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

ST/41977/2016

(Arising out of Order-in-Appeal No. 42/2016 dated 25.07.2016 passed by the Commissioner (Appeals), CCE & ST, LTU, Chennai).

M/s. Cholamandalam MS General Insurance Co. Ltd. — Appellant

CCE & ST,LTU, Chennai — Respondent

Appearance

Shri V.P. Prabhu, DCM – Taxation of the Co.
for the appellants

Shri R. Subramaniyan, AC (AR)
for the Respondent.

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member Technical

Date of Hearing/Decision: 11.04.2017

FINAL ORDER No. 40629 **/2017**

The brief facts of the case are that Show cause notice dated 15.07.2013 was issued to the appellant herein proposing disallowance of service tax credit taken/utilized on debit notes during 2011-12 involving an amount of Rs. 71,192/- along with interest thereon and imposition of penalty under Rule 15(1) of the Cenvat Credit Rules, 2004. In adjudication, the original authority vide Orider-in-Original dated 16.12.2013 has confirmed the proposals made in the SCN. On appeal, the ld. Commissioner

(Appeals) vide impugned order dated 25.07.2016 upheld the order of the original authority. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, ld. Advocate appearing on behalf of the appellant Shri V.P. Prabhu, DGM-Taxation of the appellant Company submits that SCN sought disallowance of credit only on the basis of debit notes and relied upon the order of the original authority as well as the impugned order and submits that both have gone beyond the proposals in the SCN to deny the credit. He submits that the Commissioner (Appeals) in the impugned order has conceded that there is no bar on availing cenvat credit on the basis of debit notes. Nonetheless, the appeal filed by them has been dismissed on extraneous grounds.

3. On the other hand, ld. AR Shri R. Subramanian, AC, supports the impugned order and in particular, points out that in para-11 of the impugned order, though the Commissioner (Appeals) has held that Cenvat credit could be allowed on debit notes, however, he has noted that this should be only subject to the satisfaction of the eligibility of the service.

4. Heard both sides and gone through the records.

5. The arguments put forth by the appellant do have merit. The Show Cause Notice confines the reason for disallowance of credit only on the ground that "credit had been taken/utilized on debit notes". The original authority also, in para-6 of his order dated

16.12.2013, has, in his findings, observed that " the issue to be decided in this case is, whether "Debit Note" is a valid document for availing cenvat credit as per Rule 9 of Cenvat Credit Rules, 2004". However, it is seen that while the original authority has reproduced the provisions of Rule 4A of Service Tax Rules, 1994, in para-9 of his order, there is no discussion whatsoever anywhere else on the issue of eligibility or otherwise of debit notes for availing cenvat credit. On the other hand, the original authority has gone into the description of the services enacted in such debit notes and has only found that the description of the services enacted in the debit notes and has held in para-9.4 that since debit notes do not carry "" proper classification of service", thus leaves room for ambiguity on the ground as to under which service the tax has been collected and remitted to the Department so that credit can be allowed to the tax payer. This non-application of mind by the original authority and his explanation into uncharted territory has not been addressed by the Commissioner (Appeals) in the impugned order. On the other hand, the Commissioner (Appeals) while finding that debit notes can be treated as " valid payments" for the purpose of availment of Cenvat credit and upholding that the decision of the original authority to treat debit notes as invalid documents, it is not contain merit. Nonetheless, similar furors into description of the services mentioned in the debit notes and upholds that the said services would not merit coverage under the definition of input services under Rule 2 (i) of Cenvat Credit Rules, 2004. This by no stretch of imagination, is the purpose and focus of the SCN. However, only for these reasons, the lower appellate authority has upheld the order of the original authority.

6. I am unable to comprehend why and how both the authorities chose to adjudicate on areas not covered in the SCN. I am also surprised that they have done so in the case of an assesse who is the member of the Larger Tax Payer's unit, a special vehicle of the department intended for the purpose of extending highest service standards and facilitate low compliance cost. The fact that the assesse had to go knocking at this door is definitely of no help to lowering the compliance cost. In the event, I am of the considered opinion that both the authorities have traversed beyond the SCN and as such and hence I have no hesitation in setting aside the impugned order and allowing the appeal. Setting aside these things, I am holding that the debit notes will be valid documents for the purpose of availment of cenvat credit.

7. If the LTU had felt that the description in the debit notes were also an additional reason for denying cenvat credit, they should have asked the appellant to show cause the reason on that charge also even on period of limitation. This is certainly not the case. Copy of this order may be sent to the Commissioner (LTU) for his perusal and necessary corrective action.

(Order dictated and pronounced in the open court)

18/04/2017

(MADHU MOHAN DAMODHAR)
MEMBER TECHNICAL

BB

Customs, Excise & Service Tax Appellate Tribunal

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