CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 30206 of 2018

(Arising out of **Order-in-Original** No.HYD-EXCUS-001-COM-003-17-18 dated 28.11.2017 passed by Commissioner of Central Tax, Central Excise & Service Tax, Hyderabad)

Conneqt Business Solutions Ltd., .. **APPELLANT**
(Formerly known as Tata Business Support Service Limited),
Gowra Trinity, S.P.Road,
Chiran Fort Lane, Begumpet,
Hyderabad,
Telangana – 500 003.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Central Excise & Service Tax
Secunderabad - GST
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:

Shri B L Narasimha, Advocate for the Appellant.
Shri G. Sudhakar, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30169/2023

Date of Hearing:07.06.2023
Date of Decision:04.07.2023

[ORDER PER: R. MURALIDHAR]

The Appellant is providing service as a Business Process Outsourcing Company. The Appellant also is engaged in providing Third-Party Administrator (TPA) services to various insurance companies. They enter into agreement with Insurance Company as well as with dealers/distributors of various vehicle manufacturers, wherein a Tripartite Agreement is made for the dealer to provide space, infrastructure, manpower etc., to enable the Appellant to seek insurance business for the Insurance company. For the services rendered by the dealers in their premises for such activities, the

Appellant pays for the Invoice raised which clearly show the element of Service Tax charged by such dealers. The Appellant takes cenvat credit of the Service Tax paid for such Invoices. The Appellant was earlier known as Tata Business Support Services (TBSS for short). DGCEI, Chennai Zone Unit conducted enquiries and investigations on the activities of the Appellant and also in respect of various other Insurance companies for such transactions between the automobile dealers and the Appellant/insurance companies. The investigating officers Recorded the Statements of the officials of TBSS as well as from some officials of the automobile dealers. These Statements are relied upon by the Department to issue the Show Cause Notice. The Show Cause Notice alleged that the input invoices raised by the automobile dealers do not contain the details of the services rendered by them to the Appellant. As a matter of fact, it was alleged that the service itself was not provided by the dealers to TBSS and only Invoices were raised. Thus this was more of a paper transaction without any service being rendered. Therefore, the Show Cause Notice was issued on the ground that the cenvat credit taken by them is not legal and proper. Demand was issued for Rs. 44,33,35,282/-. The Appellant requested for opportunity to cross examine the officials of the dealers whose Recorded Statements were relied upon by the Department to issue the Show Cause Notice. The Appellant was granted this request and the cross-examinations were conducted. After due process, Adjudicating Authority confirmed demand along with interest and penalty. Being aggrieved by the impugned order the Appellant is before the Tribunal.

2. The Learned Counsel appearing on behalf of the Appellant submits that it is an admitted fact that in the Show Cause Notice itself agrees that TBSS has entered into Tripartite Agreement with the dealers of major car manufacturers. He draws attention to Para 2.5 of the Show Cause Notice. He also draws attention to the Tripartite Agreement wherein TBSS, Tata Motors and Reliance General Insurance have entered into a Tripartite Agreement on 09.07.2012. Here the roles of all the three parties and their relationship and the type of services to be provided by the dealer are all brought out very clearly along with the consideration to be paid for such activities. He submits that as per this Agreement, the fact of service being

provided by the dealers to TBSS is clearly established. He also points out to the Dealer Acceptance letter for providing office space and furniture, computer accessories, power, trained manpower and broad band connection etc., at their premises to TBSS. TBSS has more than 100 such dealers spread all over India and in all these cases similar Agreements have been made wherein the dealer provides the infrastructure and manpower support to TBSS for carrying out the Insurance agency work by TBSS. The dealers raise invoice on TBSS clearly showing the amount being charged toward Reimbursement of IT Infrastructure Expenses towards Office Space, Trained Manpower etc. The amount of Service Tax is indicated clearly along with the details of PAN Number, Service Tax Registration Number of the dealer. There is no dispute by the Department that the Tax Invoices issued by the dealer conforms to Rule 9 of Cenvat Credit Rules, 2004 which specifies the conditions to be fulfilled so as to make the concerned document eligible for Cenvat Credit. He draws our attention to the cross-examination conducted for the Statement recorded by Shri Shanmuga Sudarshan, one of officers of the car dealer. In the cross-examination, this person has agreed that the dealers are using the Appellant's portal of TBSS who generate the policies. He also has accepted that the Appellant have utilised the manpower, internet connection, computer etc., for providing the service for issuing the policies through the portal of TBSS. He also confirmed that there are many computer systems out of which a few systems are being used for generating the Insurance policy. Similarly they have several staff/officials and some of them are working for this purpose. Similarly, another official Shri R. Manoharan official of another Company has admitted that manpower, internet connection, computers are being utilised for issuing the Insurance policy through TBSS portal. He also confirmed that they have incurred expenses on such facilities. The Learned Counsel submits that the cross examination proves that whatever statement was recorded by the investigating officers was not correct and cannot be relied upon to press the Service Tax demand when the report of the cross-examination directly goes against the initial statements given by them. Hence, he submits that the Recorded Statements of these officials have no evidentiary value. He also points out to the Recorded Statement of the official of the TBSS, wherein he

has categorically replied that the dealers are providing the infrastructure facilities, manpower, electricity etc. Therefore, the entire premise of the Show Cause Notice which is totally based on the Recorded statement of just two officials of two car dealers out of more than 100 dealers spread all over India, has absolutely no legal sanctity. He submits that since the Service Tax paid by the dealers at their end has been accepted as proper and the Returns filed by them before jurisdictional authorities have not been questioned, in such a case, the Department cannot question the legality of the cenvat credit taken at the end of the recipient. In catena of judgments it has been held that even when no Excise Duty or Service Tax is required to be paid by the manufacturer/service provider, but if the same has been paid and no objection has been raised by the jurisdictional authorities, if any cenvat credit is taken by the receiver of the goods/recipient of the service, the same cannot be questioned at the end of the recipient. On this issue, he relies on the case law of **M/s. Modular Auto Ltd. v. CCE, Chennai-North Commissionerate [2018-VIL-541-MAD-ST]**.

3. After taking us through the above factual matters, he submits that the issue as to whether for such services provided by the dealers, TBSS would be eligible for cenvat credit or not is no more *res integra*. On the basis of same investigations conducted by DGCEI Chennai Zone, several proceedings were initiated against many assesses wherein the cenvat credit taken was sought to be denied. The matter reached the Tribunal and the issue was decided therein. He relies on the following case law:

(i) M/s. Cholamandalam MS General Insurance Co. Ltd., Chennai Vs. The Commissioner of GST and Central Excise reported at [2021 (3) TMI 24 - CESTAT CHENNAI].

(ii) ICICI Lombard General Insurance Company Ltd. v. Commissioner of CGST and Central Excise, Mumbai Central, reported at [2023 (2) TMI 1093 - CESTAT MUMBAI]

(iii) M/S. Bajaj Allianz General Insurance Co. Ltd. v. Commissioner of CGST & CE, Pune-I, [2022 (10) TMI 1165 - CESTAT MUMBAI]

(iv) M/s. Future Generali India Insurance Company Ltd. v. Commissioner of Customs – Mumbai Central reported at [2023 (4) TMI 922 – CESTAT MUMBAI]

4. In all these cases, it has been held that when the Service Tax paid at the end of the service provider is not questioned and when there is no doubt that the Service Tax in question has been paid, the cenvat credit taken by the recipient cannot be denied. He further submits that in all these cases proceedings were initiated by DGCEI Chennai who have also initiated the present proceedings and all the cases are on identical issue only. Therefore, the present Appeal is squarely covered by the decisions of the various co-ordinate Benches of the Tribunal.

5. In view of the foregoing, he submits that the present Appeal is required to be allowed.

6. The Learned AR submits that the DGCEI investigating officials have found that no service was rendered by the car dealers. They have also obtained statements from the officials of the car dealers who have confirmed that such services were not rendered by their firms. He reiterates the findings of the Adjudicating Authority to justify the confirmed demand.

7. Heard both sides and perused the documents.

8. From the documentary evidence placed before us, there is no dispute that the Appellant, the car dealer and the insurance company have entered into Tripartite Agreement at the very first stage. These Agreements have been entered into much before the investigation/enquiries were initiated. Therefore, there is nothing to indicate that the veracity of such documents is liable to be questioned. This Agreement clarifies role of the car dealer and the acceptance letter from their side shows the details of activities being undertaken by them. Subsequent to 01.07.2012, the Invoices raised by any service provider need not specify as to under what category of service they are providing the services. In respect of the service recipient also so long as the service falls within the definition of input service in terms of Rule 2(l) of CCR 2004, they would be eligible to take the cenvat credit. The only

condition being that the input service should not be under the exclusion list. It is nobody's case in the present proceedings that the invoices issued by the car dealers are not authentic or are not accounted for by them in the Returns filed within their jurisdictional offices. There is also no allegation that the Show Cause Notice to the effect that the services rendered under these invoices are not falling within the definition of Rule 2(l) of the CCR 2004. The entire case has been built on the ground that absolutely no service was rendered by the car dealers. For coming to this conclusion, the Department has relied upon only two Recorded statements of the dealers out of more than 100 dealers of the Appellant. Even these two officials have given a different version when they were cross examined. In such a case no evidentiary value can be placed on the Recorded Statements of these officials. Further there is no allegation coming up in the Show Cause Notice that TBSS have not recorded the transactions with car dealers in their books of accounts. It is not in dispute whether TBSS has paid the full invoice value along with the Service Tax to the car dealers. In such a case when they are accounting for the entire transaction in their books of accounts, it cannot be presumed that entire transaction is only on paper. The payments on both sides are through banking channels only. It is not also the case of the Department that the person raising the Invoice has not paid the Service Tax shown in the Invoice to the Department. These car dealers are Service Tax assessees and have been filing their Returns with the Department. No questions have been asked nor any proceedings have been initiated against them by the jurisdictional authorities on any count.

9. Coming to the case law cited by the Appellant in the case of M/s. Modular Auto Ltd. v. CCE, Chennai-North Commissionerate [2018-VIL-541-MAD-ST], the Hon'ble High Court has held as under:

> *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 Tribunal with regard to the nature of invoice raised on the assesses is unsustainable. 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. *[Emphasis Supplied]*

10. In the case of M/s. Cholamandalam MS General Insurance Co. Ltd., Chennai Vs. The Commissioner of GST and Central Excise reported at [2021 (3) TMI 24 - CESTAT CHENNAI].

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.*

7.3 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)"

8.3 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. Xxxx [Emphasis Supplied]

11. In the case ICICI Lombard General Insurance Company Ltd. v. Commissioner of CGST and Central Excise, Mumbai Central, reported at [2023 (2) TMI 1093 - CESTAT MUMBAI].

5. In this case, it is an undisputed facts that the automotive dealers had paid service tax on the nature of services described in the invoices issued to the appellant; that payment of service tax by Service Tax Appeal No. 89570 of 2018 3 such dealers have been accepted by the service tax authorities having jurisdiction over their business premises. Since, the service tax paid by such dealers was availed as Cenvat credit by the appellant, availment of such credit is in conformity with the Cenvat statute. We find that in an identical case, Cenvat credit was denied by the Department, holding that the invoices issued by the automotive dealers are false/fraudulent/invalid, since no service of the description contained therein was rendered by the auto dealer. The dispute was resolved by the co-ordinate Bench of the Tribunal in the case of M/s. Cholamandalam Ms General Insurance Co. Ltd. (supra), holding that since the service tax was paid by the auto dealer, under the taxable head of "Business Auxiliary Service" and the assessment of auto dealer has not been re-opened or questioned, credit availed cannot be denied to the insurance company. This is also the ratio of the judgment of the Hon'ble Supreme Court in the case of MDS Switchgear Ltd. (supra), wherein it was held that once the tax liability has been discharged and accepted by the Department, the consequential Cenvat credit cannot be denied at the recipient's end. [Emphasis Supplied]

12. In the case of M/S. Bajaj Allianz General Insurance Co. Ltd. v. Commissioner of CGST & CE, Pune-I, [2022 (10) TMI 1165 - CESTAT MUMBAI].

4.4 This judgment was followed again by the Tribunal in the case of Cholamandalam MS General Insurance Co. Ltd. [2021 ST/87543/2018,86082/2019 26 (9) TMI 442 –CESTAT Chennai, the relevant para of which is reproduced below:- "5. It is brought to our notice that the issue in this appeal has been analyzed and decided in the appellant's own case for the previous period vide decision reported in 2021 (3) TMI 24- CESTAT Chennai. The Tribunal had followed the decision of the Hon'ble jurisdictional High Court in Modular Auto Ltd. Vs. CCE, Chennai- 2018 (8) TMI 1691 Madras High Court.

4.5 We find that the issue is squarely covered by the above two decisions. We do not find any merits in the impugned order. [Emphasis Supplied]

13. In the case of M/s. Future Generali India Insurance Company Ltd. v. Commissioner of Customs – Mumbai Central reported at [2023 (4) TMI 922 – CESTAT MUMBAI].

8. We find that in the present case, the department has mainly proceeded against the appellants for confirmation of the adjudged demands on the ground that no services were provided by the automobile dealers and therefore, Cenvat credit is not available to the appellants, based on the invoices issued by such dealers. On the contrary, the facts are not under dispute that the dealers of automobiles are registered with the service tax department for provision of the taxable output service(s) and that the service tax collected by them from the appellants were remitted into the Government exchequer. Since, the issue regarding payment of service tax and compliance of the statutory provisions, more specifically as contemplated under Rule 4A of the Service Tax Rules, 1994 have not been disputed by the jurisdictional service tax authorities at the service provider's end, in our considered view, the same cannot be questioned or objected to by the service tax authorities, having jurisdiction over the premises of the appellants, as the recipient of such taxable service, at the time when the Cenvat credit of service tax was availed by them.

9.3 It is observed that by placing reliance on the judgement of Hon'ble Madras High Court (supra), this Tribunal in the cases relied upon by the learned Counsel for the appellants has held that unless and until the

assessment made at the dealer's end is revised or altered, the Cenvat credit availed on the basis of invoices by the recipient's unit cannot denied/whittled down. (Emphasis Supplied]

14. From the above decisions, it is seen that on identical issue various co-ordinate Benches of this Tribunals have held that the assesses therein are eligible to take the cenvat credit.

15. The case law of Newlight Hotels & Resorts Ltd., Vs Commissioner of C.Ex & ST, Vadodara [2016(44) STR 258 (Tri-Ahmd), cited by the AR is on the count that though the Tribunal has allowed the Appeal, the Department has filed an Appeal against this Tribunal's Order before the Supreme Court. However, there is no documentary evidence to the effect the Tribunal's Order has been stayed or overturned by the Supreme Court. Therefore, as the Tribunal's Order is in favour of the Appellant, this does not help the case of the Department in any way.

16. Accordingly, we hold that the Appellant is eligible to take the cenvat credit on the invoices raised by various car dealers, distributors for the services provided by them. The impugned Order-in-Original is set aside and the Appeal is allowed.

(Order pronounced in the open court on 04.07.2023)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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