

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

ST/412/2011

(Arising out of Order-in-Original No. LTUC/104/2011 (C) dated 31.03.2011 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai).

M/s. United India Insurance Co. Ltd. : Appellant

Vs.

CCE & ST, LTU, Chennai : Respondent

Appearance

Shri N. Venkataraman, Sr. Advocate,
for the appellant

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM:

Hon'ble Shri V. Padmanabhan, Member (Technical)

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: **29.05.2018**

Date of Pronouncement: 01.06.2018

FINAL ORDER No. **41708/2018**

Per V. Padmanabhan,

The present appeal challenges the OIO No. 104/2011 dated 31.03.2011. The appellant is providing services of 'General Insurance' business. The dispute covers the period 2004-05 to

2007-08. During the disputed period, the appellants availed Cenvat credit of the service tax paid on repairs and maintenance of the vehicles by the 'Authorized Service Stations' (ASS in short), in respect of those vehicles which were insured by the appellant. The department took the view that such services do not form input services for the appellant in terms of the definition of input services as per Rule 2 (i) of the CCR, 2004. Accordingly, after issue of SCN, vide the impugned order the adjudicating authority confirmed the demand of an amount of Rs. 6,40,12,649/- along with interest and penalties under Sections 76 & 78 of the Finance Act, 1994. Aggrieved by the impugned order, the present appeal has been filed by the appellant.

2. In this connection we have heard the Ld. Counsel, Shri. N. Venkataraman for the appellant and the Ld. DR, Shri Veerabhadra Reddy, JC for the Revenue.

3. The main arguments advanced on behalf of the appellant are summarized below:-

a. In the transactions under this issue there are three players ie., i) Authorized Service Station which has provided the service of repair of the vehicle, ii) the vehicle owner whose vehicle has been repaired and iii) the Insurance Company (the appellant). In certain cases the insurance company, on a cashless basis have paid for the entire repair directly to the ASS. In certain other cases, the vehicle owner pays the ASS for the repairs carried out and his claim in part or full is

subsequently reimbursed to the vehicle owner. The appellant has availed Cenvat credit of the service tax paid entirely in the first part of the transaction and in the second case on that part of the service tax proportionate to the amount reimbursed by the appellant.

b. He refers to the CBEC Circular No. 334/1/2010-TRU dated 26.02.2010, in which the background of various new services was clarified. In respect of health services undertaken by hospital or medical establishment of the employees of the organizations and the health service provided under the Health Service Scheme offered by the Insurance Companies, it was clarified that the insurance company which has paid for the health check-ups would be considered as the service receiver and the tax paid by the hospital would be available to the insurance companies as credit. By drawing analogy to the above circular, he stated that in the instant case the insurance company which has paid for the repairs to the ASS should be considered as the service receiver and will be entitled to the Cenvat credit of the service tax reimbursed by them.

c. He drew our attention to the decision in the case of *Paul Merchants Ltd. Vs. CCE, Chandigarh* – 2013 (29) STR 257 (Tri.-Del.). He specifically referred to para 71 and submitted that the Tribunal in that case has made distinction between the recipient of service and beneficiary of the service. He submitted that the appellant was, by analogy having the status

of the recipient of service in as much as he is obliged by the insurance policy to make payment for the service rendered by the ASS.

d. He also argued that in some cases, the invoices issued by the ASS is in the name of the owner of the vehicle but the Commissioner has recorded the fact that the credit availed by the appellant restricted only to the portion reimbursed by them.

e. Lastly he also submitted that the SCN issued by the Revenue was hit by limitation. He explained that the assessment for the disputed period was initially made provisional which was subsequently finally assessed after reference to all the necessary documents. Since all the details were available for the Revenue to initiate final assessment, no charge can be made against the appellant.

4. The Ld. DR justified the impugned order and his arguments are summarized below:-

i. On the claim of the appellants on limitation, the Ld. DR drew our attention to para 24 of the impugned order in which the adjudicating authority has discussed the issue of limitation raised by the appellant before him.

ii. He argued the Paul Merchants case (supra) relied on by the Id. Counsel, was not applicable to the facts of the present case. It is his submission that Paul Merchants case has dealt with the case of export of services which is not the

case here and therefore the ratio cannot be made applicable to the present case.

iii. He challenged the view canvassed by the appellant that they were recipient of service. He reiterated the view held by the adjudicating authority that the service receiver of ASS can only be owner of the vehicle and the appellant cannot be considered as deemed service receiver. Consequently, they will not be entitled to avail Cenvat credit.

iv. He also drew our attention to para 18 & 22 of the impugned order and explained the view of Revenue that the documents based on which the appellant has availed the credit were not admissible documents in as much as they were all issued in favour of the vehicle owner and the appellant's name was never mentioned in such documents.

5. Heard both sides and perused the record.

6.1 The dispute is regarding the admissibility of Cenvat credit availed by the appellant on certain input services. Vehicle owners who have got their vehicles insured by the appellant, approach the ASS for carrying out the repairs. In cases where such repairs are covered by the insurance policies, the appellant pays for such repairs directly to the ASS (cashless settlement) and in other cases reimburses the vehicle owners for such repairs in full or in part. Such payments have been made by the appellant only as

part of the settlement of the General Insurance claims for the insured vehicle.

6.2 The stand of the Revenue is that the service tax paid to the ASS as part of the repair bill cannot be considered as an input service under the definition 2 (I) of the CCR, 2004. From the definition of Rule 2 (I), the input service means any service used by a provider of taxable service for providing an output service. In this case, the output service rendered by the appellant is general insurance service. The question to be answered is whether the tax paid on the category of ASS can be considered as a service used for providing output service.

6.3 The connected question which has been discussed by the adjudicating authority is who is the recipient of service. There is no doubt that the service has been provided by the ASS. The adjudicating authority has taken the view that the ASS has provided the service only to the owner of the vehicle by repairing it. He has taken the view that such service cannot be taken as provided to the appellant or in parts to the appellant and the vehicle owner. In this connection it is not in dispute that the appellant has availed the credit only proportionately to the extent of amount borne by them.

The general insurance service provided by the appellant basically insures the vehicle against damages. It is obvious that such service can be provided to the customer ie., owners of the vehicle only by way of reimbursement of the repair charges. We

are unable to see any other way by which the vehicle insurance service can be delivered to the customer. In this scenario, we are of the view that the service tax paid on the bill of the ASS is to be considered as falling within the definition of the input service which is used for providing the output service of the vehicle insurance.

6.4 The appellant has relied on the decision of the Tribunal in the Paul Merchants case (*supra*). We have gone through the said decision in which the Tribunal has made a distinction between the beneficiary of a service and the recipient of the service. The Tribunal observed that “the service recipient is the one who is obliged to pay for the services to the service provider and whose need is satisfied by the provision of the service, in other words it is the buyer of the service”. By following the above analogy, we come to the conclusion that the appellant becomes the recipient of the service of ASS even though the beneficiary remains the owner of the motor vehicle.

6.5 The appellant has also referred to the TRU Circular dated 26.02.2010, in which the following clarification has been given:-

“2.2 A large number of health insurance schemes are being offered by the insurance companies under which charges for hospitalization, surgery, post-surgical nursing etc. are generally paid by the insurance company. Such insurance policies, which fall under the category of general insurance service, are already taxable. Under general insurance service, an insurance company is a service provider to its clients. Under the proposed new service, tax is also being imposed on

the medical charges paid by the insurance companies to the hospitals on behalf of a business entity for its employees. As such, the insurance company would be the service receiver and the tax paid by the hospital would be available to the insurance companies as credit.”

Even though the above clarification has been given in the context of health insurance services, we are of the view that the same is relevant for deciding the claim of the appellant for Cenvat credit. In the present case, the appellant being the service receiver will be entitled to the credit of service tax paid in terms of Rule 2 (I) *ibid*.

6.6 The Revenue has also raised the issue that the invoices issued by the ASS which is the document based on which the appellant has availed the Cenvat credit, is invariably in favour of the owner of the vehicle and is not in favour of the appellant. Hence, Cenvat credit cannot be allowed to the appellants. As discussed above, we have held that the above service is eligible to be considered as an input service for the appellant. In the peculiar facts and circumstances of the case, we appreciate that the invoices will be issued by the ASS only in favour of the vehicle owners who took the vehicle to them for repair. But it is a fact that the insurance claims will be admitted by the appellant only after proper survey and further from the record it is seen that the credit availed by them is restricted to the portion of the repair bill reimbursed by the appellant. There is also nothing on record to suggest that the owner of the vehicle has also made claims for

Cenvat credit. Consequently, we are of the view that not having the invoice in favour of the appellant should be considered only as a procedural infraction and should not be used to deny the credit which otherwise they are eligible.

7. In view of the above discussions, we set aside the impugned order and allow the appeal.

(Order pronounced in the open Court on 01.06.2018)

(P. DINESHA)
MEMBER (JUDICIAL)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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