

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL**

**NEW DELHI**

PRINCIPAL BENCH

**Excise Appeal No. 51753 of 2021 [SM]**

[Arising out of Order-in-Appeal No.102 (SM)/CE/JPR/2021 dated 13-07-2021  
passed by the Commissioner (Appeals), Central Excise and CGST-Jaipur]

**M/s.Bosch Limited**

SP-663, RIICO Industrial Area,  
Sitapura, Jaipur-302001

**...Appellant**

*VERSUS*

**Commissioner of Central Excise  
& CGST Jaipur**

**...Respondent**

**APPEARANCE:**

Ms. Sudeshna Banerjee, Advocate for the Appellant

Mr. Gopi Raman, Authorised Representative for the Respondent

**Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

DATE OF HEARING/DECISION: 09/03/2022

**FINAL ORDER No. 50275/2022**

**RACHNA GUPTA**

The appellant herein is engaged in manufacturing of excisable goods i.e V.E Distributer Fuel Injection Pump, components of said Pump and was also availing Cenvat Credit. Cenvat Credit amounting to Rs.73,819/- was taken by the appellant on staff insurance of the employees. Department formed an opinion that the said insurance was not an eligible input service in terms of Rule 2 (I) of Cenvat Credit Rules, 2004, hence, alleged the aforesaid credit to be inadmissible. Accordingly, vide

SCN No.178/2017 – 18 dated 3<sup>rd</sup> May, 2019, the aforesaid amount of Rs.73,819/- was proposed to be recovered alongwith the interest from the appellant. Penalty was also proposed to be imposed alleging suppression on part of the appellants. The said proposal was initially confirmed vide OIO No. 8/20-21 dated 30 June, 2020. The appeal thereof was rejected vide OIA No. 102/2021 dated 8<sup>th</sup> June, 2021. Being aggrieved the appellant is before this Tribunal.

2. I have heard Ms. Sudeshna Banerjee, Id. Counsel for the appellant and Mr. Gopi Raman, Authorised Representative for the Department.

3. Ld. Counsel has submitted that the Cenvat Credit of employee deposit linked insurance is admissible to the appellant as the insurance services in the present matter are eligible input service. Ld. Counsel has mentioned that irrespective that the insurance services are mentioned in the exclusion clause of the definition of input services but are subjected to a condition. The said condition is not applicable to the facts of the present case. The adjudicating authorities below have wrongly held the said submissions of the appellant as not tenable. It is submitted that Commissioner (Appeals) has wrongly mentioned that it is not established by the appellant that the insurance of staff is statutory requirement whereas as per Employees Provident Fund Act, the employees insurance is submitted to be a statutory obligation of the employer, the appellant herein. Ld. Counsel has relied upon

the decision of this Tribunal, Hyderabad Bench in the case of **Hydus Technologies India Pvt. Ltd. vs. C.C.E., Cus. & ST, Hyderabad-II reported in 2017 (52) STR 186 (Tri.- Hyd.)**, on decision of Madras High Court in the case of **Ganesan Builders Ltd. vs. Commissioner of Service Tax, Chennai reported as 2019 (20) GSTL 39 (Mad.)**, even on the decision of this Tribunal in the case of **M/s. Rajratan Global Wire Ltd. vs. Commissioner, Central Goods and Service Tax, Ujjain (MP) reported as 2021-TIOL-315-CESTAT-Del.** It is also submitted that the extended period has also been wrongly invoked. The allegations of any suppression on part of the appellant are vehemently denied. With these submissions, the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. To rebut these submissions Id. DR has laid emphasis upon the definition of input services in rule 2 (I) of Cenvat Credit Rules, 2004, the exclusion clause thereof precisely. It is mentioned that the Commissioner (Appeals) relying upon the said rule has formed an opinion that the services provided in relation to insurance are specifically excluded from the said definition of input services. It is impressed upon that there is no infirmity in the order when based upon those observations the Cenvat Credit of Service Tax paid for life insurance for the employees of the appellant is held not admissible. The order under challenge is prayed to be upheld and appeal is prayed to be dismissed.

5. After hearing the rival contentions and perusing record, I observe and hold as follows:-

The adjudication requires to ascertain as to:

“Whether the staff insurance services being availed by the appellant for its employees is an eligible input service or not for availment of Cenvat Credit.”

6. The adjudicating authorities relying upon the definition of input services in rule 2 (I) of CCR, 2004 have laid emphasis upon the exclusion clause thereof and have formed the opinion that the life insurance has specifically been excluded and as such the Cenvat Credit availed by the appellant has been denied. The exclusion clause of the said definition reads as follows:-

*(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 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;***

7. The bare perusal shows that no doubt the insurance services as taken by the appellant in the present case have specifically been excluded but the said exclusion applies if and only if the insurance service is used primarily for personal use or consumption of an employee. The Commissioner (Appeals) order is miserably silent about any finding for the impugned services to

specifically be for the personal use of the employee/ employees of the appellant. He rather held that statutory requirement for the impugned services have not been established. These finding are apparently wrong on the face of it as Commissioner (Appeals) has miserably ignored the statute as that of Employees Provident Fund and Miscellaneous Provisions Act, 1952. This Legislation section 6 (c) thereof specifically mandates an employer to have insurance for its employees. The another legislation mandating the said obligation upon the employer, is Employees State Insurance Act, 1948. Not only this there has been Departments own clarification vide DOF No.334/3/2011 dated 28.02.2011 which explains as follows:-

*“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.”*

8. A perusal of the above clarification shows what was sought to be excluded was what is primarily meant for personal use or consumption of employees and which is not the part of the cost-to-company package of the employee. In their case, the benefit of insurance is not going to the employees at all. As per the Workmen Compensation Act, 1923, the employees are entitled to compensation whether or not the appellant takes the insurance policy. The amount of compensation is also fixed as per law. This

potential liability of the company was sought to be covered by the insurance policy which they have taken. Learned Counsel takes us through the copy of the insurance policy, which shows that the insured is the appellant and not the individual employees. Therefore, in terms of clause (C) of Rule 2(I) of CCR, 2004 these insurance services are not excluded from availing Cenvat credit being not for personal use of employee but for the appellant - employee's Statutory Mandate. Therefore, learned Counsel submits that the question before the Larger Bench may be answered in favour of the assessee.

9. The issue is otherwise no more *res integra*. This Tribunal in **Hydus Technologies** (supra) has specifically held that unless there is some document to establish that the insurance services are availed for personal use or personal consumption of the employee, the services shall be eligible input service as those are the part of provident fund Scheme and provides maximum payments to the insured persons nominated beneficiary in the event of death due to natural cause accident or illness. It was also held that the employees of an organization are covered under the Employees Provident Fund Act and hence the legislation makes it mandatory for the employer to provide the provident fund to the employees. It is under the said mandate that the appellants had taken the insurance policy. Same is the fact for the present case.

10. Though this Tribunal's Chennai Bench in the case of **Ganesan Builders vs. Commissioner of Service Tax, Chennai**

**reported in 2017 – TIOL – 3152- HYD – ST.** had taken the contrary view confirming the findings of the Department that the insurance services falls under exclusion clause. But while deciding the appeal against the said decision Hon'ble High Court of Madras has relied upon the **Hydus Technologies** (supra) and held that the workman compensations insurance policy was obtained by the appellant to meet the mandatory labour loss. There was nothing produced on record to show that the services were availed not for vocation or skill but for the individuals employee. In such circumstances the services availed would not fall under the exclusion clause i.e. sub-clause (c) or Rule 2 (I) of Cenvat Credit Rules. Because of the contradiction in the findings of two different benches of this Tribunal the Larger Bench of this Tribunal in the case of **M/s. Dharti Dredging and Infrastructure Ltd. vs. Commissioner of Central Tax, Secunderabad – GST reported as 2021-VIL-144-CESTAT-HYD-ST** has emphasized the findings of Madras High Court in **Ganesan Builders** in following words:-

*“10. As noticed above, the assessee is rendering commercial or industrial construction service, construction of residential complex, works contract services and GTA Service (as a recipient) and the assessee is registered with the Service Tax Commissionerate. The copies of a few policies, which have been availed by the assessee, have been produced before us, which show that they are Workmen Compensation Policies. The name of the insured is the assessee, namely, M/s. Ganesan Builders Limited. The policies specify the area, where the construction works are being carried on and in the copies given to us the addresses are : No. 144, Rajiv Gandhi Salai, Chennai-41 and (ii) SIPCOT Industrial Park, Irungulam, Podur Village, Sriperumbudur. The description of the employees for whom*

*premium has been paid are not described by their names, but by their vocation/skill, namely, Mason, Helper, Stone Cutter, Barbender and his Helper, Carpenter and his Helper, Painter and his Helper, Store Keeper, Electrician, Supervisor, Plumper, Welder, Tiles Mason, etc. Therefore, we are required to consider as to why the assessee is required to avail such a policy. This is so because of a statutory requirement under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (in short, "the 1996 Act"). Under the said Act, the Workmen's Compensation Act, 1923 has been included in the Second Schedule of the 1996 Act and the provisions of Workmen's Compensation Act, 1923 has been made applicable to the building workers."*

*11. Thus, the inclusion of the Workmen's Compensation Act in the 1996 Act, a beneficial legislation, is for the purpose of protecting workmen, who generally belong to unorganized sector. The policy does not name the employees, but categorized the employees based on their vocation/skill. The insured is the assessee and the intention of the policy is to protect the employees, who work in the site and not to drive them to various forums for availing compensation in the event of an injury or death. Therefore, even viewed from this angle, the availment of the policy appears to be a statutory requirement and as rightly contended by the assessee, this service is not used primarily for personal use or consumption of an employee and this, being the statutory requirement, it is insured (assessee) specific and not employees specific.*

10. The Larger Bench answered the question as was referred to them as follows:-

*"30. In view of the above, we answer the question referred to us as follows:*

*"The view expressed by the Tribunal Hydus Technologies India lays down the correct position in law. The view expressed by the Tribunal in Ganesan Builders has been over ruled by the Madras High Court in Ganesan Builders*

*Ltd. vs. Commissioner of Service Tax, Chennai[2019 (20)  
G.S.T.L. 39 (Mad.) – 2018 – VIL – 475 – MAD – ST]”*

11. Keeping in view the entire above discussion and the fact that Department has not produced anything on record to show that the services of Provident Fund were availed for the personal benefit of employees whereas what is apparent from the documents and contentions of the appellant that the life insurance services were availed by appellant for all of its employees under statutory mandate and not for the individual and personal consumption.

12. Accordingly, following the said decision of the Larger Bench of this Tribunal. I hold that Commissioner (Appeals) has failed to appreciate the statutory mandate of the appellant being the employer to get insured its employees. Resultantly, the order under challenge is hereby set aside and the appeal stands allowed.

[Dictated and pronounced in the open Court]

**(RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

Anita