IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,WEST ZONAL BENCH AT MUMBAI

COURT No. II

APPEAL No.E/86634/17

(Arising out of Order-in-Appeal No.PUN-EXCUS-001-APP-06-17-18 dated 12/04/2017 passed by Commissioner of Central Excise (Appeals), Pune)

For approval and signature:

Hon'ble Mr. Raju, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:Yes

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Mercedes Benz India Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Pune-II **Respondent**

Appearance:

Shri.P Paranjape, Advocate for appellant
Shri.M.K. Mall, Asst. Comm. (AR) for respondent

CORAM:

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing : 27/12/2017
Date of Decision : 04/04/2018

ORDER NO.A/85898/2018

Per: Raju

1. This appeal has been filed by M/s.Mercedes-Benz India Pvt. Ltd. against denial of Cenvat Credit on input services of insurance used in respect of family members of their employees.

2. Ld. Counsel for the appellant argued that the issue is squarely covered by the earlier decision in their own case vide order No.A/87624/17/SMB dated 30/05/2017. He further relied on the decision of the Tribunal in the case of Reliance Industries Ltd. – 2014 (36) STR 467 (Tri-Mum) and in the case of Biesse Manufacturing Co. Ltd. – 2012 (26) STR 546 (Tri-Bang).

3. Ld. AR relies on the impugned order. He relied on the decision of the Tribunal in the case of Semco Electric Pvt. Ltd. – 2012 (276) ELT 94 (Tri-Mum).

4. I have gone through the rival submission. I find that the decision of the Tribunal in their own case relies on the assertion made therein that the group insurance is mandatory under the statue for <u>the employees and their families</u>. It is understood that group insurance is mandatory only for the employees. There is no such mandatory provisions for their families. Thus, it is apparent that the said decisions have been given on the basis of erroneous assumption. In case of Reliance Industries (supra) relied upon by the Ld. Counsel, it is seen that the group insurance cover of family members have not been admitted by

the appellant as the entire credit was reversed by them on their own. In the case of Biesse Manufacturing Co. Ltd. (supra), there is no specific discussion on the admissibility of credit in respect of family members and the said decision relies solely on other decisions in respect of the group health insurance without any findings in respect of admissibility of credit on the said insurance in respect of family members. On the other hand in the case of Semco Electric Pvt. Ltd. (supra) relied upon by the Ld. AR, it is seen that there is a specific discussion in respect of the said services. The said order observes as follows:

> ***4) Insurance Services :***
>
> *The input service credit on insurance is denied on the ground that these insurance has been taken for the family members of the employees which is in nature of perquisites. I do agree with the finding of the lower appellate authority as the insurance of family members of the employees has no concern with the business of manufacturing of the appellant. The appellants relied on the decision of Millipore India Ltd. v. Commissioner of Central Excise, Bangalore-II reported in 2009 (13) S.T.R. 616 (Tri. - Bang.) = 2009 (236) E.L.T. 145 (Tribunal) and submitted that credit on insurance was allowed in that case, therefore the input service credit on insurance service be allowed. I have gone through the facts of the case in the case of Millipore India Ltd. (supra), in that case insurance was taken for group insurance of the employees or personal accident of the employees and not of the family members of employees. Therefore the said decision is not relevant to the facts of this case. Therefore the credit is denied.*

5. In view of the above, I do not find any merit in the appeal in respect of the credit availed in respect of family members and the same is denied.

6. In so far as the imposition of penalty is concerned, it is seen that there can be a bonafide doubt in the mind of the appellant as it can be an issue of interpretation.

7. In view of the above, the penalty is set aside. Appeal is partly allowed on the above terms.

(Pronounced in Court on 04/04/2018)

(Raju)
Member (Technical)

pj