CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Excise Appeal No. 89783 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-284/18-19 dated 04/09/2018 passed by the Commissioner (Appeals-I), Central Tax, Pune)

M/s KSBL Ltd. ....Appellant
(Formerly known as KSB Pumps Ltd.)
147, Mumbai-Pune Road,
Pimpri,
Pune 411 018

VERSUS

Commissioner of Central Excise and Service Tax, Pune-I ....Respondent
41/A, GST Bhavan,
Sassoon Road, Opp. Wadia College,
Pune- 411 001.

APPERANCE:

Mr. Makrand Joshi, Advocate for the Appellant
Mr. S.K. Hattangadi, Assistant Co0mmissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86863/2021

Date of Hearing: 02.08.2021
Date of Decision: 23.09.2021

PER: AJAY SHARMA

This Appeal has been filed against the order dated 04/09/2018 passed by the Commissioner (Appeals-I), Central Tax, Pune in Order-in-Appeal No. PUN-EXCUS-001-APP-284/18-19.

2. The issue involved in this Appeal is whether the Appellants, who are engaged into manufacture & sale of goods

(Pumps), are eligible to avail Cenvat Credit of service tax on Group Medical insurance Policy for its employees and their family members w.e.f. 1.4.2011 in view of the amended definition of '*input service*' under Rule 2(l) of Cenvat Credit Rules, 2004 and if the answer is in negative then whether there was any malafide intention on the part of the Appellant?

3. The Appellants are engaged into manufacture & sale of goods (Pumps). During the course of audit, it was observed that they availed credit of service tax on Group Medical insurance Policy for its employees and their family members during the period from 2008-09 to 2012-13, which was used for the personal consumption of the employees although as per Revenue, the same is not admissible under the provisions of Rule 2(l) of Cenvat Credit Rues, 2004. Since as per department the same had no nexus with the manufacturing activities and also could not be considered as welfare measure therefore a show cause notice dated 18.3.2014 was issued for recovery of Cenvat credit of service tax amounting to Rs.15,08,698/- and for appropriation of the aforesaid amount which was reversed by the appellants in the months of January/March, 2013 against the said demand and also for recovery of interest u/r. 14 ibid r/w S.11AB (New Section 11AA w.e.f. 8.4.2011), Central Excise Act, 1944 and for penalty u/r. 15(2) ibid r/w. S.11AC ibid. The said show cause notice was adjudicated and upheld by the Adjudicating Authority vide Order-in-Original dated 13.1.2017. On Appeal filed by the Appellant, the learned Commissioner vide impugned order dated 4.9.2018 partly allowed the appeal and dropped the demand of Rs.7,39,644/-

as not sustainable for the period 2008-09 to 2010-11 in view of unamended definition of *'input service'* as existing prior to 1.4.2011 and reduced the interest and penalty proportionately, but upheld the demand of Rs.7,69,054/- pertaining to the period 2011-12 to 2012-13 with proportionate interest and equal penalty.

4. Learned counsel submits that the order of both the authorities below goes beyond the show cause notice. He further submits that since premium does not alter with the number of dependants because it is same for all the employees, therefore in view of the decisions of this Tribunal in the matters of *BNY Mellon International Operations (I) Pvt. Ltd. vs. CCE; 2016(45)STR 116* and *BNY Mellon International Operations (I) Pvt. Ltd. vs. CCE; 2017(47)STR 290* respectively, the Cenvat Credit can be availed on the service tax paid on such Group Medical insurance Policies. According to him no additional cost premium is paid for extending benefit to the family members and hence the Cenvat credit is admissible and for that he relied upon the decision in the matter of *Reliance SMSL Ltd. vs. Commissioner, CGST; 2019-TIOL-2785-CESTAT-Mum.* He also submits that extended period of limitation is not invokable in the facts of this case since there was a bonafide mistake on the part of the appellants without any malafide intention. In the alternative learned counsel submits that the demand confirmed in the adjudicating order amounting to Rs.7,69,054/- was admittedly paid by the appellants on 18.1.2013 & 22.1.2013 respectively i.e. well before the issuance of the show cause notice and the interest thereon of Rs.1,84,043/- alongwith 25% penalty amounting to

Rs.1,92,264/- was also paid by the appellants on 14.2.2017 i.e. within one month's period from the date of communication of the Order-in-Original dated 30.12.2016 (issued on 13.1.2017), which was received by the appellants only on 15.1.2017. According to him therefore the learned commissioner ought to have extended the benefit of reduced penalty of 25% in terms of Section 11AC(b) ibid r/w R.15(2) ibid but still equal penalty of Rs.7,69,054/- was imposed on the appellants. Per contra learned Authorised Representative reiterated the findings recorded in the impugned order and prayed for dismissal of appeal of the appellants.

5. I have heard learned counsel for the Appellants and learned Authorised Representative for the Revenue and perused the case records including the written submissions and case laws produced by the respective sides. The case laws cited by learned counsel in support of his submission that since premium does not alter with the number of dependants therefore it is permissible, are not applicable on the facts of the instant case as all those case laws pertain to the period prior to 1.4.2011 whereas in the instant matter the learned Commissioner already granted relief to the appellants so far as the period prior to 1.4.2011 is concerned. Rule 2(l), CCR, 2004 has been amended w.e.f. 1.4.2011 and from that date 'insurance' has been brought under the exclusion clause and there is no ambiguity/confusion in understanding the said definition of 'input service' after 1.4.2011. Since w.e.f. 1.4.2011 the service in issue clearly falls in the excluded category, therefore the Cenvat credit availed on these services is inadmissible to the Appellant whether

without any additional premium or even if it is attributable to the family members only. When the language of the rule is clear and unambiguous and despite that assessee is not doing his part of obligation then the malafide is apparent and it cannot be termed as bonafide mistake. Therefore the extended period has rightly been invoked by the authorities concerned. I am not able to agree with the contention on behalf of the appellant that extended period cannot be invoked if suppression is detected during course of audit conducted by department. As far as suppression is concerned the matter has to be decided with reference to facts of each case. The issue to be considered is whether the relevant information was placed before the department earlier and if so in what form, whether in a manner from which the issue at hand was clearly discernible to the department. The provision in the rule relevant to the credit taken is very clear and simple and easy to understand. The very fact that the assessee has taken proportionate credit by adopting their own interpretation without intimation to department would justify to consider this as a case of mis-representation and suppression to invoke extended period for demanding the excess credit availed.

6. Now I have to see whether the lower authorities have traversed beyond the scope of the show cause notice while passing the orders. In the show cause notice Rule 2 (l) CCR, 2004 defining '*input service*' has specifically been extracted and thereafter it has been stated in the subsequent paragraph that *in the light of "input service' definition above, service used by the manufacture, whether directly or indirectly, in or in relation to the manufacture of final*

products are considered as eligible input service, while in the instant case credit of service tax has been availed on insurance premium paid for dependants of employees and the same has no nexus with manufacturing activities or clearance of final products upto the place of removal and at best can be considered as welfare measure. Thus, the assessee has wrongly availed Cenvat Credit on employee's dependents' personal insurance and deliberately suppressed the facts of availment of wrong Cenvat Credit to the department with intent to avail and utilize the same in wrong way...."(emphasis supplied). A perusal of the show cause notice as well as the orders of the authorities below clearly demonstrates that the lower authorities acted within the show cause notice and merely because exclusion clause has not been extracted that does not mean that they cannot rely upon that exclusion as the exclusion clause is very much part of Rule 2(l) itself.

7. Now comes the penalty part. The point to be considered here is whether penalty can be reduced to 25% when credit admittedly was reversed before the issuance of show cause notice and interest and penalty was paid within 30 days from the date of the receipt of Adjudication Order? From the perusal of the case records, it is not disputed that the demand confirmed in the adjudicating order amounting to Rs.7,69,054/- was paid by the appellants on 18.1.2013 & 22.1.2013 respectively i.e. well before the issuance of the show cause notice and the interest thereon of Rs.1,84,043/- alongwith 25% penalty amounting to Rs.1,92,264/- was also paid by the appellants on 14.2.2017 i.e. within 30 days' period from the date of

communication of the Order-in-Original dated 30.12.2016 (issued on 13.1.2017), which was received by the appellants only on 15.1.2017. In view of the peculiar facts of this case, in my considered opinion this relief can be granted to the appellants and accordingly the penalty is reduced to 25% which, as submitted by learned counsel, has already been deposited by the appellant.

8. Accordingly, the appeal is partly allowed by modifying the impugned order only to the extent of reducing the penalty to 25%.

(Order pronounced in the open Court on 23.09.2021)

(Ajay Sharma)
Member (Judicial)

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