

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

APPEAL NO: ST/87234/2018

Arising out of: Order-in-Appeal No. CD/TR(APPEALS)/ME/
100/2017-18 dated 12/03/2018

Passed by: Commissioner of CGST & Central Excise,
Thane Rural.

IL & FS Financial Service Ltd.	<i>Appellants – Represented by:</i> Shri Mehul Jiwani, Chartered Accountant
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versus

CCGST, Navi Mumbai	<i>Respondent – Represented by:</i> Shri S.B. Mane, Assistant Commissioner
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Date of hearing: 15/11/2018
Date of pronouncement: 11/03/2019

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Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO: A/85446 / 2019

The instant Appeal has been filed from the order dated 12.03.2018 passed by the Commissioner CGST & Central Excise, Thane Rural, by which the Id. Commissioner rejected the Appeal filed by the Appellant while observing that the Appellants are not eligible to take Cenvat credit in respect of Service Tax paid on insurance premium of group mediclaim policies of their employees.

2. In the instant case Appellant has taken input tax credit in respect of Service Tax paid on Insurance Premium of Group Mediclaim Policies of their employees. The Appellate Authority vide impugned order has stated that services related to business are only eligible for availing service tax credit. It is not mandatory for the assessee to take mediclaim policy and accident policy for their employees and the same is only welfare measure and therefore cannot be treated as having nexus with the business activities hence cannot be held to be the input service. It also observed that the Appellant has also not submitted any documentary proof showing that the input service has direct nexus with output services/goods.

3. I have heard learned Chartered Accountant for the Appellant and Learned Authorised Representative for the Revenue. The Learned Authorised Representative reiterated the findings recorded in the impugned order and submitted that the credit has been wrongly availed by the Appellant since the service on which credit has been availed i.e. "Group Health Insurance for employees" do not fall in the requirement of being "used in or in relation to the manufacture". The learned Chartered Accountant for the Appellant submitted that the Appellant have taken up Group Medical Insurance Policy for the betterment of their employees. He further submitted that the Medical insurance is necessary as it forms part of activities relating to business and there is direct nexus between the said expenditure and the

business of the Appellant's firm and that there is no dispute regarding the input service credit document and the payment of service tax.

4. The disputed period with regard to the denial of Cenvat credit on medical insurance services is for the period from 01.04.2007 to 31.03.2009 i.e. prior to 01.04.2011 when the definition of input services included 'activities relating to business'. The definition of input services as per Rule 2(I) of the Cenvat Credit Rules, 2004 during the aforesaid period is as under :-

“input service” means any service, -

- (i) used by a provider of taxable service for providing an output service; or
 - (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal,
- and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, *activities relating to business*, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal;”

It has to be noted that the first part of the definition reads that “input service” means any service used by the manufacturer whether directly or indirectly, in or in relation to the manufacture of the final product. When employees are at work in the factory, if any accident happens, the employer is liable to pay compensation and a prudent businessman will be interested in taking an accident insurance policy for his worker to cover the business risk and it cannot be considered that such insurance is not relation to the manufacturing activity. Even in the case of health insurance of the workmen, when employees fall sick, it is necessary that they are provided proper medical treatment so that they are brought back to work without loss of man hours and disruption of manufacturing lines. Therefore, the medical insurance in relation to the employees of the company also falls within the broad definition of input service given at Rule 2(l) of the Cenvat Credit Rules, 2004.

5. The Hon’ble Karnataka High Court in the matter of *CCE v. Micro Labs Ltd.*; [2011 \(270\) E.L.T. 156](#) (Kar.) has held that Service Tax paid on group insurance and health insurance policy for employees is an input service on which credit can be allowed. There is another similar decision by the Hon’ble Karnataka High Court in the matter of *CCE v. Stanzen Toyotetsu India (P) Ltd.*- [2011\(23\)S.T.R.444](#)(Kar.), wherein the Hon’ble High Court has observed as follows :

“14. In so far as Insurance coverage to the employees is concerned in the course of employment if the employees suffer injury or dies, there is a vicarious liability imposed on the employer to compensate the employee. If the employer employs its own transportation facility in order to cover the risk which also includes the risk of workers who are covered in that statutory establishment. He has to take the insurance policy without which the vehicle cannot go on the road. Under the Workmen’s Compensation Act he has to obtain the Insurance Policy covering the risk of the employees. The Employees’ State Insurance Act takes care of the health of the employees also and casts an obligation on the employer to provide insurance services. Under these circumstances, this Group Insurance Health Policy though is also a welfare measure is an obligation which is cast under the Statute that the employer has to obey. Section 38 of the Employees’ State Insurance Act, 1948, mandates that subject to the provisions of the Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. May be the employees also have to contribute but the employer is under an obligation to take an insurance policy and contribute his share. Therefore, the said Group Insurance Health Policy taken by the assessee is a service which would constitute an activity relating to business which is specifically included in the input service definition.

15. Therefore, merely because these services are not expressly mentioned in the definition of input service it cannot be said that they do not constitute input service and the assessee is not entitled to the benefit of CENVAT credit. In fact, Rule 3 of the Cenvat [Credit] Rules, 2004, specifically provides that the manufacturer of final products shall be allowed to take credit, the service tax leviable under Section 66 of the Finance Act and paid on any input service received by the manufacturer of a final product. Therefore under the scheme of the Cenvat Credit Rules, 2004, the service tax paid on all those services which the assessee has utilized directly or indirectly in or

in relation to the final product is entitled to claim the credit. Therefore, the judgment of the Tribunal is legal and valid and is in accordance with law and does not suffer from any legal infirmity which calls for any interference. Hence, the substantial questions of law framed in these appeals are answered against the revenue and in favour of the assessee.”

6. The Revenue has not challenged the aforesaid order of the Hon’ble High Court, for whatever reason, and the effect of the same is that the said order of the Hon’ble High Court in the matter of *Stanzen Toyotetsu India (P) Ltd. (supra)* has attained finality and it is a binding precedent. The said decision of the Hon’ble High Court has been followed by the Tribunal in en-number of decisions and it has not been disputed by the Revenue.

7. Similarly this Tribunal in the matter of *Affinity Express India Pvt. Ltd. Vs. CCE, Pune-I; 2011(22) STR 177 (Tri-Mumbai)* has held that the assessee is entitle for input service credit on medical insurance and recorded as under:-

“7.1. With regard to the input service credit on local travel and medical insurance, the decision of the Hon’ble High Court of Bombay in the case of *Ultratech Cement - 2010-TIOL-745-HC = [2010 \(20\) S.T.R. 577](#) (Bom.) = [2010 \(260\) E.L.T. 369](#) (Bom.)* is squarely applicable wherein it has been held that any input service availed by the assessee in course of their business is entitled for input service credit. It is not disputed by the lower authorities that these services are availed by the assessee in the course of their business, hence denial of input service on these two above services is not sustainable. The impugned order denying the input service credit on

local travel and medical insurance and on input service availed on April 2006 is set aside and the appeals of assessee are allowed with consequential relief.”

8. In a recent decision, the Tribunal in the matter of *Deloitte Support Services India Pvt. Ltd. Vs. CCE, Hyderabad-IV; 2017(5)GSTL 393(Tri-Bang.)*, while following the decision of the Hon’ble Karnataka High Court in the matter of *Stanzen Toyotetsu India (P) Ltd. (supra)*, has held as under:-

“Cenvat credit availed amount to Rs. 1,42,98,722/- during the period from 2006-07 to 2010 to 2011 has been demanded with interest and penalties under Finance Act, 1994 have been imposed.

2. The learned counsel submits that credit of service tax paid on group insurance premium and the rent-a-cab services have been disallowed on the ground that there is no nexus between the output services and the input services; the services on which credit so taken are not directly or indirectly relatable to the output services rendered; absence of services on which credit is availed does not adversely impact the quality and efficiency of the output services provided by the appellant. The learned counsel submits that the issue is no longer res integra and has been settled in favour of the appellants in view of the decision of the Tribunal in the case of *KPMG v. CCE, New Delhi* [2013-TIOL-761-CESTAT-DEL = [2014 \(33\) S.T.R. 96](#) (Tri.-Del.)]. He also relied upon the decision of the Hon’ble High Court of Andhra Pradesh in the case of *CC&CE, Hyderabad-IV v. Deloitte Tax Service India Pvt. Ltd.* [2012-TIOL-954-HC-AP-ST = [2014 \(33\) S.T.R. 129](#) (A.P.)] wherein the Hon’ble High Court upheld the decision taken by the Tribunal taking the view that Cenvat credit is admissible. Moreover, the Hon’ble High Court of Karnataka in the case of *Stanzen Toyotetsu India (P) Ltd.* [[2011 \(23\) S.T.R. 444](#) (Kar.)] also took the same view. We find ourselves in agreement with the submissions. Therefore, we do not find any valid

reason to keep the matter pending after considering the stay application alone. Therefore we waive the requirement of pre-deposit and take up the appeal itself for finalization.

3. In view of the discussions above, since the issue is no longer *Res Integra*, the appeal itself will have to be allowed and we do the same with consequential relief if any to the appellants.”

9. The aforesaid decision of the Tribunal was challenged by the Revenue before the Hon’ble Andhra Pradesh High Court and the Hon’ble High Court vide order dated 1.4.2014 in the matter of *Commissioner vs. Deloitte Support Services India Ltd.; 2017(5) GSTL J197 (A.P.)* dismissed the Appeal filed by Revenue.

10. There is no dispute about the fact that the issue in question is prior to 1.4.2011 i.e. before the amendment in Rule 2(l) *ibid*. The definition of input service, post amendment contains exclusion clause and the said exclusion specifically excludes the life insurance/health insurance. The need for exclusion would arise only when such services are otherwise covered by the definition earlier i.e. before amendment. While interpreting Rule 2(l) *ibid* pre and post amendment, the Tribunal in the matter of *M/s. Wipro Ltd. Vs. CCE, Bangalore-III; 2018(4) TMI 149- CESTAT BANGALORE* has observed that the legislature in its wisdom has excluded certain service from the availment of CENVAT credit w.e.f. 1.4.2011, when such service are otherwise covered by the main definition clause of the ‘input service’. Meaning thereby that the need to exclude certain

services from the definition of 'input service' through amendment arises only when it was included earlier i.e. pre-amendment. Since the insurance has been specifically excluded post-amendment, this itself shows that it was included earlier.

11. Therefore, in view of the discussions made hereinabove, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in Court on 11/03/2019)

(Ajay Sharma)
Member (Judicial)

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