

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH AT CHANDIGARH
DIVISION BENCH

Appeal No. ST/60608/2016

(Arising out of Order-in- Appeal No.DLI-SVTAX-004-COM-045-16-17 dated 31.8.2016 passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Gurugram)

M/s. Ernst & Young LLP

(1st Floor, Tower-a, Building No.8, DLF Cyber City,
Phase-II, Sector 25, Gurugram)

Appellant

Vs.

Commissioner of CGST, Gurugram

(CST,-Delhi-IV, Plot No.36-37, Sector 32,
Medanta hospital, Gurugram-121001

Respondent

Present for the Appellant: Shri Sparsh Bhargava, Advocate

Present for the Respondent: Sh. Munish Kumar, AR

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER(TECHNICAL)

Date of Hearing: 13.01.2022

Date of Decision: 31.1.2022

FINAL ORDER No.60028/2022

Per: Ashok Jindal

This appeal is filed by the appellant against the impugned order wherein the input service credit on various services has been denied on the premise that the said services do not qualify as input service in terms of Rule 2(I) of Cenvat Credit Rules, 2004.

2. The facts of the case are that the appellant is engaged in providing the service under the category of "Management or Business Consultancy Service". A Special audit was conducted for the period 2007-08 to 2011-12 in January, 2013. On the basis of that audit, the input service credit sought to be denied on the following services:-

(a) Processional Indemnity Insurance (PII) which indemnified their country member, regional member, regional entity and central entity also in addition to the appellant during 2008-09 to 2012-13.

(b) Group Medclaim Insurance Policy/Tailor made floater Group Medclaim Policy during 2007-08 to 2011-12.

(c) Invoices of M/s. Wizcraft for EOY Awards expenses on Budget day programme expenses during 2007-08 to 2011-12.

(d) On renting of immovable property availed for the period April and May, 2007 during March, 2008 against bills of M/s. Perfect Business Centre Services Pvt. Ltd. and M/s. Ind Global Corporate Finance Pvt. Ltd., as such services were not taxable prior to 01.06.2007.

(e) Bills of M/s. Perfect Business Centre Services Pvt. Ltd. pertaining to reimbursement of cost of travel coupons issued in favour of Appellant's employees in the month of February, 2010 and against improper documents for inadmissible services during 2007-08 to 2011-12.

(f) Bills of M/s. Woodcraft India Pvt. Ltd. were not proper documents as the same were not issued in favour of the appellants.

3. Periodical show cause notices were issued to the appellant and the matter was adjudicated by way of the impugned order and the credit was denied on above services during the period 2007-08 to 2014-15. Against the said order, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that the appellant is a management and consultancy service provider wherein it gives advice to clients on financial and other taxation matters.

5 **With regard to availment of cenvet credit on Professional Indemnity Insurance Service**

He submits that the services namely, Professional Indemnity Insurance availed by the appellant is in form of liability insurance which helps in to protect professional advice and service provided to individuals and companies, from bearing the full cost of defending against a negligent claim made by a client and damages awarded in a civil suit. The agreement of appellant with clients has a clause where the appellant undertakes to indemnify the clients in respect of certain losses. Therefore, there is direct nexus between the PII availed and the output services provided by the appellant, the same is availed by the appellant in the course of their business of providing output service. Therefore, the appellant is entitled to take credit on the said services.

5.1 To support his contention, he relied on the decisions in the following cases: -

(1) CST vs. m/s. Ernst & Young LLP-2017-TIOL-2942-CESTAT-CHD, 2017-TIOL-4017-CESTAT-CHD and 2017-TIOL-4394-CESTAT-CHD,

(2) M/s. Stock Holding Corporation of India Ltd. vs. CST, 2015-TIOL-1183-CESTAT-MUM

6. **With regard to the availment of Cenvat credit on services of group Mediclaim insurance policy**

It is his submission that their employees are key for running the business as the appellant is in the service industry which is driven by workforce. The employees are key assets and the appellant would not be able to provide high quality consultancy and other services without them. The Employees are of high skilled nature and it is necessary that they are to be treated adequately in good medical facilities so that they resume office in a timely manner. It is common business practice to provide insurance to the employees for purely business reason and also to attract and to retain the talent. Insurance service is covered under the 'includes' portion of the definition of the input service as the same are 'provided in relation to business activities' which is a very wide term. Such service has been specifically excluded from the definition of 'Input Service' w.e.f. 1.4.2011 and the cenvet credit has been availed by the appellant prior to 1.4.2011, therefore, it is prayed that the cenvet credit is admissible on these services.

6.1. To support his contention, he relied on the judgments in the following cases; -

- (a) CST v. Team Lease Services Pvt.Ltd.-2014 (36) ELT STR 543 (Kar.)
- (b) Prism Cement v. CCE, Bhopal-2019 (369) ELT 1205 (Tri. - Del.)
- (c) PTC Software India Pvt. Ltd. v.CCE-2014 (35) STR 632 (Tri.)
- (d) KPMG v. CCE. New Delhi-2014 (33) STR 96 (Tri. - Del.).

7. **With regard to the availability of Cenvat credit against Bills of M/s. Wizcraft for EOY awards expenses and budget day programme expense,**

it his submission that the Budget Day function is organized specifically to discuss the annual Union Budget changes with employees of the appellant across country to provide them knowledge which helps in providing services (tax and regulatory consultancy) to the clients. Further, an EOY award is an event where top industry leaders, professionals and entrepreneurs who have excelled in their respective fields are appreciated and recognized for their achievements. The event is attended by senior management personnel of the appellant which gives them an opportunity to develop new business relationships further leveraged in future to generate business. Therefore, the services of Wizcraft are used for events for organising the abovesaid events which are linked to business activities.

7.1. To support his contention, he relied on the decisions in the following cases: -

- (i) Order-in-Original dated 18.2.2021 in the case of appellant
- (ii) CCE v. Maruti Suzuki India Ltd.-2017 (49) STR 261 (P&H)
- (iii) Shree Cement v. CCE, Jaipur-2014 (36) STR 1107 (Tri.-Del.)

- (iv) J. P. Morgan Services (I) Pvt. Ltd. v. CST-2016 (42) STR 196 (Tri. - Mum)
- (v) Endurance Technologies Pvt. Ltd. v. CCE, Aurangabad-2013 (32) STR 95 (Tri. - Mum)
- (vi) CST v. M/s. DBOI Global Services Pvt.Ltd.-2018-TIOL-2535 (HC DEL) CX
- (vii) M/s. Vodafone Mobile Services v.CCE-2019-TIOL-2869-CESTAT-ALL
- (viii) M/s. Honda Motorcycle & Scooter India Pvt. Ltd. v.CCE-2016-TIOL-2127-CESTAT-CHD.

8. **With regard to the credit on cost of travel coupons in February, 2010**

it is his submission that the main service rendered by PBCSPL is renting of immovable property and providing other support and infrastructural services and whenever any expense is incurred by service provider on appellant's behalf, the same are recovered from the appellant at actuals as per Rule 5 (1) of the Valuation Rules. It is mutually agreed between the appellant and the service provider, that the service provider would render required support service (involving distribution of coupons to employees on appellant's behalf) and the service provider would charge only the actual cost of providing certain support services to the appellant. The service provider has charged service tax on all its activities under the agreement with the appellant i. e. main service of renting as well as other support services (including that of distribution of travel coupons). He also submits that the Id. Adjudicating authority has not disputed the eligibility of cenvet

credit on the main service and therefore, it cannot deny cenvet credit for ancillary services. He further submits that no evidence placed on record by the Department to show that such input services are not used by the appellant for providing output services. Therefore, the appellant is entitled to avail cenvet credit.

8.1. To support his contention, he relied on the decisions in the following cases: -

- (i) Manikgarh Cement v. CCE-2011 (22) STR 471 (Tri.-Mum)
- (ii) CCE v. Carborandum Universal Ltd.-2009 (16) STR 181 (Tri.-Chennai).

9. **Cenvet credit against improper documents,**

He submits that the invoice raised by M/s Woodcraft were addressed to the one of the registered premises of the appellant and the civil work was done at one of the registered premises of the appellant involving maintenance, repairs and renovation of the office premises from where the appellant provides consultancy services. The service provider has given a declaration that services have been provided to the registered address of the appellant and that the service tax has been paid by the appellant to the service provider. Therefore, the appellant is entitled to take Cenvet credit as services used in or in relation to setting up, modernisation, renovation or repairs of a factory, premises of provider of output services or an office relating to such factory or premise.

9.1. To support his contention, he relied on the decision in the following cases: -

- (i) Coca Cola India Pvt. Ltd. v.CCE-2009 (242) ELT 168 (Bom.)

- (ii) CCE v. Bellsonica Auto Components India Pvt.Ltd.-2015 (40) STR 41 (P&H)
- (iii) Carrier Air-conditioning & Refrigeration Limited v.CCE-2016 (41) STR 824 (Tri.)
- (iv) CCE, Goa v. Essel Propack-2015 (39) STR 363 (Bom.)

10. **Cenvet credit on non-levy amount against bills of M/s Perfect Business Centre Services Pvt. Ltd. and M/s Ind Global Corporate Finance P. Ltd.,**

It is his submission that the appellant is entitled to avail services on renting of immovable property, although the service was taxable with effect from 1.6.2007 but the service provider charged rent from April, 2007 to September, 2007 in the month of March,2008. The payments were made by the appellant in March, 2008 and accordingly, the appellant is entitled to avail Cenvet credit.

10.1. To support his contention, he relied on the decision in the following cases: -

- (i) V.G. Steel Industry v.CCE-2011 (271) ELT 508 (P&H)
- (ii) CCE v. MDS Switchgear Ltd.-2008 (229) ELT ELT 485 (SC)
- (iii) CCE v. CEGAT-2006 (202) ELT 753 (Mad.)
- (iv) CCE v. Carboranum Universal Ltd.-2009 (16) STR 181 (Tri.)

11. Lastly, he submits that the appellant was subjected to audit in 2011 and had submitted all required documents and information and availed cenvet credit on the basis of judicial precedent and the provisions. Therefore, the extended period of limitation is not

invokable. In that circumstance, the demand up to September, 2011 is barred by limitation.

11.1 To support his contention, he relied on the decision in the following cases: -

(i) Maruti Suzuki India Ltd. v. CCE, Delhi-2017 (47) STR 273 (Tri.-Chan.)

(ii) Pushpam Pharmaceuticals Co. v. CCE, Bombay-1995 (78) ELT 401 (SC)

(iii) Prolite Engineering Co. v. Union of India-1995 (75) ELT 257 ELT (Guj.)

(iv) Sands Hotel Pvt. Ltd. V.CST, 2009 (16) STR 329

(v) CCE, Surat v. Surat Textile Mills Ltd.-2004 (167) ELT 379 (SC)

(vi) Kirloskar Pneumatic Co. Ltd. v. CCE, Pune-2011 (22) STR 121 (Tri.-Mum.)

12. He also prayed that the penalties be dropped by invoking section 80 of Finance Act, 1994.

13. On the other hand, Id.AR opposed the contention of the Id. Counsel and submits as under: -

Professional Indemnity Insurance Policies (for short 'PII')

REBUTTAL: The adjudicating authority has noted that the subject services have no relation to provision of service rendered by the appellant either as a main constituent for providing output service under clause (i) of Rule 2(I) of the Cenvet Credit Rules nor under inclusive definition provided under clause (ii) of Rule 2(I) of the Cenvet Credit Rules under "activities relating to Business",

while relying on the decision of the Hon'ble High Court of Gujarat in the case of CCE Vs. Cadila Healthcare Ltd.-2009 (30) STR 0003 wherein it has specifically been held that the words "such as" used in the definition should bear some similarity to the illustrative activities.

Further, these services can be, not in all cases, but in case of any eventuality used only when the output service is complete and delivered and being post delivered service, the credit cannot be said to be covered by the definition of input service hence can otherwise also fall within clause (i) to the definition.

14. **Credit is admissible on Group Health Insurance Policy of employees**

REBUTTAL: The Hon'ble Tribunal in case of John Deere India Pvt. Ltd. v. CCE, Pune-III, 2016 (41) STR 990 (Tri.-Mum.) had specifically held that the portion of the service tax paid on premium pertaining to the family members shall not be admissible. The adjudicating authority had noted that in the impugned case the subject policy covered not only the employees but also their children, spouse and dependent parents. The appellant have pointed out that the insurance involved in the said case law was 'life insurance', whereas in the subject case is 'mediclaim insurance'.

The ratio of the case law relied upon by the adjudicating authority is on the issue whether credit of the policy including family members of the employees being the beneficiaries would be admissible. The Hon'ble Tribunal has very clearly distinguished the benefit according to the employees and to their family members

and had held that the portion pertaining to the employees only would be admissible. Thus, ratio of the said case law is fully applicable.

The appellant has claimed that the premium would have remained the same whether the family members were included or excluded from the said policy. In the face of clearcut decisions that credit on portion pertaining to the latter would not be admissible, it is for the appellant to give the break-up of the two portions, if the same is not possible, no credit would be admissible.

As regards, the negative entry being made w.e.f.01.04.2011, meaning that prior to that the credit of the same was admissible, it is pertinent to refer to the JS TRU-II's D.O. F.No.334/3/2011-TRU explaining the budgetary changes and why the subject and related services have been put in the negative list. So, it is only clarificatory in nature. Relevant portions of the same are extracted below:

The changes in Cenvet Credit Rules are guided, inter-alia, by the following considerations:

- a) Describe the scope of eligible inputs and input services more clearly so as to minimize disputes in their interpretations;
- b) Eliminate distortions and areas of tax avoidance arising from differential treatment of goods and services used for similar purposes;
- c) Provide a practical scheme for the segregation of Cenvat credits used in respect of final products and output services where they are partially exempted with condition that no such credits shall be taken;

d) Liberalize the provisions in certain areas to meet the legitimate demands of business;

On the same lines, a service meant primarily for the personal use or consumption of employees will not constitute an input service. A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.

Lastly, in Dharti Dredging & Infrastructure Ltd. vs. CGST, Hyderabad-2021-TIOL-223-CESTAT-HYD-LB a 2-member Larger Bench constituted specifically to examine the admissibility of the input credit of service tax paid on premium of Group Insurance Policy taken out by an assessee to meet with the requirement of Workmen Compensation Act, 1923 noted that the admissibility would depend on the person to who the benefit of the policy accrued to. If the benefit accrued to the assessee as it did in the said case as they were obliged by law to pay compensation to their workmen in case of any mishap, credit would be admissible, but if it accrued to the employee, even if the premium was paid by the assessee, the credit would not be admissible.

This Tribunal has observed that the said policy unlike health insurance policy taken for the benefit of employees.

Further, it was noted that the Hon'ble Madras High Court in the case of Ganesan Builders had denied Cenvat credit on the

input service which was for personal consumption of the employees and not to cover the potential liability of the assessee. In the subject case, the benefit accrues not only to the employee but also to their family members, so even though the premium is paid by the appellant, credit of the same would not be admissible.

Accordingly, decisions relied upon by the appellants in the case of Commissioner of ST vs. Team Lease Services-2014 (36) STR-543 (Kar.), CCE vs. Micro Labs Limited-2011 (270) ELT 156 and Commissioner vs. Stanzen Toyotetsu India (P) Ltd.-2011 (23) STR 444 (Kar.) are distinguishable on facts as in the said cases the insurance policy was taken for the employees only and not for their family members.

The decision in PTC Software (P) Limited vs. CCE-2014 (35) STR 632 (T) had stretched the ratio of Stanzen and Micro Labs, which only covered issue of admissibility of credit on group insurance policy in favour of the employees, to hold that credit was admissible even in respect of policy covering the family members of employees. The said order is silent about how the policy covering the family members of the employees would constitute input service.

15. **Credit on invoices of Wizcraft for EOY Awards and Budget Day programmes**

REBUTTAL: As regards, the adjudicating authority has noted that the EOY Awards Functions were not related to the output service rendered by the appellant. Further, on perusal of the invoices/bills by adjudicating authority, against which Cenvat credit has been taken revealed that these had been issued for the cost of

Annual Program and includes expenses relating to Artists, (Exhibition & cocktail area), Local Travel & Recce costs, Foods, etc. As such the said programme organized by the appellant were recreational activities and not necessary for providing the output service.

For the said reasons, the decision relied upon by the appellants in the case of Idea Cellular Limited vs. CCE-2011 (22) STR 450 (Tri.), Shree Cements Ltd. vs. CCE & ST -2014 (36) STR 1107 (T), Castrol India Ltd. vs. CCE-2013 (291) ELT 469 (T) are not applicable to the present case in as much as in the said cases the events were held either for training or for promotional activities as also held by the adjudicating authority.

16. Credit of service tax paid/collected on Renting of Immovable Property Service for period prior to 01.06.2007

Invoices raised in 03/08 for by Perfect Business Centre Services Pvt. Ltd. for the period April, 2007 to September, 2007 and M/s. Ind Global Corporate Finance (P) Limited, in March, 2008 for the entire year 2007-08. Credit availed for the period April, 2007 and May, 2007 even when the said services were not taxable.

REBUTTAL: As per Rule 3 of CCR, a manufacturer or producer of final products or a provider of output service shall be allowed to take credit of the service tax leviable under section 66 of the Finance Act. The Cenvat scheme did not extend service tax credit on non-taxable services. The subject services cannot be considered as input services as the same were not taxable at the time of their rendering. Just as service tax for the period could not have been

recovered in the absence of the legal fiat to collect the same, the service provider was under no obligation to pay the tax in question. It would constitute tax collected without authority of law and would accrue to the government on the said account only.

The case law of MDS Switchgear is not relevant to the subject case as in the said case the duty payable had been assessed by the jurisdictional departmental officers, the issue pertained to the era when the classification as well as prices were approved by the department.

17. **Credit of service tax paid on travel coupons provided by ROIP service provider to Appellant's employees**

REBUTTAL: From the invoice no. PBSCPL/TE-01/09-10 dated 19.02.2010, it is nowhere clear that the same is for official tour, much less that it is reimbursement. In fact, it does not mention what these travel coupons are, for hotel bookings, for air tickets, taxi, for food? Further, the service tax is charged on the whole amount, whereas it is different for the different services enumerated above. It seems more in line with a comprehensive holiday tout package encompassing travel, boarding and lodging. Thus, it is firstly not reimbursement as claimed by the appellant, secondly it is not for official tours, thirdly, it is in no way connected to Renting of immovable property service rendered by the said service provider.

The service provider provides ROIP services to the appellant, the subject services of providing travel coupons, cannot by any stretch of imagination be stated to be ancillary to ROIP. Secondly, why

would the service provider go through the trouble of arranging the said services on purely reimbursement basis. Does the reimbursement include administrative cost of procuring the said services, which cannot be the case being reimbursement claim.

The contention of the appellant that as per Rule 59(1) of the Service Tax (Determination of Value) Rules, 2006 any costs incurred in providing the services would be includible in the gross taxable value of services rendered does not hold goods because m/s. PBCSPL invoices were for an altogether different activity i.e. issue of travel coupons.

18. **Credit in respect of improper invoices issued by Woodcraft India Pvt. Ltd.**

REBUTTAL: The invoices cover the period 31.05.2007 to 31.03.2008. The ST-2 certificate mentions various addresses registered under centralized registration. It mentions the date of issue of original ST-2 as 18.08.2008. Thus, the premises mentioned on the service provider's invoices were not registered premises at the time of issuance of invoices.

19. **Substantive benefit cannot be denied**

REBUTTAL: Until and unless the credit in question can be held to be admissible substantively, the same cannot be allowed. Any procedural infirmities, which can be rectified at a later date also, can be ignored solely for evaluating the substantive benefit, but will still have to be fulfilled to avail the benefit in question.

20. **Invocation of extended period of limitation**

REBUTTAL: The appellant was cast with the responsibility to self-assess the admissibility of Cenvat credit as also the valuation

and classification of the output services. The irregularities were brought out only while conducting Special Audit under Section 14A of the Central Excise Act, 1944 as made applicable to Finance Act, 1994 and evidencing intention to avail inadmissible Cenvat Credit. Hence, extended period is rightly upheld. Reliance is placed on judgement in the case of Lakhan Singh & Co. vs. CCE-2016 (46)STR 297 (T) and CCE vs. Mehta & Co.-2011 (264) ELT 481 (SC).

20. Heard the parties at length. On going through the arguments advanced during the hearing, written submissions made by both sides and records placed before us, we find that the appellant is in the business of providing **"Management and Business Consultancy Service"** and availed above services and took cenvet credit on the said services. It is also a fact on record that a special audit took place for the period of 2007-08 to 2011-12 in January, 2013 wherein the audit raised objections for availment of cenvet credit on the above mentioned services. Consequent to the same, periodical show cause notices were issued to the appellant, which was adjudicated by way of the impugned order wherein the cenvet credit has been denied on the above services. As there are various services and having their own merits therefore the said services are be dealt separately as under: -

21. **Professional indemnity insurance-**

we find that the appellant is providing consulting service and availed professional indemnity insurance against the liability which may arise on account of any dispute arises for providing the services provided by the appellant. The said insurance helps and

protect professional advice and service provided by the officials/individuals of the appellant from bearing the full cost of damages awarded in a civil suit to the service recipient. The appellant undertakes to indemnify their clients in respect of certain losses against future claim by their clients against the appellant. In that circumstance, we hold that the said service i.e. **Professional Indemnity Insurance** do qualify as an input service in terms of Rue 2(I) of Cenvat Credit Rules, 2004. The same view was taken by this Tribunal in the appellant's own case vide Order dated 6.10.2017, wherein this Tribunal observed as under: -

"5. I find that the main contention of the Revenue is that after amendment of the definition of input service from 1.4.2011, the word the activity relating to business has been deleted from the definition of input service and the impugned service cannot be said to be directly used for providing any output service. It is also argued that the impugned service is not covered by the inclusive part of the definition and it is used only when output service is complete and delivered.

6. On the question as to whether the professional indemnity insurance service has nexus with output service, I completely agree with the analysis of the Commissioner (Appeals) in the following paragraphs extracted from the Order-in-Appeal:

"The Definition of Input Service Rule 2 (I) of Cenvat Credit Rules, 2004 defines the Input Service w.e.f.01.07.2012.

"(I) Input service means any service,

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal but excludes services, -

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of [Section 65](#) of the Finance Act (hereinafter referred as specified services), in so far as they are used for-

(a) construction of a building or a civil structure or part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of [section 65](#) of the Finance Act, in so far as they relate to a motor

vehicle except when used for the provision of taxable series for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits excluded to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee”,

Definition of Input service for different relevant period makes it amply clear that in order to qualify as Input service, any service used by a provider of output service should satisfy the following conditions: It should fall under main part or inclusive part of the definition of input service. It should not be covered in the exclusion part of the definition.

Further, professional indemnity insurance is form of liability insurance that helps in safeguarding the professional advisor and service providing individuals and companies from bearing the full cost of defending against a negligence claim made by a client, and damages awarded in such civil lawsuit. The coverage focuses on alleged failure to perform, on the part of financial loss caused by error or omissions in the service or product sold by the policy holder & is in force during the period specified in policy, for the coverage of output service.

The appellant is engaged in providing consultancy services to its clientele by way of reliable deliverables. Thus, I find that professional indemnity insurance service have nexus with the output service and is covered under definition of input service.

7. I find that the adjudicating authority has allowed refund for general insurance service for employees, equipments and property, for insuring the company against unforeseen circumstance. On the same analogy, the professional indemnity insurance service has to be viewed in the context of providing the consultancy or other professional services, where the assessee has to safeguard itself against unforeseen legal damages/costs due to negligence or other bonafide mistakes of the employees/partners. Hence, the professional indemnity insurance service is an essential ingredient for providing the output service and has direct nexus with the providing of output service.

22. The case laws relied upon by the Id.AR have no relevance to the fact of this case. Further, in the appellant's own case, this Tribunal has held that the appellant is entitled to credit on Professional Indemnity Insurance Service, therefore, following our own decision in appellant's own case, we allow credit availed by the appellant on professional indemnity insurance service.

Medical insurance policy -

23. For the cenvet credit of service tax against the group medical insurance for the period 2007-08 up to 31.3.2011, the appellant has availed credit of service tax paid on group medical insurance

policy, we find that the appellant is entitled to take credit on any of the service directly or indirectly having nexus with their business activity. The said group insurance of their employees is not having any direct nexus with the output service provided by the appellant but the group medical insurance for employees only is covered by the said definition on analysing the case laws relied upon by both the sides. From the facts of the case, it is coming out that the group insurance has been taken by the appellant not only for their employees but for their family members also. In that circumstances, the service tax paid on premium for group medical insurance paid toward the insurance of family members of the employees of the appellant, therefore, the appellant is not entitled to take credit on the service tax paid on the part of group medical insurance paid towards the family members of the employees of the appellant. Further, from the records placed before us, it is not coming out how much amount of premium of group medical insurance policy belong to the employees of the appellant and how much amount to the family members of the employees of appellant. In that circumstance, the matter needs consideration at the end of the adjudicating authority to find out the inadmissible cenvet credit of service tax paid of medical insurance towards the family members of the employees of the appellant. The appellant is directed to provide data for the same.

24. **Availment of Cenvat credit of inadmissible service against Bills of M/s Wizcraft for EOY Awards Expenses and Budget Day Programme Expenses**

we have seen that the Budget Day programme is organized specifically to discuss the annual Union Budget changes with employees of the appellant across country to provide them knowledge which helps in providing services (tax and regulatory consultancy) to the clients. Therefore, the said services of Wizcraft is used for events for organising these events is linked to business activities. Accordingly, we hold that the said service is entitled for cenvet credit as input service. Further, an EOY award is an event where top industry leaders, professionals and entrepreneurs who have excelled in their respective fields are appreciated and recognized for their achievements. The event is attended by senior management personnel of the appellant which gives them an opportunity to develop new business relationships which are leveraged in future to generate business. Therefore, we hold that said activity is also termed as service availed in relation to the business of the appellant, the same is entitled to cenvet credit as input service.

25. Cenvat credit against bills of Perfect Business Centre Services Pvt. Ltd. on cost of travel coupons in February, 2010,

We find that the main contention of the appellant is service provider is providing renting of immovable service and other services and its travel coupons are part of the service as support service as the main service is a renting but the distribution of coupons is other support service. Therefore, the appellant has to take credit of the main service and also on other support service. We find that there is bifurcation of the services availed by the

appellant. The appellant has failed to provide data and information whether the said travel coupons has been used for business purpose or not? Failing which inference is drawn that the said coupons were used by the employees of the appellant for their personal use. Therefore, the service tax paid on travel coupons do not qualify as input service. Accordingly, on that service the appellant is not entitled to take credit and the same is denied.

26. **Credit in respect of improper documents-**

We take note of the fact that the invoices raised by M/s Woodcraft were addressed to the one of the registered premises of the appellant and the civil work was done at one of the registered premises of the appellant involving maintenance, repairs and renovation of the office premises from where the appellant provides consultancy services. The allegation is that the invoices raised on those registered premises which are not in the name of the appellant, therefore, the appellant is not entitled to avail credit. We find that the appellant is having various offices at various other locations, on those locations the appellant is availing the services of repairs, maintenance and renovation, etc. and all these locations have been used for proving output service by the appellant. In that circumstance, we hold that the appellant is entitled to avail credit on these services, therefore, the credit denied on account of improper documents is not sustainable. According, we hold that the appellant is entitled to take credit on the invoices issued by M/s. Woodcraft for maintenance, repairs and renovation ect, of the offices of the appellant.

27. Credit non levy amount against bills of M/s. Perfect Business Centre and M/s Ind Global Corporate Finance Ltd. For Renting of Immovable Service for the period April-May, 2007

We find that levy of service tax on renting of immovable property service came into force with effect from 1.6.2007 and the service tax on which cenvet credit availed is pertained to the period prior to that, as no service tax was payable by the service provider and there was no levy of service tax prior to 1.6.2007, the said service prior to 01.06.2007, cannot be held as input service to avail credit by the appellant. The appellant was not required to pay service tax for the April, 2007 and May, 2007 as there was no levy of service tax during the said period. In that circumstance, on merits, we hold that the appellant is not entitled to take credit of service tax paid on renting of immovable property for the period for the April, 2007 and May, 2007. Further, from the facts of the case, it is evident that the cenvet credit has been availed in the month of March, 2008 whereas the show cause notice has been issued on 18.04.2013 which beyond the extended period of limitation, in that circumstance, we hold that the show cause notice issued beyond 5 years of availment of cenvet credit to deny cenvet credit availed for the period of April-May, 2007 is barred by limitation and the same cannot be recovered.

28. Limitaton-

We take note of the fact that for the period 2007-08 to 31.3.2011, an audit took place during the period January, 2013, to February, 2013. If audit could not take place, the availment of

inadmissible cenvet credit could not be revealed, therefore, after analysing the case laws on the issue, we hold that the extended period of limitation is rightly invoked.

29. **Penalty-**

In terms of the provisions of section 80 of the Finance Act, 1994 which provides for immunity from imposition of penalty, we invoke the provisions of Sec. 80 of the Finance Act, 1994, we give immunity from imposition of the penalty on the appellant. Therefore, the penalty imposed on the appellant is set aside.

30. In view of above discussion, we remand the matter back to the adjudicating authority for computation of demand of amount of cenvet credit recoverable from the appellant as observed hereinabove and to pass an appropriate order in accordance with law.

31. The appeal is disposed of in the above manner.

(order pronounced in the open court on 31.1.2022)

S. Srivastava

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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