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

ST/42100/16-SM

[Arising out of Order-in-Appeal No.123/2016 (STA-II), dated 01.08.2016 passed by the Commissioner of Service Tax (Appeals-II), Chennai]

M/s. GANESAN BUILDERS LTD. APPELLANT

Versus

COMMISSIONER OF SERVICE TAX, CHENNAI-II RESPONDENT

Appearance:

For the Appellant	Shri V. Ravindran, Adv.
For the Respondent	Shri R. Subramaniyan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing	**15-05-2017**
Date of Pronouncement	**17-05-2017**

FINAL ORDER NO. 40713 / 2017

Per Archana Wadhwa:

The appellant is, *inter alia*, engaged in providing various types of Construction Services and were duly registered with the Service Tax Department. They were discharging the service tax liability after availing the Cenvat Credit of service tax paid on various input services.

2. During the period Oct.'13 to Feb.'14, they availed credit of service tax to the extent of Rs.6.03 lakhs (approx.), in respect of premium paid to insurance taken for workers at site. Revenue objected to such availment of credit on the ground that the definition of "Input Services" was amended with effect from 01.04.2011 and Insurance Services were specifically excluded from the definition of "Input Services". In as much as, the period involved in the present case is subsequent to 01.04.2011, the appellants were not entitled to avail the credit.

3. On the basis of the above, proceedings were initiated against them by way of issuance of show-cause notice resulting in passing of the present impugned order vide which the credit of Rs.6,03,808/- stands denied along with the confirmation of interest and imposition of penalty of Rs.60,381/- in terms of the provisions of section 76 of the Finance Act, 1994 read with Rule 15 (1) of the Cenvat Credit Rules, 2004. Hence, the present appeal.

4. Learned advocate appearing for the appellants has pleaded that the insurance cover was taken by the company

for the workers at their site as per the mandatory requirements of section 38 of the Employees' State Insurance Act, 1948. As such, it stands submitted that in as much as, the company is under a legal obligation to take insurance cover for their employees, it has to be held that the said services are directly having nexus to their output service and hence, is an input service. Learned advocate in support of his argument has relied upon the Tribunal's decision in the case of *Sundaram Fasteners Ltd. Vs Commissioner of Central Excise, Chennai* reported in *2016 (43) S.T.R.454 (Tri.-Chennai)*.

5. Learned departmental representative appearing for the Revenue draws my attention to the amended provisions of section 2(l) of the Cenvat Credit Rules, 2004 and submits that as per the amendment carried out with effect from 01.04.2011, the Insurance Service stands excluded. He also submits that the Tribunal's decision in the case of *Sundaram Fasteners Ltd.*(supra) is not applicable, in as much as, clear wordings of the amendments has not been considered and the decision stands given only on the short ground that welfare of the workers under the Factories Act, 1948 requires providing of Insurance Service.

6. After carefully considering the submissions made by both sides and after going through the impugned orders, I find that the dispute relates to availment of Cenvat credit of service tax paid on the Insurance Service taken by the appellant for their workers at site. Admittedly, such Insurance Services have to be provided by an assessee in terms of the Employees State Insurance Act, 1948 and are for the welfare of the employees. The said services have also been held to be eligible input service for the purpose of availment of credit by various decisions of the higher courts.

7. However, the crux of the matter in the present appeal is, as to whether such services continued to be covered by the definition of "Input Services" after 01.04.2011, when a specific exclusion clause was introduced in the definition of "Input Services". For better appreciation the same is reproduced below:-

> [but includes]:-
>
> (a) … … … … … …
>
> (b) … … … … … …
>
> (c) Such as those provided to 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 extended 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.

8.1 Clause (c) of the exclusion part of the definition clearly leads to the fact that the various services mentioned therein stands excluded from the definition of "Input Services". Life Insurance and Health Insurance are the two specific services, which are excluded. The language of the exclusion clause is in simple English and does not require any interpretational expertise to arrive at the conclusion that the Insurance Services are no longer covered by the definition of Input Services. The Tribunal's decision in the case of *Sundaram Fasteners Ltd*. (supra) relied upon by the learned advocate is to the effect that the exclusion is only in respect of the insurance charges given to the employer during journey availing Leave Travel Concession. I do not find myself in agreement with the said conclusion, in as much as, expression "and" used between two expressions "Health Insurance" and "travel benefits" is a disjunctive and is not required to be read along with the expression "Health Insurance". The exclusion clearly mentions various services including the Life Insurance and Health Insurance Services as not covered by Input Services. Similarly, the travel benefits extended to the employees at the time of Leave or Home Travel Concession also stands excluded. There is no warrant to read excluded Health Insurance Services with the travel benefits for leave etc. As such, the contention of the learned advocate that it is only those Health Insurance Services, which are extended during leave, stands excluded, cannot be appreciated and accepted.

9. In as much as, the period involved in the present appeal is subsequent to 01.04.2011, I am of the view that the availment of credit was not admissible to the assese.

10. Similarly the fact that the appellant is obliged to provide such services under the Employees State Insurance Act, 1948 can also not to be held as ground to allow the credit, in as much as legislation is within its right to amend the definition of "Input Services" and to include or exclude any of the services from its ambit. In any case, the Tribunal is not within its jurisdiction to decide on the *vires* of the said amendments. Accordingly, the denial of the same along with confirmation of interest is upheld.

11. As regards penalty, I find that the appellants have availed the credit while reflecting the same in their account books as also in the various returns filed with the Revenue. Further, the issue involved is also a bonafide legal issue of interpretation of the provisions of law and cannot be held to be a malafide. In such a scenario, the imposition of penalty

upon assessee is not warranted. The same is accordingly set aside.

12. But for the setting aside of penalty, the appeal is otherwise rejected.

(Pronounced in open court on **17-05-2017**)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
16-05-2017

	DRAFT			Remarks
	I	II	III	
Date of dictation	**15.05.2017**			
Draft Order - Date of typing	**16.05.2017**			
Fair Order Typing	**16.05.2017**			
Date of number and date of dispatch	**19.05.2017**			