

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

Appeal No. ST/86356/2018

(Arising out of Order-in-Appeal No. PUN-CT-APPH-000-210-17-18 dated 09.01.2018 passed by the Commissioner (A), Central Tax, Pune II)

M/s. FIS Solutions (India) Pvt. Ltd. Appellant

Vs.

CCT, Pune II Respondent

Appearance:

Shri Bharat Raichandani, Advocate for the appellant
Shri M. Suresh, AC (AR) for the respondent

CORAM:

Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 27.07.2018

Date of decision : 30.11.2018

O R D E R No: **A/88013/2018**

Denial of refund claim against cenvat credit taken in respect of group term life insurance service, employee insurance service, rent a cab service and membership club service for an amount of `48,28,742/- to the appellant is challenged before this Tribunal for determination of admissibility of the credit.

2. Case of the appellant in a nutshell is that appellant company is engaged in rendering services of IT software and Business Auxiliary Service which are exported by the appellant company to its client located outside India. It had availed cenvat credit on input services in respect of the above referred services availed by it but its refund application filed under Rule 5 of Cenvat Credit Rules 2004 was rejected partly on tax paid on those services on the ground that those above referred were covered under the exclusion clause. Appellant unsuccessfully challenged the order-in-original before the Commissioner (Appeals) and preferred this appeal before this Tribunal seeking above referred relief.

3. In the memo of appeal and during the course of hearing of appeal, the Id. Counsel for the appellant Shri Bharat Raichandani, in citing judicial decisions reported in *Keva Fragrances Pvt. Ltd. vs. CCE 2017-TIOL-4079-CESTAT-MUM* and *Rajasthan Spinning & Weaving Mills vs. CCE 1999 (112) ELT 457* etc. submitted that show-cause was a mandatory requirement before rejection of refund claim or denial of cenvat credit and without providing opportunity to the appellant to justify the admissibility of cenvat credit against which refund has been claimed, certain claim amount has been rejected in gross violation of the principles

of natural justice. He also submitted that appellant was not provided with the opportunity to even produce documents before the authority to establish that it had taken group term life insurance for its employees and employee insurance services and not individual insurance policy to provide life insurance coverage in general to employees for their personal benefits since the policy availed by the appellant company is strictly restricted to the period of employment of the employees in the company. He further wanted to establish the linkage between input and output service in respect of other services for which credit has been denied.

4. In response to such submissions, Shri M. Suresh, AC (AR) for the respondent department justified the legality of the order passed by the Commissioner (Appeals) confirming the order-in-original placing reliance on the exclusion clause which bars life and health insurance, rent a cab and Membership of club service from the purview of availment of cenvat credit and sought no interference in the order by this Tribunal.

5. Heard from both sides and perused the case records. It is observed that before rejection of claim of the appellant that came through order-in-original, appellant was not noticed to justify the linkage between input and output

service for which out of the total claim of `2,34,02,251/- appellant was denied refund of `41,87,020/- pertaining to those services and except a noting in the order-in-original at para 6 to which Table 3 is annexed that such services were inadmissible as per provision of Rule 2(l) of the Cenvat Credit Rules 2004, nothing can be inferred from the Order-in-Appeal as to why those are inadmissible credits. Before the Commissioner (Appeals), as found from his order dated 30.05.2017, the appellant had placed on record which is noted at para 3.1 of the order that appellant was not given notice before rejection of such claim and thereby denied the principles of natural justice. It also argued before the Commissioner that the services availed by it had not been covered under Rule 2(l) but its submissions were disregarded on the ground as mentioned in para 8.2 that life insurance and health insurance are used primarily for personal use and for consumption of employees unless it is tailor-made specific policy that primarily covers the accident of the employees on duty. It has been noted by the Commissioner(A) that in respect of rent a cab and Membership of club services, appellant had not placed any argument before him. However, going by the order-in-original, it can be noticed that among supporting documents placed before the adjudicating authority, invoice copies of input services were placed along with cenvat

credit account. Invoice cannot establish the relationship between input and output service and the scrutiny made the adjudicating authority in respect of invoices vis-a-vis abstract of cenvat credit cannot be sufficient document for the purpose of establishment of such relationship. Moreover, such scrutiny by the adjudicating authority was made in the absence of the appellant who, given an opportunity, would have been in a position to justify the same, subject to satisfaction of the adjudicating authority. Going by the exclusion clause of Cenvat Credit Rules it can be said that there is no service referred in those clauses that would be considered as absolute since each of those category of services are qualified one, dependant on personal use, consumption of employees, etc. In the premise, it is a fit case which is required to be re-adjudicated upon with reference to production of relevant documents that would establish the linkage between input and output service and the same would ensure natural justice to the appellant also. Hence the order –

6. The Appeal is allowed. The order passed by the Commissioner (Appeals) is hereby set aside and the matter is remanded back to the adjudicating authority for fresh adjudication in terms of above observation. Appellant is

duty bound to place relevant documents and participate in personal hearing during such re-adjudication upon notice.

(Pronounced in Court on 30.11.2018)

Dr. Suvendu Kumar Pati
Member (Judicial)

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