IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 40938 of 2017

(Arising out of Order-in-Original No. LTUC/77/2017-C dated 30.01.2017 passed by the Commissioner of Central Excise & Service Tax, Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai – 600 101)

M/s. Cholamandalam MS General Insurance Co. Ltd. : Appellant
2nd Floor, Dare House, No. 2, NSC Bose Road,
Chennai – 600 001

VERSUS

The Commissioner of G.S.T. & Central Excise, : Respondent
Chennai North Commissionerate,
26/1, Mahatma Gandhi Marg, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Shri Raghavan Ramabadran, Advocate for the Appellant

Ms. T. Usha Devi, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40772 / 2021

DATE OF HEARING: 15.01.2021

DATE OF DECISION: **24.02.2021**

Order : Per Hon'ble Ms. Sulekha Beevi C.S.

Brief facts of the case are summarized as under:

(i) The appellant is a General Insurance Company and is in the business of offering General Insurance, which includes fire, marine, motor, etc.,

(ii) On the basis of intelligence gathered that General Insurance Companies were availing ineligible CENVAT Credit on the basis of invoices issued by dealers of motor vehicles containing description of services which were never provided by them, the premises of Toyota car dealers at Chennai, namely, M/s. Harsha Automobiles Pvt. Ltd., Chennai and M/s. Lanson Motors Pvt. Ltd., Chennai, were visited by the Officers of DGCEI on 11.06.2015 and 18.06.2015 respectively. Certain records were taken and statements were also recorded. Preliminary scrutiny of records and statements revealed that the appellants had entered into an agreement with the car manufacturer M/s. Toyota Kirloskar Motor Company Pvt. Ltd. for issuance of insurance policies through their dealer network. These car dealers collected premium from the customers and issued policies to them by accessing the portals of the insurance brokers. For insuring the vehicles, the dealers/manufacturers are given **payout** calculated at a given percentage on Own Damage (OD) premium by the insurance companies. For receiving such payouts, the dealers are raising invoice containing description of services in the nature of "Provision of space, Computer, Internet and administrative support", though such services were never provided to the General Insurance Company, i.e., the appellant herein.

(iii) Service Tax was also collected by the dealers in these invoices from the appellant. The appellant availed CENVAT Credit of the Service Tax reflected in such invoices.

(iv) The Department was of the view that no service has been provided to the appellant by the car dealers and that the invoices do not reflect the consideration paid by the appellant to the car dealers for any service provided to them. For this reason, the appellant is not eligible to avail CENVAT Credit of the Service Tax paid by them as per these invoices.

2. Show Cause Notice dated 14.10.2015 was issued proposing to deny the alleged ineligible CENVAT Credit from the period from April 2010 to March 2015 and also for recovering the same along with interest and for imposing penalties. After due process of law, the Original Authority vide order impugned herein confirmed the demand, interest and imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

3.1.1 On behalf of the appellant, Learned Counsel Shri Raghavan Ramabadran appeared and argued the matter. He submitted that the Department has denied the credit alleging that no service has been received by the appellant from the car dealers. He adverted to page 56 of the appeal memorandum which contains an invoice dated 31.03.2015 issued to the appellant by the M/s. Lanson Value Added Services. The service is described as "Expenses incurred towards computing network connectivity through extranet, Internet space, Furniture and Fixtures, consumables, salary of staff, computers,…" etc. For easy reference, scanned specimen copy of the said invoice is as below:

LANSON VALUE ADDED SERVICES

Service Tax Regn No. ABEPL4650QST001
PAN No.: ABEPL4650Q
TIN: 33621344122

INVOICE

Date : 31/03/2015
Invoice No.: 240/14-15

To
Cholamandalam MS General Insurance Co. Ltd.,
New No. 2 (Old No.234), Dare House,
NSC Bose Road,
Chennai - 600 001.

[illegible]	[illegible]
A. Expenses incurred towards computing network connectivity through extranet, Internet space, Furniture and Fixtures, consumables, salary of staff, computers, printers, electronics and electricity for the month of March 2015	15,79,951.00
B. Add: Service Tax @ 12.36%	1,95,282.00
[illegible]	[illegible]

Amount in Words Rupees Seventeen Lakhs Seventy Five Thousand Two Hundred Thirty Three Only

Please issue Cheque in favor of Lanson Value Added Services

For Lanson Value Added Services

Authorised Signatory

Seen
7/1/2015

29/6/15

No.36, Poonamallee High Road, Koyambedu, Chennai - 600 017, India
Phone: 044 - 40501045 Mail: info@lvas.co.in

3.1.2 That such facilities provided to the appellant would fall under the category of 'Business Support Services'. The dealer has collected from the appellant applicable Service Tax for the amount paid by appellant. In the SCN, the Department contends that the description of the services is not correct and the credit has been held to be ineligible for the reason that the documents do not comply with Rule 9 of the CENVAT Credit Rules, 2004.

3.2.1 He submitted that the appellant had, vide their reply to the Show Cause Notice dated 25.04.2016, given detailed submissions with regard to the credit availed on the invoices. The Department, in some parts of Show Cause Notice, has stated that no services have been received by the appellant whereas, in certain instances, has emphasized that the description of services in the invoices is not correct. That when the Department has collected Service Tax from the appellant through the dealer, they cannot deny the credit availed at the service recipient's end. The dealers are registered with the Department and their services are covered under 'Business Support Services'. The dealers, in their capacity as service providers, have paid Service Tax and the appellant has borne incidence of the same.

3.2.2 That there is no dispute that the services in question are directly used for the taxable output services provided by the appellants. Once the Department has accepted the remittance of Service Tax, they cannot take a contrary stand and deny credit at the service recipient's end.

3.3.1 He further submitted that the dealers/service providers have always stated the description of service in their invoice as per Rule 4A of the Service Tax Rules, 1994. The description of service given in the invoice is in the nature of infrastructure support services and the dealers/service providers have accordingly remitted Service Tax. That this fact has never been disputed by the Department. No Show Cause Notice has ever been issued to the dealers/service providers for non-compliance of Rule 4A of the Service Tax Rules, 1994, for any discrepancy in issuing the invoices. That, in other words, the Department has acceded to the description of service in the tax invoice issued by the service provider and has not disputed the payment of Service Tax by the service provider.

3.3.2 He therefore contended that once the nature and description of services as mentioned in the invoice is not disputed at the service provider's end, the same cannot be questioned at the service recipient's end. This is for the reason that the assessment based on the returns in the hands of the service provider has become final and the Department has accepted those returns based on the declarations made by the service provider.

3.4 It is also argued by the Learned Counsel for the appellant that the Department alleged that such payouts given by the appellant to the dealers are in violation of the guidelines issued by the Insurance Regulatory Development Authority of India (IRDAI). He referred to Annexure-15 at page 459 of the appeal paper-book. It is pointed out by him that the letter by IRDAI dated 12.08.2015 would show that such outsourcing by insurance companies to dealers is recognized by IRDAI.

3.5 He relied on the decision of the Hon'ble jurisdictional High Court in the case of *M/s. Modular Auto Ltd. v. Commissioner of Central Excise, Chennai – North Commissionerate in C.M.A. Nos. 723 to 725, 795 and 806 to 810 of 2018 & ors.* reported in *2018-VIL-541-MAD-ST*

3.6.1 Learned Counsel for the appellant also argued on the ground of limitation. He submitted that the Show Cause Notice is dated 14.10.2015 whereas the period involved is from 2010 to 2015. Majority of the demand in the present Show Cause Notice is beyond the normal period of limitation. The extended period is not invokable as there is no suppression of facts, much less with intent to evade payment of Service Tax. He argued that the appellant was under the *bona fide* belief that they were entitled to avail and utilize the credit of Service Tax paid on various input services.

3.6.2 That Prior to this Show Cause Notice, an earlier Show Cause Notice dated 24.10.2011 was issued to the appellant proposing to deny credit for the period from April 2006 to September 2011 alleging that the appellant has taken credit of the Service Tax element paid to its other intermediaries. This was followed by another Show Cause Notice dated 04.06.2013 for the subsequent period 2011-12. These demands were dropped and it was held that the appellant is eligible to avail credit. The Department, therefore, was on the knowhow of the availment of credit on various input services. The allegation that the appellant has suppressed facts with the intention to evade payment of Service Tax is therefore without any basis.

3.7 He prayed that the impugned order may be set aside.

4.1 On behalf of the Department, Ms. T. Usha Devi, Learned Authorized Representative, appeared and argued the matter. She supported the findings in the impugned order. She read out paragraph 3.1.2 to 3.3.2 of the order emphasizing on the statements of Mrs. Lavanya Kumaraguru, Deputy General Manager, M/s. Lanson Motors Pvt. Ltd., Chennai (Dealer of M/s. Toyota) and Shri G. Suresh Kumar, Senior Accounts Manager, M/s. Harsha Automobiles Pvt. Ltd., Chennai recorded at the time of investigation.

4.2 It is argued by her that the payouts given by the appellant to the dealers are nothing but commission paid to them for the premium collected from the customers. Such commission/payout is described in the invoice as providing computing network connectivity through extranet, Internet space, Furniture and Fixtures, etc. That such services, as described in the invoices, have never been provided by the dealers to the appellant. Since no service has been provided by the dealers to the appellant, the appellant is not eligible to avail CENVAT Credit of the tax paid as per these invoices.

4.3 She further submitted that in paragraph 37 of the impugned order, the Original Authority has clearly stated that the in-depth investigation conducted with the dealers has brought out the fact that the dealers were issuing invoices with the description suggested by the appellant and that no service has actually been provided.

4.4 She relied upon a series of decisions, which are as under:

(i) P. Alavikutty v. Director, Enforcement Directorate [2013 (294) E.L.T. 172 (ATFE)];

(ii) M/s. P.B. Nair C&F Pvt. Ltd. v. C.C. (General), Mumbai [2015 (318) E.L.T. 437 (Tri. – Mum.)];

(iii) Acto, Anti-Evasion-I, Alwar v. M/s. Khandewal Food Products [2018 (8) G.S.T.L. 112 (Raj.)];

(iv) C.C.E. & S.T., Hyderabad-II v. M/s. Peers Technologies Pvt. Ltd. [2019 (27) G.S.T.L. 701 (Tri. – Hyd.)];

(v) M/s. Shoppers Stop Pvt. Ltd. v. Commr. of Service Tax, Mumbai-II [2018 (8) G.S.T.L. 405 (Tri. – Mum.)];

(vi) M/s. Star Industries v. Commr. of Cus. (Imports), Raigad [2015 (324) E.L.T. 656 (S.C.)];

(vii) M/s. Shree Ranie Gums & Chemicals P. Ltd. v. Commr. of C.Ex., Jaipur-II [2017 (4) G.S.T.L. 340 (Tri. – Del.)];

(viii) M/s. Jemcon Industries v. C.C.E., Kolhapur [2018 (17) G.S.T.L. 264 (Tri. – Mum.)]

5. Heard both sides and carefully perused the records.

6.1 The allegation of the Department is that no services have been provided by the dealers to the appellant as per the invoices and therefore, the appellant is not eligible to avail credit of the Service Tax reflected in this invoices. In paragraph 31 of the Order-in-Original dated 30.01.2017, the crux of the allegations of the Department has been recorded by the Original Authority, as under:

> *"31. On careful consideration of the statements of personnel of M/s. Chola and Dealers, I find that*
>
> *(i) The payment made by M/s. Chola to M/s. Hyundai / Dealers of Motor Vehicles is only a percentage of OD premium collected and the said payout details are calculated by the Head Office of M/s. Chola and communicated to the Dealers;*
>
> *(ii) M/s. Chola could not term such payout as commission (which would be in violation of IRDA guidelines) and hence the Dealers were given prescribed format to raise invoices as if they provided "computing network connectivity through extranet, internet space, furniture and fixtures, consumables, salary of staff, computers, printers, electronics and electricity";*
>
> *(iii) the Dealers accordingly raised invoices on the insurance companies in the format provided to them and*
>
> *(iv) the Dealers have not provided the services as mentioned in the description of the invoices. In other words, the description of the services contained in the invoices used for availing Cenvat Credit do not reflect the true description of the services."*

6.2 From the above, it can be seen that the case of the Department is that the **payout** paid by the appellant to the dealers on the OD premium collected by the dealers from the customers is camouflaged as service provided by the dealers to the appellant; that therefore, the services contained in the invoices have actually not been provided by the dealers to the appellant and thus, CENVAT Credit is not eligible.

7.1 Though in the Show Cause Notice the main allegation is that the description of services in the documents on which credit has been availed is not correct, at the time of adjudication, the main finding is that no services have been provided by the dealers to the appellant and that therefore credit is not eligible. At this juncture, it needs to be pointed out that the Department has no dispute with the Service Tax collected from the appellant by the dealer and remitted to the Government. The assessment of Service Tax paid at the dealer's end has not been disturbed/questioned by the Department; only the credit availed at the service recipient's end has been questioned by issuing the present Show Cause Notice.

7.2 If the Department contends that no service has been provided, the crucial question arises as to why Service Tax was collected from the dealer. The discussion by the Original Authority at paragraph 37 countering this argument is as under :

> *"37. As regards their contention in Para N.1 to N.7 that if no service is provided by the Dealer there is no requirement to pay service tax; that at the time of accepting service tax from the dealer, the department chooses to look at the form of transaction and accept service tax. In this regard, I find that the issue involved is not about the service tax payable by the Dealer. It is about the mentioning of true description of services in the*

> *invoice and the services mentioned in the invoices in the instant case admittedly were not provided by the Dealers. Only after the in-depth investigation conducted with the Dealers, the fact of Dealers issuing invoice with the description suggested by the Taxpayer have come to light. Hence their contention that department cannot approbate and reprobate in the same case is not valid."*

7.3 It is not disputed that the dealer has paid Service Tax on the services described in the invoices. If that be so, the denial of credit at the recipient's end cannot be justified by the Department without reopening the assessment at the dealer's end.

8.1 A similar issue came up for consideration in the case of *M/s. Modular Auto Ltd. (supra)*. The substantial questions of law considered in the above case are as under:

> *"2. The above appeals are admitted on the following substantial questions of law;*
>
> > *a) When the service provider was not before the Tribunal, whether the Tribunal can go into the question as to whether the said service provider had provided service to the appellant or not, more so when the said service provider has been assessed to service tax under Business Support Service for the service rendered by them to the appellant.*
> >
> > *b) Is the Tribunal not in error in refusing credit to the appellant for service tax paid by them to service provider when payment of service tax by the appellant for the service rendered by service provider is not in dispute and that it is settled, the assessment to tax at the hands of the service provider end cannot be questioned in the hand of service receiver (appellant in this case)"*

8.2 The brief facts of the said case are that the appellant therein had availed input service credit on "Multi

Protocol Label Switching" (MPLS) service based on the invoices issued by M/s. Brakes India Ltd., Chennai ("M/s. BIL" for short). The appellants were job workers for M/s. BIL. The services were utilized by M/s. BIL for communicating and retrieving the data from the appellant's therein. The Department alleged that the services were rendered by BSNL and Reliance Communications Ltd. to M/s. BIL and that M/s. BIL had raised invoices on the appellants claiming reimbursement under these invoices as MPLS charges along with Service Tax. The Department was of the view that the invoices were raised for reimbursement of expenses and that no service was rendered by M/s. BIL to the appellants and that the appellants were not eligible for credit. The appellants therein had contended that M/s. BIL are retrieving data relating to the assessees from the server and are further processing the same for their end use and therefore, M/s. BIL is rendering the service. It was also explained by the appellant therein that but for M/s. BIL retrieving the data, the appellant would have retrieved the data and passed on the same to M/s. BIL. The Hon'ble High Court, after analysis of the issue, observed as under:

> *"11. The short question, which falls for consideration, is whether the department as well as Tribunal could have held what was availed by the assesseess as credit is only a reimbursement and it is an attempt of BIL to pass costs incurred by them towards MPLS.*
>
> *12. Mrs.Aparna Nandakumar, learned Senior panel counsel for the Revenue, produced a lecture on Multi Protocol Label Switching with Quality of Service in High Speed Computer Network to explain as to what is Multi Protocol Label Switching (MPLS) and it has been stated therein that it is a method that directs data from one system node to the next based on short path lables rather than long network addresses in high-performance telecommunication association. Referring to a chart showing the working methodology, it is submitted that it is a facility created and the beneficiary is BIL and no input service is rendered by the BIL to the assessees for them to claim Input Tax Credit.*

13. To test the correctness of the said submission, we give the following illustration, which is broadly the nature of transactions done by the assessees with BIL.

14. The BSNL / Reliance Communications Private Limited have provided the MPLS facility to BIL and assuming the amount to be paid is Rs.100/- towards the cost and Rs.10/- towards the Service Tax, when the invoice is raised by the BSNL/Reliance Communication Private Limited for the said amount and the BIL has paid Rs.110/- to BSNL/Reliance Communication Private Limited, which includes the cost as well as Service Tax element, the BIL, in turn, has raised an invoice on the assessees claiming proportionately the costs which they have incurred to BSNL/Reliance. By way of illustration, if Rs.20/- has been passed on to one of the assesses, a sum of Rs.2/- is collected as Service Tax and each of the assesses pays Rs.22/- to BIL, on which Rs.2/- is the Service Tax paid. The assessees have taken CENVAT credit on the said Rs.2/- paid by it as Service Tax to BIL. Therefore, the question would be as to whether the department can dispute the nature of transaction at this juncture, more particularly, when the assessment made on the BIL and the collection of Service Tax on them has not been reopened.

15. From the reasons assigned by the Commissioner (Appeals), we find that the Commissioner (Appeals) has travelled beyond the scope of allegation made in the show cause notices. By giving a different interpretation to the nature of transaction, which, in our considered view, could not have been done by the Appellate Authority in the light of the settled position with regard to the Service Tax liability admitted and paid by BIL. Thefore, unless and until, the assessment on BIL had been reopened, the nature of transaction as referred by BIL has to be held to be wrong and the Commissioner (Appeals) could not have given a different interpretation to the nature of claim made by the BIL from the assessees by interpreting the terminology used in the invoice. The correct test, which ought to have been applied by the Adjudicating Authority, Appellate Authority and the Tribunal, is as to what is the character of payment made by the assessees on which they have availed the CENVAT credit.

<u>16. In the instant cases, it is not in dispute that whatever the portion of Service Tax component which was collected from the assessees by BIL was only the amount on which the CENVAT credit has been claimed by the assessees. Therefore, unless and until the assessment made on BIL was revised, which obviously could have been done, at this juncture, on account of the expiry of the period of limitation, the interpretation given by the Commissioner (Appeals) as well as the</u>

> *<u>Tribunal with regard to the nature of invoice raised on the assesses is unsustainable</u>. Furthermore, we find that the reason assigned by the Tribunal in paragraph 6.2 stating that the activity performed by the BIL for monitoring of production activities of the assesses cannot by any stretch of imagination be considered as an input service or in relation to the manufacture of final products of the assesses, is a statement, which is unsubstantiated by any record. At best, it can be taken as a personal opinion of the Tribunal, which could not have been a reason to reverse the credit availed by the assesses.*
>
> *17. What is important to note that the assessees' specific case is that there has been a service by BIL to the assessees in the matter of retrieval of data and service tax has been collected and paid by BIL and the correctness, legality or otherwise of the tax paid by the subject providers cannot be called in question by the Central Excise Officer having the jurisdiction over the assesses availing the credit. This question has not been considered. If the impugned orders are allowed to stand, then it would in effect mean that the jurisdictional assessment officers of the assesses are sitting in the judgment over the assessment made on BIL, over which, they have no jurisdiction."*

(Emphasis added)

8.3 The above decision squarely applies to the facts of the case before us. As discussed by the Hon'ble High Court, unless and until the assessment made by the dealer is revised, the credit at the recipient's end cannot be denied.

9. Before we part, we must state that we have gone through the several decisions placed by the Learned Authorized Representative for the Department before us; none of these decisions are applicable to the issue or facts under consideration in this appeal.

10. From the foregoing, after appreciation of the facts and following the decision of the Hon'ble High Court in *M/s. Modular Auto Ltd. (supra)*, we hold that the impugned order cannot sustain and requires to be set aside, which we hereby do.

11. The appeal is allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **24.02.2021**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Sdd