctness of the order dated 25.07.2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, (in short, “the CESTAT”) in Interim Order Nos.40007 – 40008/2023 in Appeal Nos. ST/40810/2017 and ST/40198/2020, to the extent it is prejudicial to them. For ease of reference, the operative portion of the order impugned herein, is reproduced below:

DIFFERENCE OF OPINION

In view of the difference of opinion between the Members, the following questions are framed for resolving the difference:-

Whether the appeals is to be allowed by setting aside the impugned orders as held by Member (Judicial)?

(OR)

Whether the appeals is to be dismissed by upholding the impugned orders as held by Member (Technical)?

BRIEF FACTS:

2.(i) The petitioner is engaged in the business of providing general insurance services relating to Motor Insurance, Health Insurance, Property Insurance, Engineering Insurance, liability insurance and other miscellaneous insurance and it was registered with the Service Tax Department under Registration No.AABCR7106GST001. The petitioner is carrying on such business from 2001 and they also registered themselves with Insurance Regulatory Development Authority of India (IRDAI) to conduct business of general insurance.



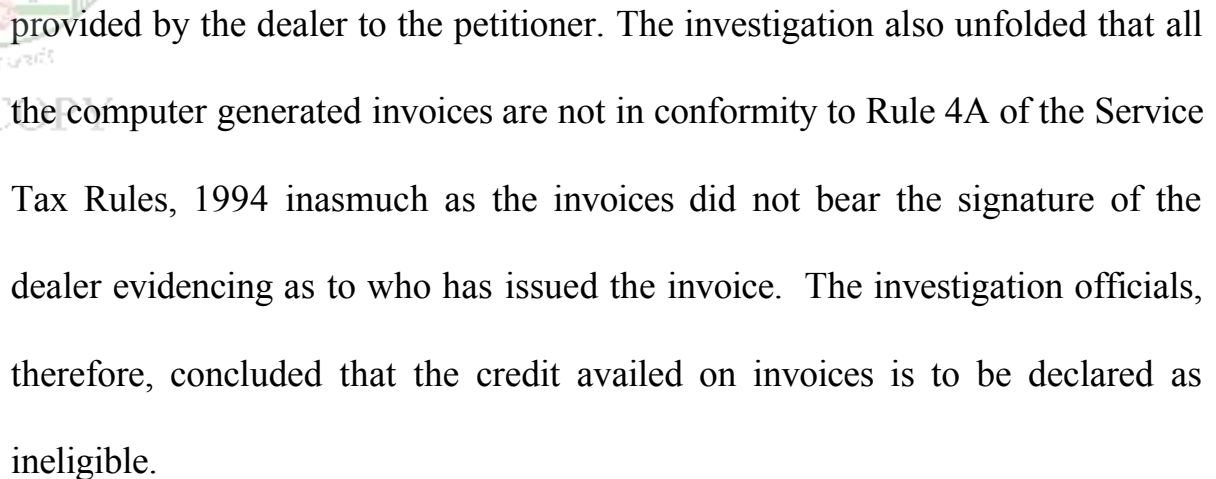
(ii) According to the petitioner, during the course of their business, they have entered into facilitating agreements with various automobile manufacturers and dealers, who, at the time of sale of automobiles, through their established dealer network, assist the buyers of such automobiles to obtain motor insurance. In that context, the dealers of the automobiles are considered as the first point of contact with the buyers of motor vehicles and also motor insurance. The petitioner offered to their customers, insurance services through their automobile manufacturers/dealers as per the agreements entered into with them. Apart from facilitation agreements, the petitioner also entered into Service Provider Agreements with the dealers and availed the services of the dealers. In certain instances, tripartite agreements have been entered into with automobile manufacturers and infrastructure service providers. For taxation purpose, the dealers declared those infrastructure support service as taxable service and remitted service tax. For several years, the payment of tax by the dealers has been accepted by the first respondent and no proceedings have been initiated under Section 77 (1) (e) of the Finance Act, 1994 in respect of any discrepancy.

(iii) While so, on the basis of an alleged investigation conducted by the officers of the Chennai Zonal Unit, an issue was raised in relation to the eligibility of the petitioner to avail Central Value Added Tax (CENVAT) credit



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on service tax charged by the dealers on the infrastructure services provided in respect of motor insurance policies. As per the investigation conducted by the Chennai Zonal Unit, the dealers of motor vehicles not being Agents/Brokers/Intermediaries of Insurance Companies, are neither permitted to do insurance business nor to receive commission. However, the dealers have been soliciting business of insurance on behalf of the petitioner, while selling the vehicles to their customers. For this purpose, the petitioner pays commission to the dealers for soliciting insurance business on their behalf, which is prohibited under the Insurance Act and IRDA Regulations. The dealers/manufacturers are not permitted to do insurance business and to receive commission. The investigation revealed that invoices have been raised describing the service so rendered by the brokers as "Data Processing and Policy Serving related Activities". But, in reality, the dealers did not provide any such service to the petitioner, much less the service described in the invoices. The invoices have been raised in such a manner only to pass over the insurance commission to the dealers under the garb of providing services. The dealers pay service tax on the amount collected from the petitioner as per the invoices, based on which the petitioner has availed CENVAT credit for the service tax paid by them. According to the Department, the availment of such credit is irregular inasmuch as no service, as described in the invoices, has been



(iv) In this context, show cause notice for the period from 2010-2011 to 2014-2015 was issued and ultimately, Order-in-Original dated 23.12.2016 was passed by the Commissioner of Large Taxpayer Unit, Chennai. Subsequently, statement of demand for the period from April 2015 to July 2017 was made and the Order-in-Original dated 28.11.2019 was passed by the Commissioner of GST & Central Excise, Chennai South, disallowing the CENVAT Credit and confirming the demands made along with interest. Aggrieved by the said Orders-in-Original dated 23.12.2016 and 28.11.2019, the petitioner has filed appeals in ST Nos.40810/2017 and 40198/2020 before the CESTAT along with interim applications.

3.(i) Before the CESTAT, it was contended on behalf of the petitioner that the dealers/service providers have always indicated the description of service in their tax invoice as per Rule 4A of the Service Tax Rules, 1994. The description given is in the nature of infrastructure support services and the



dealers/service providers have accordingly remitted service tax. The remittance of service tax all along by the dealers has been accepted by the Department and there was no show cause notice issued against the dealers/service providers for non-compliance of Rule 4A of the Service Tax Rules, 1994 nor penalty was imposed under Section 77 (1) (e) of the Act for any discrepancy in service. Once the nature and description of service, as mentioned in the invoice, are not disputed at the service providers' end, the same cannot be questioned by the Department. The assessment based on the returns in the hands of the service providers has become final and the Department has also accepted those returns based on the declarations made by the service providers. Having accepted the same, it is no longer open to the Department to raise the issue at the service recipient's end. The petitioner also placed reliance on the decision of this Court in the case of **M/s. Modular Auto Limited, CCE, Chennai** reported in **2008 VIL 541 Madras ST** which was also followed by the Tribunal in the case of **M/s. Ford India Pvt Ltd., vs. Commissioner of GST & CCE - 2019 VIL 182 CESTAT CHE-ST**. In the said decision of this Court, it was held that when it is not disputed that the dealer has paid service tax on the services described in the invoices, the denial of credit at the recipient's end cannot be justified without re-opening the assessment at the dealers' end.

(ii) It was further argued on behalf of the petitioner that the denial of



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CENVAT credit on unsigned computer generated invoice issued by M/s.

Honda Motors India Pvt Ltd., to the petitioner is untenable. According to the learned counsel, the CENVAT credit cannot be denied to the petitioner merely because there was no signature in the invoices. When the tax is paid by the petitioner and it is not the case of the Department that the invoices are fake or bogus, the denial of CENVAT credit is legally unsustainable. In this context, reliance was placed on the decision of the Tribunal at Chandigarh in *Automax vs. CCE Delhi* reported in **2018 (363) ELT 1121 (Tri:-Chand)** to contend that when there is no dispute *qua* duty paid, nature of the goods transacted and the actual receipt of the goods in the recipient's factory, then, the credit cannot be denied on the mere ground that the description of goods in the invoice is incorrect. The learned counsel further submitted that in that decision, the Tribunal at Chandigarh concluded that when no investigation was initiated at the hands of the transporter or supplier, then the denial of CENVAT credit at the recipient's end is unlawful.

(iii) The learned counsel for the petitioner also contended that the denial of CENVAT credit was on the ground that the invoices issued by TVS Sundaram Motors reflect the existence of two sets of invoices. According to the learned counsel, in the invoices issued to the petitioner, the services are described as "data processing and policy servicing services". The invoices at



the dealers' end show 'additional incentive'. Only one invoice describing the service as 'data processing and policy servicing services' was issued to the petitioner and they are unaware of a second set maintained by the dealer. While so, the petitioner cannot be penalised by denying CENVAT credit for the invoices maintained by the service providers on their own volition. Thus, the learned counsel prayed for allowing the appeals.

4.(i) Opposing the appeals before the CESTAT, it was contended on behalf of the Department that investigation carried out has unfolded that the issuance of invoices is a tool employed by the dealers/manufacturers to claim undue payment (commission) under the garb of providing services, when no such service is rendered by them. The dealers/manufacturers of motor vehicles not being insurance agents/brokers/intermediaries of the insurance companies, cannot be permitted to solicit insurance business. Consequently, they are dis-entitled to receive any insurance commission from the petitioner. However, the dealers/manufacturers have been soliciting insurance business for and on behalf of the petitioner. When the dealers cannot receive commission from the petitioner, the dealers and manufacturers raise invoices on the instructions given by the petitioner describing in the invoices as 'data processing and policy servicing related activities' so that the commission for promoting insurance



business can be paid to the dealers/manufacturers. In this regard, reliance was placed on Section 40(1) of Insurance Act, 1938 which expressly mandates that *no person shall after expiry of six months from commencement of the Act, pay any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business in India to any person, except an insurance agent or an intermediary or insurance intermediary.* Reference was also made to IRDA Circular dated 25.08.2008 issued under Section 14 of IRDA Act, which limits the payment of commission or brokerage to 10%. In the circular dated 25.08.2008, it was specifically mentioned that *"no payment of any kind including 'administrative or servicing charges' is permitted to be made to the agent or broker in respect of the business of which he is paid agency commission or brokerage."* Contrary to the guidelines issued in the Circular, the petitioner maintains business connection with automobile dealers for procuring insurance policy from the vehicle buyers. The petitioner is not authorised to outsource such insurance services. As per Section 40 of the Insurance Act, only licensed brokers are permitted to do insurance business and entitled to receive commission. For the purpose of receiving commission, the dealers of the petitioner have raised invoices describing the services as 'data processing and policy servicing activities', but, in fact, they render no such service. The taxable value and the service tax is calculated as a percentage of



own damage (OD) premium and intimated by the petitioner to the dealers through e-mail. These facts have been brought out during the investigation conducted by the department. Before passing the orders, which were impugned before the CESTAT, it was contended that the statement of Sri Venkatachalam Sekar, authorised representative of the petitioner was taken into consideration, who has stated that the petitioner has entered into service provider agreements for 'data processing and policy servicing and related activities services' and the rates for the services have not been specified in the agreements. It was also admitted that the petitioner gives a specific percentage of value of the insurance policy as payout to the dealers. Similar statement obtained during the course of investigation was also relied on by the Department while passing the orders which were impugned in the appeals before the CESTAT. Accordingly, the Department justified the orders passed by the authorities which were impugned in the appeals and prayed for dismissal of the appeals.

5. When the appeals were taken up for hearing, the Tribunal, consisting of a Member (Judicial) and a Member (Technical), by order dated 25.07.2023, differed in its views. While the Member (Judicial) held that the orders, which were impugned in the appeals, denying CENVAT credit are unjust and allowed the appeals, the Member (Technical) differed from such



view and passed a separate verdict dismissing the appeals filed by the petitioner. In view of such split verdict, a reference was made to a third Member for deciding the issue.

6. Challenging the portion of the order dated 25.07.2023, which prejudices the petitioner, the present writ petitions are filed.

7. (i) Mr. Arvind P. Datar, learned Senior Counsel for the petitioner submitted that even though there is a statutory appeal remedy against the impugned order of the Tribunal under Section 35-G of the Central Excise Act read with Section 83 of the Finance Act, inasmuch as the order of the Tribunal, which prejudices the petitioner, suffers from arbitrariness, perversity and violation of principles of judicial discipline and ignores the law settled by this Court, the petitioner was constrained to invoke the jurisdiction of this Honourable Court. Hence, the writ petitions are maintainable before this Court.

(ii) The learned Senior counsel also submitted that there is no dispute with regard to the fact that the dealers have paid the service tax collected from the petitioner. While so, the department is not justified in issuing a show cause notice to the petitioner proposing to deny the CENVAT credit availed by them.



The dealers of the petitioner have indeed provided service to the petitioner and collected charges for the same along with service tax, which had gone unnoticed. The department has opted to retain the tax collected, but sought to deny the credit to the petitioner without questioning or disturbing the assessment of the dealers. The learned Senior counsel for the petitioner invited the attention of this Court to the decision in **Modular Auto Ltd., vs. CCE, Chennai**, reported in **2018 (8) TMI 691 Madras**, wherein it was held that denial of credit at the hands of the petitioner is not justified. However, the Member (Technical) of the Tribunal held against the petitioner by holding that the car manufacturers only facilitate insurance companies to have business through their dealer and apart from this, there is no service provided by them. It was also concluded that in furtherance of the sale of policy, the dealers receive the insurance premium from the customers, take out a print out of the insurance policy to complete the sale and hand it over to the customers and except the same, no other service activity is provided to the petitioner. This conclusion of the Member (Technical) of the Tribunal, according to the learned Senior Counsel for the petitioner, is perverse and arbitrary. The petitioner is a service recipient and they are questioned as to the manner of service provided, on the other hand, the same service rendered by the service provider/dealer has not been subjected to any verification by the department.



(iii) The learned Senior counsel for the petitioner further submitted that in the decision of this Court in *Modular Auto* mentioned supra, reference was made to the decision of **State of Karnataka vs. M/s. Ecom Gill Coffee Trading Private Limited** reported in **2023 (72) G.S.T.L. 134 (SC)** wherein it was held that the dealers from whom the purchaser (who claimed Input Tax Credit) purchased the readymade garments have either got their registration cancelled or have filed NIL returns and in some cases, the sale has been disputed by the dealers. While so, it was held that the Assessing Officer doubted the sale and the payment of tax on such sale of which Input Tax Credit was claimed and therefore, the issue of burden of proof attained traction. In the present case, there is no dispute on the transaction made by the petitioner nor on the payment or the registration of the dealer got cancelled. While so, the prejudicial portion of the impugned order of the Tribunal has to be ignored as per the dictum laid down in the case of *Modular Auto* mentioned supra.

(iv) According to the learned Senior counsel for the petitioner, the issue involved in this case is settled by a series of decisions of the Coordinate Benches of the Tribunal, however, the Tribunal failed to place reliance on the same. In this context, he referred to the decisions in *Cholamandalam MS General Insurance Company Ltd., vs. Commissioner of GST and Central Excise (2021) (3) TMI 24 - CESTAT Chennai*; and in *ICICI Lombard General*



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Insurance Company Ltd., vs. Commissioner of CGST and Central Excise,

Mumbai (2023) (2) TMI 1093 CESTAT Mumbai.

(v) The learned Senior counsel for the petitioner has further placed reliance on the decision in the case of **East India Commercial Co., Ltd., vs. Collector of Customs, Calcutta** reported in **1983 (13) ELT 1342 (SC)** and contended that the Law declared by the highest Court in the State is binding on the Tribunal under its superintendence and they cannot ignore it in either initiating a proceeding or deciding on the rights involved in such a proceeding. In this case, identical issue has already been decided and settled by this Court and it was also followed by the Coordinate Benches of the Tribunal. Even though the aforesaid decisions have been placed before the Tribunal, the impugned order was passed by the Tribunal.

(vi) The learned Senior counsel for the petitioner invited the attention of this court to the prejudicial portion of the order of the Tribunal in para No.45 and submitted that the attempts made by the Tribunal to distinguish the case laws submitted by the petitioner are improper. When identical decisions rendered by the Coordinate Benches of the Tribunal have been placed, in order to maintain judicial propriety, the Tribunal ought to have followed them or in the event of the same not being followed, the only option is to place the matter



before a larger bench for deciding the matter. In this context, the learned Senior counsel referred to the decisions in **Jindal Dye Intermediaries Limited vs. Collector of Customs, Mumbai (2006) (197) E.L.T. 471 (SC)** and **Jayswals Neco Ltd., vs. CCE, Nagpur (2006(195) E.L.T. 142 (S.C)** wherein it was held that if a Bench does not agree with the view taken by a Coordinate Bench, then, it should refer the matter to a larger bench and refrain from taking a contrary view. The Tribunal, without any valid reasons, rejected the decisions of the coordinate Benches of the Tribunal. With these submissions and case laws, the learned Senior counsel prayed for allowing the writ petitions filed by the petitioner as prayed for.

8. (i) Per contra, Mr. Rajnish Pathiyil, learned Senior Panel Counsel for the respondents submitted that the writ petitions are not maintainable especially when the order of the Tribunal is not final and a decision is yet to be taken in the matter of reference of the matter to a Third Member. While so, the relief sought for in the writ petitions is premature. In this context, the learned Senior Panel Counsel placed reliance on the decision of the Honourable Supreme Court in the case of **Zenith Computers Limited vs. Commissioner of Central Excise** reported in **2014 (303) E.L.T. 336 (Bom)** wherein it was held that in the event of split verdict by the members of the Tribunal, those



orders partake the character of mere opinion rendered by the members of the Tribunal and they are not enforceable. While so, the present writ petitions filed by the petitioner against the split verdict of the Tribunal, which is not enforceable under law, is not maintainable.

(ii) The learned Senior Panel counsel for the respondents also placed reliance on the decision of this Court in the case of **M.M. Rubber Company Limited vs. Union of India** reported in **2007 (210) E.L.T. 670 (Madras)** wherein it was held that when an appeal is filed against an order of split verdict by the Tribunal and when the matter was referred to a third member, the writ petition under Article 226 of the Constitution of India is not maintainable. When the matter is pending before a third member for decision, the order of the Tribunal can only be construed as an expression of opinion by one of the members and it is enforceable only when an order is passed by the third member.

(iii) For the same proposition, the learned Senior Panel counsel for the respondents also placed reliance on the order passed by the Division Bench of this Court in the case of **Income Tax Officer, Company Circle II (I), Madras and others vs. Vice-President, Income Tax Appellate Tribunal, Madras and others** reported in **1983 SCC Online Madras 358 = 1985 (155) ITR 310** wherein this Court, referring to Section 255 (4) of the Income Tax



Act held that if there is a difference of opinion among the members, the assessee has to await the order to be passed by the third member and without knowing the majority verdict of the Tribunal, the writ petitions filed by the petitioner are not maintainable. Accordingly, the learned Senior Panel Counsel submitted that the matter has been referred to a third member for opinion. Even before the third member renders his opinion, the petitioner rushed to this Court with these writ petitions. Therefore, the learned Senior Panel Counsel prayed for dismissal of the writ petitions.

9. We have heard the learned Senior counsel for the petitioner and the learned Senior Panel Counsel for the respondents and also perused the record.

10. The present writ petitions are filed mainly on the ground that the conclusion reached by the Member (Technical) to the effect that no service has been provided to the petitioner by the dealers or manufacturers and consequently, the petitioner, as a provider of output service, cannot avail CENVAT input credit on the invoices generated by the dealers, is legally not sustainable. According to the learned Senior Counsel for the petitioner, the very same issue has been considered and decided by the jurisdictional High Court as



well as other High Courts in favour of the assessee and hence, the prejudicial portion of the order passed by the Tribunal cannot be sustained and is liable to be set aside.

11. At the outset, it is important to point out that the co-ordinate benches of the Tribunal, in several cases, have dealt with the aforesaid issue. In this connection, reference was made to the decision of the CESTAT, Chennai in the case of *M/s. Cholamandalam MS General Insurance Co Ltd vs. The Commissioner of G.S.T. & Central Excise, Chennai* reported in 2021 (3) TMI 24 - CESTAT Chennai, by the learned Senior Counsel for the petitioner. In that case, the assessee entered into agreements with car dealers and Insurance policies have been issued through dealer network. While so, the Credit availed by the Insurance company on the basis of invoices issued by dealers of motor vehicles has been questioned by the Commissioner of GST Central Excise. The Tribunal, following the decision of *Modular Auto* mentioned supra, has held that unless and until the assessment made by the dealer is revised, the credit at the recipient's end cannot be denied and consequently, allowed the appeal filed by the assessee.

12. In the decision of the CESTAT, Mumbai in the case of *ICICI Lombard General Insurance Co., Ltd., vs. Commissioner of CGST and Central Excise, Mumbai* reported in 2023 (2) TMI 1093, relied on the side of



the petitioner, on the basis of the invoices issued by the automotive dealers, service tax was paid by the automotive dealer to the government and the service recipient availed CENVAT credit. However, the Commissioner of CGST and Central Excise, Mumbai not only questioned the availment of CENVAT credit, but also recovered it along with interest and penalty. When the denial of CENVAT credit and recovery of the same were questioned, the CESTAT, Mumbai, following the ratio laid down in *Cholamandalam* case mentioned supra, held that when tax had undisputedly been received by the Government from the automotive dealers, the denial of CENVAT credit is unreasonable and arbitrary. In yet another order passed by the CESTAT Chennai in *Cholamandalam MS General Insurance Company Limited vs. Commissioner of GST and Central Excise, Chennai* reported in 2021 (9) TMI 442, it was once again held that the order passed by the respondent therein cannot be sustained and the Service Tax Appeal filed by the appellant therein was allowed.

13. The learned senior counsel for the petitioner also relied on the order passed by the CESTAT, Hyderabad in the case of *Conneqt Business solutions Limited vs. CCE* reported in 2023 (7) TMI 204. In that case, a



Tripartite agreement was entered into for the dealer to provide space, infrastructure, manpower etc., to enable the assessee to seek insurance business for their company. The issue involved in that case was whether for such services provided by the dealers, the Assessee would be eligible for Cenvat Credit. The CESTAT Tribunal, Hyderabad, following the decisions rendered in *Modular Auto* as well as *Cholamandalam-I* as well as *ICICI Lombard* case mentioned supra, held that when the service tax paid at the end of the service provider is not questioned and when there is no doubt that the service tax in question has been paid, the CENVAT Credit taken by the recipient cannot be denied. Further, unless and until the assessment made at the dealer's end is revised or altered, the CENVAT credit availed on the basis of invoices by the recipient's unit cannot be denied or whittled down.

14. Referring to the decisions of the Honourable Supreme Court in **Union of India vs. Kamlakshi Finance Corporation Limited** reported in **1992 Suppl (1) Supreme Court Cases 443** and in **East India Commercial Co. Ltd vs. Collector of Customs, Calcutta** reported in **1983 (13) E.L.T. 1342 (SC)**, the learned Senior counsel for the petitioner submitted that judicial discipline demands that the decision reached by the coordinate benches has to be scrupulously followed by the other Tribunal. However, in this case, the



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Tribunal has taken a contrary decision and refused to place reliance on the decisions of the Coordinate Benches. Thus, according to the learned Senior Counsel, without taking note of the ratio laid down by the Coordinate Benches, on the very same issue, the Member (Technical) has passed the prejudicial portion of the order, which cannot be allowed to be sustained.

15. We find much force in the submissions so made by the learned Senior counsel for the petitioner. The prejudicial portion of the order has been passed by the Tribunal in derogation of the various orders passed by the coordinate benches of the Tribunal on the very same issue. In Para No.45.1 of the order passed by the Member (Technical) of the Tribunal, the decision cited on behalf of the petitioner in *ICICI Lombard General Insurance Company Limited vs. CGST & CE reported in 2023 (2) TMI 1093* was referred to. However, the Member (Technical) of the Tribunal held that the aforesaid decision factually differs and therefore, it cannot be relied upon. Such a conclusion reached by the Member (Technical) of the Tribunal cannot be countenanced. The coordinate bench of the Tribunal - CESTAT, Mumbai, in the case of *ICICI Lombard General Insurance Company Limited* mentioned supra, had dealt with an identical issue and concluded in para No.6 of the order dated 06.02.2023 that



the conclusion reached by the original authority that no commission could have been paid by the assessee to the automotive dealer under Section 40 of the Insurance Act and that such payment, which is recorded by the automotive dealers in their books of account as a commission, is illegal. The Tribunal further held that such a finding is untenable on the question of the eligibility to avail CENVAT Credit especially when the tax had undisputedly been received by the Government from the automotive dealers. When such a clear and categorical finding was rendered by the CESTAT - Mumbai, being a coordinate bench, which was also followed by the other Coordinate Benches in various other cases, there is no reason for the Member (Technical) to independently assess the merits of the case and to reach a different conclusion. Therefore, we hold that the very reference made by the Tribunal to determine as to whether the conclusion reached by the Member (Judicial) is right or the one made by the Member (Judicial) itself is unnecessary. The issue before the Tribunal has already been examined and adjudicated by the coordinate benches and it binds the Tribunal in all respects. While so, the Tribunal cannot go beyond the settled issue and to re-adjudicate the same by referring the dispute to a third member. Judicial discipline requires that the orders of the coordinate bench or the jurisdictional High Court have to be followed without in any manner attempting to factually re-examine or re-adjudicating the same issue.



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16. At this juncture, it would be appropriate to refer to the decision of Hon'ble Supreme Court in the case of **Official Liquidator v. Dayanand and others**, reported in **(2009) 1 SCC (L&S) 943**, in which, the aspect of judicial discipline has been discussed in detail. Paragraphs 75 to 92 of the said judgment are relevant and the same are extracted as under:

“75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka vs. Uma Devi (2006 SCC (L&S) 753) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharmaceuticals Ltd. vs. Workmen [2007 (1) SCC 408], Gangadhar Pillai vs. Siemens Ltd. [2007 (1) SCC 533], Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara [2007 (5) SCC 326], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh [2007 (6) SCC 207]. However, in U.P. SEB vs. Pooran Chand Pandey [2007 (11) SCC 92] on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in Maneka Gandhi vs. Union of India [1978 (1) SCC 248].

76. The facts of U.P. SEB vs. Pooran Chand Pandey (supra) were that the respondents (34 in number) were employed as daily wage employees by the Cooperative Electricity Supply Society in 1985. The Society was taken over by Uttar Pradesh Electricity Supply Board in 1997 along with daily wage



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employees. Earlier to this, the Electricity Board had taken a policy decision on 28.11.1996 to regularize the services of its employees working on daily wages from before 4.5.1990, subject to their passing the examination. The respondents moved the High Court claiming benefit of the policy decision dated 28.11.1996. The learned Single Judge of the High Court held that once the employees of the society became employees of the Electricity Board, there was no valid ground to discriminate them in the matter of regularization of service. The Division Bench approved the order of the Single Bench. A two-Judges Bench of this Court dismissed the appeal of the Electricity Board. In para 11 of its judgment, the two-Judges Bench distinguished *Secretary, State of Karnataka vs. Uma Devi (supra)* by observing that the ratio of that judgment cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. The two-Judges Bench then referred to *State of Orissa vs. Sudhanshu Sekhar Misra [AIR 1968 SC 647]*, *Ambica Quarry Works vs. State of Gujarat [1987 (1) SCC 213]*, *Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. [2003 (2) SCC 111]*, *Bharat Petroleum Corpn. Ltd. vs. N.R.Vairamani [2004 (8) SCC 579]* and observed:

"16. We are constrained to refer to the above decisions and principles contained therein because we find that often Umadevi (3) case is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University and Bharat Petroleum Corpn. Ltd. a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Umadevi (3) case cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Umadevi (3) case inapplicable to the facts of that case."

"18. We may further point out that a seven-Judge Bench decision of this Court in Maneka Gandhi vs. Union of India has held that



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reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. Maneka Gandhi case is a decision of a seven-Judge Bench, whereas Umadevi (3) case is a decision of a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, Maneka Gandhi case does not specifically deal with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application."

[Emphasis supplied]

77. *We have carefully analyzed the judgment of the two-Judges Bench and are of the considered view that the above reproduced observations were not called for. The only issue which fell for consideration by two-Judges Bench was whether the daily wage employees of the society, the establishment of which was taken over by the Electricity Board along with the employees, were entitled to be regularized in terms of the policy decision taken by the Board and whether the High Court committed an error by invoking Article 14 of the Constitution for granting relief to the writ petitioners. The question whether the Electricity Board could frame such a policy was neither raised nor considered by the High Court and this Court. The High Court simply adverted to the facts of the case and held that once the daily wage employees of the society became employees of the Electricity Board, they could not be discriminated in the matter of implementation of the policy of regularization. Therefore, the two-Judges Bench had no occasion to make any adverse comment on the binding character of the Constitution Bench judgment in Secretary, State of Karnataka vs. Uma Devi (3) (2006 SCC (L&S) 753).*

78. *There have been several instances of different Benches of the High Courts not following the judgments/orders*



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of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In *Mahadeolal Kanodia vs. Administrator General of W.B.* [1960 (3) SCR 578], this Court observed:

"19.If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."

[Emphasis added]

79. In *Lala Shri Bhagwan vs. Ram Chandra* [AIR 1965 SC 1767], Gajendragadkar, C.J. Observed:

"18. ... It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the



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earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

80. *In Union of India vs. Raghubir Singh [1989 (2) SCC 754], R.S. Pathak, C.J. while recognizing need for constant development of law and jurisprudence emphasized the necessity of abiding by the earlier precedents in following words :*

"9.The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

81. *In Sundarjas Kanyalal Bhatija and others vs. Collector, Thane [1989 (3) SCC 396], a two-Judges Bench observed as under :*

"22.. In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions



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within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute."

82. In *Dr. Vijay Laxmi Sadho vs. Jagdish* [2001 (2) SCC 247], this Court considered whether the learned Single Judge of Madhya Pradesh High Court could ignore the judgment of a coordinate Bench on the same issue and held:

"33. As the learned Single Judge was not in agreement with the view expressed in Devilal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

83. In *Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others* [2002 (1) SCC 1], the Constitution Bench noted that the two learned Judges denuded the correctness of an earlier Constitution Bench judgment in *Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha* [2001 (4) SCC 448] and reiterated the same despite the fact that the second Constitution Bench refused to reconsider the earlier verdict and observed:



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“3.We may point out, at the outset, that in Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha (2001 (4) SCC 448) a Bench of five Judges considered a somewhat similar question. Two learned Judges in that case doubted the correctness of the scope attributed to a certain provision in an earlier Constitution Bench judgment and, accordingly, referred the matter before them directly to a Constitution Bench. The Constitution Bench that then heard the matter took the view that the decision of a Constitution Bench binds a Bench of two learned Judges and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, the Bench of two learned Judges could have ordered that the matter be heard by a Bench of three learned Judges.

** * **

5.The learned Attorney-General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three learned Judges was binding on Benches of two learned Judges -- a proposition that learned counsel for the appellants did not dispute. The learned Attorney-General drew our attention to the judgment of a Constitution Bench in Sub-Committee of Judicial Accountability v. Union of India (1992 (4) SCC 97) where it has been said that "no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench" (SCC p. 98, para 5). The learned Attorney-General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in Nityananda Kar (1991 Supp. (2) SCC 506) was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the



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same view of Nityananda Kar, could have referred the case to a Bench of five learned Judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.

[Emphasis supplied]

84. In State of Bihar vs. Kalika Kuer and others [2003 (5) SCC 448], the Court elaborately considered the principle of per incuriam and held that the earlier judgment by a larger Bench cannot be ignored by invoking the principle of per incuriam and the only course open to the coordinate or smaller Bench is to make a request for reference to the larger Bench.

85. In State of Punjab vs. Devans Modern Breweries Ltd. [2004 (11) SCC 26], the Court reiterated that if a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter has to be referred to a larger Bench.

86. In Central Board of Dawoodi Bohra Community vs. State of Maharashtra [2005 (2) SCC 673], the Constitution Bench interpreted Article 141, referred to various earlier judgments including Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha (supra), Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others (supra) and held that "the



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law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status - both would be immediate casualty"

87. *In State of U.P. and others vs. Jeet S.Bisht and another [2007 (6) SCC 586], when one of the Hon'ble Judges (Katju, J.) constituting the Bench criticised the orders passed by various Benches in the same case, the other Hon'ble Judge (Sinha, J.) expressed himself in the following words:*

"100. For the views been taken herein, I regret to express my inability to agree with Brother Katju, J. in regard to the criticisms of various orders passed in this case itself by other Benches. I am of the opinion that it is wholly inappropriate to do so. One Bench of this Court, it is trite, does not sit in appeal over the other Bench particularly when it is a coordinate Bench. It is equally inappropriate for us to express total disagreement in the same matter as also in similar matters with the directions and observations made by the larger Bench. Doctrine of judicial restraint, in my opinion, applies even in this realm. We should not forget other doctrines which are equally developed viz. Judicial Discipline and respect for the Brother Judges."

88. *In U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj [2007 (2) SCC 138], the Court noted that by ignoring the earlier decision of a coordinate Bench, a Division Bench of the High Court directed that part-time tube-well operators should be treated as permanent employees with same service conditions as far as possible and observed :*

"26. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial



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discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity."

89. It is interesting to note that in *Coir Board, Ernakulam vs. Indira Devi P.S.* [1998 (3) SCC 259], a two-Judges Bench doubted the correctness of the seven-Judges Bench judgment in *Bangalore Water Supply & Sewerage Board vs. A.Rajappa* [1978 (2) SCC 213] and directed the matter to be placed before Hon'ble the Chief Justice of India for constituting a larger Bench. However, a three-Judges Bench headed by Dr. A.S. Anand, C.J., refused to entertain the reference and observed that the two-Judges Bench is bound by the judgment of the larger Bench – *Coir Board, Ernakulam, Kerala State vs. Indira Devai P.S.* [2000 (1) SCC 224].

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

91. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect



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its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

92. *In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in UP State Electricity Board vs. Pooran Chandra Pandey (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.”*

17. As per the principles enunciated by the Hon'ble Supreme Court in the aforesaid judgment, it is clear that High Court cannot sit in appeal in an earlier order passed by it in the same matter, which has already attained finality and set aside that order. Further, the doctrine of precedents is well explained by observing that a coordinate Bench of the High Court is bound by the order of another coordinate Bench where the order has attained finality and judicial discipline has to be maintained in this regard. Therefore, we are of the view



that the dissent expressed by the Member (Technical) of the Tribunal in derogation of the various orders passed by the coordinate benches of the Tribunal on the very same issue, cannot be countenanced. As such, we hold that the very reference made to the third member to adjudicate an issue, which was already set at naught by the coordinate benches of the Tribunal, is unnecessary.

18. In the result, the prejudicial portion of the order dated 25.07.2023 passed by the Member (Technical) of the CESTAT, is quashed. As a sequel, both the writ petitions are allowed as prayed for. No costs. Connected miscellaneous petitions are closed.

[R.M.D., A.C.J.]

[M.S.Q., J.]

24.05.2024

Index : Yes / No

Internet : Yes / No

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1. Commissioner of Central Excise and Service Tax
Large Taxpayer Unit
1775, Jawaharlal Nehru Inner Ring Road
Anna Nagar Western Extension
Chennai - 600 101

2. The Commissioner of GST Central Excise
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai
Nandanam, Chennai - 600 035



3. Assistant Commissioner of GST and Central Excise
Sholinganallur Division, Chennai South
692, MHU Complex, Nandanam
Anna Salai, Chennai - 600 035



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THE HON'BLE ACTING CHIEF JUSTICE
AND
MOHAMMED SHAFFIQ, J

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WP Nos. 31725 and 31726 of 2023

24-05-2024