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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ SERTA 16/2024

COMMISSIONER OF CGST DELHI EAST .....Appellant

Through: Mr. Aditya Singla, SSC with Mr. Sarthak Mittal & Mr. Raghav, Advs.

versus

MS ESSJAY ERICSSON P LTD .....Respondent

Through: Mr. Pawan Arora, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **30.08.2024**

CM APPL. 36230/2024 (120 Days Delay)

Bearing in the mind the disclosures made, the delay of 120 days in filing the appeal is condoned.

The application shall stand disposed of.

SERTA 16/2024 & CM APPL. 36228/2024 (Stay)

1. The Commissioner of Customs challenges the correctness of the decision handed down by the **Customs, Excise and Service Tax Appellate Tribunal**[1] dated 05 July 2023 and has proposed the following questions of law for our consideration:-

> "A. Whether the Respondent has adequately reversed the CENVAT Credit under Rule 6 of the CENVAT Credit Rules, 2004?
>
> B. Whether the Respondent could avail CENVAT Credit on Group Personal Accident Policy, Group Term Life Policy, and Group Mediclaim Policy taken for employees?

[1] CESTAT

> C. Whether the Respondent is liable to pay the penalty and interest on tax liability discharged under Reverse Charge Mechanism on legal services? ”

2. It becomes pertinent to note that although an issue with respect to premium for insurance services was also sought to be canvassed, the same clearly appears to have been abandoned before the CESTAT itself as would be evident from a reading of Para 4 of the impugned judgment which is reproduced hereinbelow:-

> “4. While rebutting these submissions, learned DR has conceded that the issue with respect to the premium for insurance services to be called as input service stands decided in favour of the assessee. However, with respect to the non-reversal of Cenvat credit under Rule 6(3) of CCR, 2004, the decision of this Tribunal, Chennai Bench, in the case of **Sify Technologies Ltd. Vs. Commissioner of GST & Central Excise, Chennai reported as MANU/CC/0021/2023 dated 27.02.2023 in Service Tax Appeal No. 689 of 2012**, it is mentioned that, hence, there is no infirmity as far as the non-reversal of Cenvat credit under Rule 6(3) of CCR, 2004 has been ordered. The order of imposition of penalty due to non-payment of service tax under Reverse Charge Mechanism on legal charges is also impressed as correct. The appeal in question is accordingly prayed to be decided in favour of Revenue at least for the two counts as mentioned above. ”

3. It was in the aforesaid context that the CESTAT found that the solitary question which thus survived was with respect to CENVAT credit availed by the company on Group Personal Accident Policy, Group Term Life Policy and Group Mediclaim Policy taken for employees, CENVAT credit reversal in respect of non-taxable services provided by the appellant in the State of Jammu and Kashmir and penalty on tax liability discharged under reverse charge on legal services.

4. While dealing with those issues, the Tribunal has taken note of its Larger Bench decision in **Reliance Industries Ltd. vs. Commr. of**

C. Ex. & S.T.[2] to hold as follows:-

> "**9.** While holding this the decision of Hon'ble High Court of Karnataka in the case of **Commissioner of C.Ex. Bangalore-II Vs. Millipore India Pvt. Ltd. reported as 2012 (26) S.T.R. 514 (Kar.)** was relied upon, wherein it was held that all factors have to be taken into consideration while fixing the cost of final product. It was observed as an undisputed fact in the said case that the premium so paid has formed part of the cost of excisable goods on which the excise duty has been paid on removal. Therefore, the assessee is entitled to avail Cenvat credit for the insurance premium paid in respect of the group insurance/insurance of employees including retired employees/mediclaim as these are covered under the definition of input services having nexus to the business of the assessee. The Hon'ble Bombay High Court reiterated this decision subsequently in the case of **Commissioner of C. Ex., Nagpur Vs. Ultratech Cement Ltd. reported as 2010 (20) S.T.R. 577 (Bom.)**. All these decisions have been considered by the Larger Bench of this Tribunal while deciding the case **of Reliance Industries Ltd. Vs. Commr. of C. Ex. & S.T. (LTU), Mumbai reported as 2022 (60) G.S.T.L. 442 (Tri.-LB)**, wherein it was held as follows:
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> > *"34. It needs be noted here that though the Bombay High Court in Ultratech Cement categorised 'input service' into three categories, as against five categories by the Bombay High Court in Coca Cola India, there is actually no difference between the two judgments as the third category in Ultratech Cement covers the last three of the five categories mentioned in Coca Cola India.*
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> > *35. The following two principles from the aforesaid two judgments of the Bombay High Court would be of relevance to the present dispute:*
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> > *(a) The definition of "input service" is of wide import and covers not only input services which have a nexus with the manufacture of the final product (covered by the first limb), but also other input services, which do not have such a nexus, and are covered by the other limbs of the definition. Each limb of the definition is independent and, therefore, if an assessee can satisfy any one of the limbs, the benefit of Cenvat credit would be available, even if the assessee does not satisfy the other limbs of the definition; and*
> >
> > *(b) Insofar as the first limb is concerned, the requirement of establishing a nexus between the input service and the process of manufacture is to be regarded as 'satisfied if*

[2] 2022 (60) G.S.T.L. 442 (Tri.-LB)

the expenditure incurred for the input service forms part of the cost of production/value of the final product, on which duty of excise is levied."

10. The Larger Bench has discussed that the decision of Hon'ble Bombay High Court in the case of **Central Excise, Nagpur Vs. Manikgarh Cement reported as 2010 (20) S.T.R. 456 (Bom.)** is not applicable for the reason that the decision of **Coca Cola (I) Pvt. Ltd. (supra)** was not brought to the notice of the Bench in the said case. It has been concluded by the said Larger Bench that the definition would cover not only 'input services' which have a nexus with the manufacture of the final product (covered by the first limb in the definition), but also other 'input services', which do not have such a nexus but are covered by either of the other four limbs of the definition. Each limb of the definition is independent and benefit of Cenvat credit would be available even if any one of them is satisfied. So far as the first limb is concerned, the requirement of establishing a nexus between the 'input services' and the process of manufacture would stand satisfied if the expenditure incurred for the 'input service' forms part of the cost of production/value of the final product on which duty of the excise is levied. In this view of the matter, the appellant would be entitled to avail Cenvat credit on the service tax paid on insurance premium for employees who had opted for the 'Voluntary Separation Scheme. The interpretation of Rule 2(l) of the 2004 Rules has been conclusively settled by the Hon'ble Bombay High Court in **Coca Cola India and Ultratech Cement (supra)**.It has also been consistently so held in **Principal Commissioner Vs. Essar Oil Ltd. reported as 2016 (41) S.T.R. 389 (Guj.), Commr. of S.T., Mumbai-II Vs. Willis Processing Services (India) Pvt. Ltd. reported as 2017 (7) G.S.T.L. 12 (Bom.) and Commr. of C. Ex. & Service Tax Vs. Tata Consultancy Services Ltd. reported as 2018 (362) E.L.T. 777 (Bom.)**.

11. This Tribunal also in the case of **M/s. Rajratan Global Wire Ltd. (supra)** has held that once there is no evidence that the insurance service was obtained for the personal use of the employee of assessee, it is definitely an eligible input service for which the assessee is entitled to claim the Cenvat credit. Above all, department has conceded for this issue to no more res integra and to have been decided in favour of the assessee. We hold that the Cenvat credit availed by the appellant on the various insurance policies taken for its employee were eligible for availment is permissible. The order of reversing/disallowing the same is therefore liable to be set aside. "

5. Insofar as the reversal of CENVAT credit in respect of non-taxable services in the State of Jammu and Kashmir is concerned, the

Tribunal has firstly taken note of the conceded position of the respondent-assessee providing both taxable as well as non-taxable services. It is in the aforesaid context that it has ultimately upheld the right of the assessee for a proportionate reversal in accordance with Rule 6(3) of the **CENVAT Credit Rules, 2004**[3].

6. The fact that the CENVAT credit had been duly determined and deposited also does not appear to have been an issue of contestation as would be apparent from a reading of Para 14 which is reproduced hereinbelow:-

> "14. Clause (i) further provides that if the amount so determined is not paid within the due date i.e. 30th June then in addition to the said amount, the assessee shall be able to pay interest @24% per annum to the due date till the date of payment. Thus, it is evident that the condition of filing the declaration is only directory and not mandatory. In case, a particular option is not opted by the output service provider, we are of the opinion that Revenue cannot insist assessee to a avail particular option. We draw our support from the decision in the case of **Mercedes Benz India (P) Ltd. (supra).** Further, most of the requirements under Rule 6(3A) like, name, address and registration no. of the assessee, description of taxable services and exempted services, CENVAT Credit of inputs and input services lying in balance as on the date of exercising option, are already available in the records of the Revenue. We further find it is an admitted fact that the assessee herein have calculated the CENVAT Credit in terms of clause (c) read with clause (h) and have deposited the amount so determined, by 30th June in the succeeding financial year as prescribed. We draw our support from the decision in the case of **M/s. Tata Technologies Ltd. Vs. Commissioner of Central Excise, Pune-I reported as 2016- TIOL-272- CESTAT-MUM.** "

7. Left only to examine as to whether penalty was liable to be imposed, the Tribunal has held as follows:-

> " 16. Coming to the third shortcoming noticed by the department i.e. with respect to the penalty of tax liability discharged under Reverse Charge Mechanism on legal services. We observe that the adjudicating authority has held that the service recipient is liable to pay 100 per cent service tax. We observe that the said findings are

[3] 2004 Rules

based upon Notification No. 30/2012-ST dated 20.06.2012. We further observe that the service recipient who is located in the taxable territory is made liable to pay 100 per cent service tax. In the present case, the appellant as service provider was liable under Reverse Charge Mechanism to discharge the said liability, the recipient in the present case being situated in non taxable territory. Apparently and admittedly, the liability on this count stands already discharged by the appellant. The adjudicating authority has still made appellant liable for payment of interest. But we are of opinion that there is no evidence on record about the discharge of said liability beyond the reasonable time. The question of payment of interest does not at all arises. We also observe that the issue of levy of service tax on legal services is undisputedly a question of law pending consideration before the Hon'ble High Court of Delhi. Imposition of penalty in these circumstances, does not at all arises. Otherwise also, there is no evidence of any positive act on the part of the appellant proving that appellant had intention to evade the payment of duty. In these circumstances, the order of imposition of penalty is held unreasonable. "

8. In the absence of the appellant having been able to establish any intent on the part of the respondent-assessee to evade payment of duty, we find no justification to interfere with the view ultimately expressed by the CESTAT.

9. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 30, 2024/RW