CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/21165/2018-SM

[Arising out of Order-in-Appeal No. 200/2018 dated 27/04/2018 passed by the Commissioner of Central Tax, Bangalore North, Bangalore-II (Appeals)]

Andritz Technologies Pvt. Ltd.
Manyata Embassy Business Park
Outer Ring Road, Nagawara
Bangalore – 560 045
Karnataka

Appellant(s)

Versus

Commissioner of Central Tax,
Bangalore North
No. 59, HMT Bhawan
Ground Floor, Bellary Road
Bangalore – 560 032
Karnataka

Respondent(s)

Appearance:

Mr. Bhanumurthy, Advocate
#466, 9th Cross,
1st Block, Jayanagar, Near
Madhavan Park,
Bangalore – 560 011
Karnataka

For the Appellant

Mr. K. Murali, Supdt. (AR) — For the Respondent

Date of Hearing: 06/08/2019
Date of Decision: 29/11/2019

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 21193 / 2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 27/04/2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has confirmed the demand of Rs. 13,93.952/- (Rupees Thirteen Lakhs Ninety Three Thousand Nine Hundred and Fifty Two only) being ineligible cenvat credit availed and utilized under Section 73 of the Finance Act. The Commissioner (Appeals) has dropped the demand of Rs. 1,90,090/- (Rupees One Lakh Ninety Thousand and Ninety only). The interest demand is also confirmed and penalty is reduced from Rs. 10,03,625/- (Rupees Ten Lakh Three Thousand Six Hundred and Twenty Five only) to Rs. 8,83,200/- (Rupees Eight Lakh Eighty Three Thousand and Two Hundred only) on proportionate basis. This appeal was partly allowed by the Commissioner. To the extent of rejection, appellant has filed the present appeal. The breakup of the service tax demand along with interest and penalty is given herein below:

Particulars	Period	Service Tax (Rs.)	Interest	Penalty (Rs.)
Insurance on assets and business activities	April 2011 to December 2015	2,27,123/-	U/s 75 but not quantified	8,83,200/-
Medical, accidental and life insurance for employees, directors and foreign employees		10,35,706/-		
Rent a cab/Taxi hire charges		1,23,091/-		
Bus pass		2,339/-		
Food coupons/Sodexo coupons		5,693/-		
		13,93,952/-		

2. Briefly the facts of the present case are that the appellant is registered with the Service Tax under the category of service of design, development and installation of continuous processing plant. Audit of the service record of the appellant was undertaken by the Audit Commissionerate, Bangalore in the months of February and

March 2016 covering the impugned period from April 2011 to December 2015 and Department entertained the view that the appellant has availed cenvat credit on certain services which do not qualify as 'input service'. It was alleged in the show-cause notice that appellant had availed ineligible credit and the said cenvat credit of Rs. 16,52,154/- (Rupees Sixteen Lakhs Fifty Two Thousand One Hundred and Fifty Four only) was reversed on being pointed out by the audit team and paid interest amount of Rs. 8,75,593/- (Rupees Eight Lakhs Seventy Five Thousand Five Hundred and Ninety Three only). Appellant was issued a show-cause notice as to why an amount of Rs. 18,88,128/- (Rupees Eighteen Lakhs Eighty Eight Thousand One Hundred and Twenty Eight only) should not be recovered as ineligible cenvat credit and amount of Rs. 16,52,154/- (Rupees Sixteen Lakhs Fifty Two Thousand One Hundred and Fifty Four only) being cenvat credit reversed should not be appropriated, interest amount of Rs. 10,13,681/- (Rupees Ten Lakhs Thirteen Thousand Six Hundred and Eighty One only) should not be demanded and recovered and amount of Rs. 8,75,593/- (Rupees Eight Lakhs Seventy Five Thousand Five Hundred and Ninety Three only) being interest paid should not be appropriated, penalty should not be imposed under Section 78(1) of the Act for suppression of facts and contravening the provisions of the Act. The appellant filed reply to the show-cause notice and contested the demand on merits as well as on limitation. After following the due process, the Assistant Commissioner confirmed the demand of Rs. 15,84,042/- (Rupees Fifteen Lakhs Eighty Four Thousand and Forty Two only) and dropped the demand of Rs. 3,04,086/- (Rupees Three Lakhs Four Thousand and Eighty Six only). Interest amount was confirmed at Rs. 7,98,772/- (Rupees Seven Lakhs Ninety Eight Thousand Seven Hundred and Seventy Two only) and penalty was imposed under Section 78(1) amounting to Rs. 10,03,625/- (Rupees Ten Lakhs Three Thousand Six Hundred and Twenty Five only). Aggrieved by the said order, appellant filed appeal before the

Commissioner and the Commissioner confirmed the demand amount of Rs. 13,93,952/- (Rupees Thirteen Lakhs Ninety Three Thousand Nine Hundred and Fifty Two only) and dropped the demand of Rs. 1,90,090/- (Rupees One Lakh Ninety Thousand and Ninety only). Penalty was also reduced from Rs. 10,03,625/- (Rupees Ten Lakhs Three Thousand Six Hundred and Twenty Five only) to Rs. 8,83,200/- (Rupees Eight Lakhs Eighty Three Thousand and Two Hundred only). Demand for interest under Section 75 was also confirmed. Aggrieved by the said order, appellant has filed the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order denying the cenvat credit on the impugned services is not sustainable in law as the same has been passed without properly appreciating the definition of 'input service' and the exclusion clause provided in the definition of 'input service' under Rule 2(l) (C). He further submitted that Clause (C) of the exclusion Clause in the definition of input service will be applicable only where the services listed therein are used primarily for personal use or consumption of any employee whereas in the present case the medical insurance is taken on the life of the Directors and foreign employees. He further submitted that Group Medical Insurance falls in the definition of 'input service' as the same is required under a statutory obligation on the appellant. In support of this submission, he relied upon the decision in the case of ***M/s. Ganesan Builders Ltd. Vs. CST reported in 2018-TIOL-2303-HC-MAD-ST, Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CCE, Nashik – 2014-TIOL-2460-CESTAT-MUM. & Reliance Industries Ltd. Vs. Commr. of. C. EX & ST, LTU, Mumbai reported in 2016 (45) STR 383 (Tri-Mum.)***. As far as insurance on assets and business activities is concerned, he submitted that the cenvat credit pertains to insurance on travel insurance,

marine and other general insurance on assets which are used for business purpose and travels are undertaken during the course of business and hence would be outside the exclusion clause. He further submitted that insurance on motor vehicle is excluded only if it relates to motor vehicles which is not a capital goods. In other words, insurance on motor vehicles which are capital goods are eligible for credit. He also submitted that in the present case motor vehicles are capital goods for the company. Therefore, it would be entitled to credit under the Cenvat Credit Rules and would not be hit by the exclusion clause. For this submission, he relied upon the decision in the case of ***Marvel Vinyls Ltd. Vs. CCE – 2016-TIOL-3071-CESTAT-DEL.*** With regard to Food coupons/sodexo coupons, learned counsel submitted that in the case of sodexo vouchers, the services are provided by the restaurants, stores and shops etc and merely the service charges are paid by the employer and as such no services are provided by the employer himself. He further submitted that the food coupons/sodexo coupons are not included in the exclusion clause and therefore cenvat credit cannot be denied. Further with regard to bus pass, the learned counsel submitted that bus pass is taken for the employees to travel on the business connected issues. Therefore, the same cannot be denied and is not excluded by the exclusion clause. He also submitted that major portion of the demand is barred by limitation as there is no intention on the part of the appellant to evade payment of taxes.

5. On the other hand, the learned AR defended the impugned order and submitted that the cenvat credit on medical and group insurance policy, this Tribunal in the case of ***Bharat Fritz Werner Ltd. Vs. CCT vide Final Order No. 20450/2019 dated 31/05/2019*** and in the case of ***Sasken Technologies Ltd. vide Final Order No. 20863/2019*** has denied the cenvat credit by passing a detailed order. He has also produced the copies of those decisions. He further submitted that with regard to insurance on assets and business

activity, the learned Commissioner after examining the various invoices has partly allowed the cenvat credit to the tune of Rs. 1,30,246/- (Rupees One Lakh Thirty Thousand Two Hundred and Forty Six only) and rejected the cenvat credit of Rs. 2,27,123/- (Rupees Two Lakhs Twenty Seven Thousand One Hundred and Twenty Three only). He further submitted that with regard to Rent-a-cab and bus passes and food coupon, the appellants are not entitled to any cenvat credit as they are not required to render output service.

6. After considering the submissions of both the parties and perusal of the material on record, I find that as far as Group Medical Insurance is concerned, this Tribunal in the case of **Bharat Fritz Werner Ltd. vide Final Order No. 20450/2019** has held that cenvat credit is not permissible under the Group Medical Insurance Service. This Tribunal has relied upon the decision of the Larger Bench in the case of **Wipro Ltd.** and then come to the conclusion that the impugned service falls under the exclusion clause as provided in Clause (c) of Rule 2(l). Therefore, by following the ratio of the said decision in the case of **Bharat Fritz Werner Ltd.,** I hold that the appellants are not entitled to cenvat credit of service tax paid on Group Medical Insurance Service. The decision of the Hon'ble High Court of Madras in the case of **M/s. Ganesan Builders Ltd.** has been distinguished by this Tribunal in the case of **Bharat Fritz Werner Ltd.** As far as cenvat credit on assets and business activities is concerned, I find that the Commissioner (Appeals) has rightly rejected the cenvat credit to the tune of Rs. 2,27,123/- (Rupees Two Lakhs Twenty Seven Thousand One Hundred and Twenty Three only) after examining the various invoices relating to cenvat credit and I do not find any infirmity in his findings and therefore I hold that appellant is not entitled to cenvat credit on insurance on assets and business activities to the tune of Rs. 2,27,123/- (Rupees Two Lakhs Twenty Seven Thousand One Hundred and Twenty Three only). As far as Rent-a-Cab and bus pass is

concerned, I find that this falls in the definition of 'input service' as it is directly related to the productivity of the employees working with the appellant and this facility is only from the factory to the residence of the employees and back which in my opinion falls in the definition of 'input service' and the exclusion clause is not applicable as far as this service is concerned. As far as Food coupons/sodexo coupons are concerned, I find that these services are in the nature of welfare service and purely for personal consumption of employees as these are perquisites allowed to the employees. Further I find that Commissioner (Appeals) has given reasons for denying the cenvat credit on sodexo coupon and I do not find any fault in that and upheld the same. Further, I find that the issue involved in the present case relates to interpretation of the definition of 'input service' and therefore extended period cannot be invoked and penalties cannot be imposed. Therefore, I confirm the demand for the normal period of one year and hold that invocation of extended period is not tenable in the present case and also set aside the penalties under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC (1)(c) of Central Excise Act, 1944 and the matter is remanded back to the original authority to re-quantify the demand for the normal period with regard to all the impugned services which the appellant is liable to pay. Appeal is partly allowed.

(Order Pronounced in Open Court on **29/11/2019**)

(S.S GARG)
JUDICIAL MEMBER

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