

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH
Single Member Bench**

Excise Appeal No. 1008 of 2012

(Arising out of Order-in-Appeal No. PI/RKS/111/2012 dated 15.05.2012 passed by Commissioner of Central Excise (Appeals), Pune-I)

M/s. ThyssenKrupp Industries Pvt. Ltd.
Pimpri, Pune 411 018.

Appellant

Vs.

Commissioner of CGST & CE, Pune-I
ICE House, 41-A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Respondent

Appearance:

Shri S. Narayanan, Advocate, for the Appellant

Shri P.K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 12.09.2022

Date of Decision: 12.09.2022

FINAL ORDER NO. A/85837/2022

This appeal is directed against Order-in-Appeal No. PI/RKS/111/2012 dated 15.05.2012 of the Commissioner of Central Excise (Appeals), Pune-I. By the impugned order, the Commissioner (Appeals) has held as follows:-

"ORDER

17. I set aside the impugned Order-in-Original No.PI/ADC/CEX/56/2011, dated 25.01.2012/08.02.2012, passed by the Additional Commissioner, Central Excise, Pune-1 Commissionerate, in so far as it relates to disallowance of input service credit in respect of Service Tax paid on Insurance policies, as discussed and held in paras 14 & 15 above. However, I uphold the impugned Order, in so far as it relates to disallowance/recovery of inadmissible input service credit on Service Tax paid amounting to Rs. 16,24,896/-, in respect of Insurance policies, as discussed and held at Sl.No. (vii) and (viii)

of para 14 above, alongwith interest thereon, under the provisions of Rule 14 of Cenvat Credit Rules, 2004, readwith Section 11A of Central Excise Act, 1944, and Section 11AB ibid. I further reduce the amount of penalty imposed on the appellants under Rule 15(1) ibid from Rs. 10,00,000/- to Rs. 7,50,000/- only, as discussed & held in para 16 above.

18. The appeal filed by the appellants is thus partially allowed in above terms & the impugned Order-in-Original is modified to the above extent."

2.1 Appellants are registered with Central Excise for manufacturing various excisable goods viz. Machinery/parts/equipments of sugar plant, cement plant, boilers and bulk material handling systems. They are also availing the benefit of cenvat credit scheme as provided for under Cenvat Credit Rules, 2004. They are also providing taxable services such as consulting engineering services, maintenance or repair services, erection, commissioning and installation services, test, inspection and certification services, commercial or industrial construction services, works contract services, business auxiliary services etc.

2.3 During scrutiny of records, it was observed that the appellants have availed cenvat credit in respect of general insurance L.D. policy; special contingent policy for baggage of employees while travelling by air etc; burglary and house-breaking policy for employees; credit card policy, fidelity guarantee policy, mediclaim policy for employees and their families; personal accident policy; corporate protection policy against terrorism etc., which are not covered under the definition of 'Input Service'.

2.4 Accordingly two show cause notices dated 15.04.2011 and 29.08.2011 were issued to the appellant asking them to show cause as to why the inadmissible credit of Rs.29,84,224/- availed by them during the period from October 2009 to March 2011 should not be recovered from them along with interest. The show cause notices also proposed penalty under the provisions of Rule 15(1) of the Cenvat Credit Rules.

2.5 The show cause notices were adjudicated by the Additional Commissioner confirming the entire demand of cenvat credit along with interest and imposing penalty of Rs.10,00,000/-. Appellant preferred appeal to the Commissioner (Appeals) who vide the impugned order referred in para 1 above has decided the appeal.

3.1 I have heard Shri S. Narayanan, Advocate for the appellant and Shri P.K. Acharya, Superintendent, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits:-

- That the Commissioner (Appeals) has allowed cenvat credit in respect of all other services except for group mediclaim policy and personal accident policy. Against the part allowed, Revenue has not preferred any appeal. The issue in respect of group mediclaim policy and personal accident policy has been decided by various authorities holding that cenvat credit to the extent it pertains to the insurance services relating to the employee should have been allowed.
- That in respect of that part of the insurance services which is in respect of family members of the appellant, he agrees that it is not covered by the definition of input services and hence not admissible.
- That no case has been made out against them for invocation of extended period of limitation and also for imposition of penalty.

3.3 Arguing for the Revenue, learned AR while reiterating the findings of the Commissioner (Appeals), submits that the appellant has taken inadmissible credit in respect of the two services which have been disallowed by the Commissioner (Appeals). He would rely upon the following decisions in his support.

- Stanzen Toyotetsu India (P) Ltd. [2011 (23) STR 444 (Kar.)]
- Telco Construction Equipment Co. Ltd. [2013 (32) STR 482 (Tri.-Bang.)]

- Sundaram Brake Linings [2014 (34) STR 583 (Tri.-Chennai)]
- Oudh Sugar Mills Ltd. [2014 (34) STR 309 (Tri.-Del.)]
- Emerson Export Engineering Centre [2017 (49) STR 423 (Tri.-Mumbai)]
- Titan Industries Ltd. [2018 (15) GSTL 75 (Tri.-Chennai)]
- Maruti Suzuki India Ltd. [2017 (47) STR 273 (Tri.-Chan.)]
- Mercedes Benz India Pvt. Ltd. [2018 (364) ELT 1019 (Tri.-Mumbai)]
- Manikgarh Cement [2010 (20) STR 456 (Bom.)]
- Mahindra Sona Ltd. [2016-TIOL-1174-CESTAT-MUM].

Accordingly he submits that the appeal may be dismissed.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 For disallowing the cenvat credit in respect of these two services, the Commissioner (Appeals) has observed as follows:-

"(vii) Group Mediclaim Policy – 5,85,731/& Rs 9,25,971/-

The appellants have contended that this policy covers the expenses incurred by the employees and their families during hospitalization and which are borne by the Company and such mediclaim policies for the employees are to be considered to be input service and the credit thereon is therefore, undisputedly admissible.

*In this regard, I find that the said Insurance Policy is for the benefit of the employees and is more in the nature of perquisite to the employees, and is not essential for their business activities. **I therefore, hold that the appellants are not eligible to avail Cenvat credit on the Service Tax paid on the same, as it has no relation whatsoever to the business.***

(viii) Personal Accident Policy - Rs 22,993/- & Rs 90,201/-

The appellants have contended that this policy is obtained for the employees and covers the loss arising due to any accident

and as the policy is in relation to the company's business activities, the credit cannot be disallowed.

*In this regard, I find that the said Insurance is for the benefit of the employees and is more in the nature of perquisite to the employees, rather than in relation to their business and hence the same cannot be considered in relation to their business activities. **I therefore, hold that the appellants are not eligible to avail Cenvat credit on the same, as it has no relation whatsoever to the business.***

15. In view of the above discussions, I hold that the appellants are eligible to avail Cenvat credit in respect of Service Tax paid on insurance consultation charges as well as, all the insurance policies obtained by them, except in respect of policies as discussed at Sl.No. (vii) and (viii) of para 14 above. Consequently, the impugned Order-in-Original is not legally sustainable so far as it relates to denial/disallowance of credit on the service tax paid on the said policies, as well as on insurance consultation charges, including confirmation of demand of credit, recovery of interest & penalty imposed, and hence the same is liable to be set aside to the said extent. I further hold that the appellants will be eligible to avail credit of Service Tax paid on insurance in relation to the policies as discussed at paras (ii) and (xiv) of para 14 above, only to the extent that it covers the appellants' company/business area only. Accordingly, the jurisdictional Assistant Commissioner shall re-quantify the amount of Cenvat credit eligible to the appellants in respect of service tax paid on the policies as discussed at paras (ii) and (xiv). However, as regards the Service Tax paid on insurance charges relating to policies as discussed at paras (vii) and (viii), I hold that the appellants are not eligible to avail credit, as the same are not in relation to business activities of the appellants, but are in the nature of welfare measures or perquisites to their employees and hence to that extent the adjudicating authority has correctly disallowed the Cenvat credit & ordered its recovery alongwith interest and hence the impugned Order-in-Original is upheld to that extent."

4.3 The issue in respect of the admissibility of cenvat credit in respect of group mediclaim policy and personal accident policy is no longer res integra for the period prior to the amendments made in April 2011 to the Cenvat Credit Rules. Admittedly in this case the entire period of dispute is prior to April 2011.

4.4 The Tribunal has in the case of Sundaram Brake Linings [2014 (34) STR 583 (Tri.-Chennai)] held as follows:-

"5. 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 an 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 treatment so that they are brought back to work without loss of man hours and disruption of manufacturing lines and the employer may take insurance for arranging proper medical attendance for sick workman or other employees of the company. Therefore, the medical insurance in relation to the employees of the company are also within the broad definition of input service given at Rule 2(I) of the Cenvat Credit Rules, 2004. It is this position that has been affirmed by the Hon'ble Karnataka High Court in the two judgments cited above.

6. Though the decision of the Hon'ble Gujarat High Court in Cadila Healthcare (supra) explains the scope of the expression "in relation to business" it has not examined with reference to accident insurance health insurance of employees which is the subject matter of this appeal. When there is a direct decision of a High Court, on the particular service in question, it is only proper that the same is followed. Therefore, I follow the decision of the Hon'ble Karnataka High Court in this matter and hold that the Service Tax paid on such service which is attributable to insurance premium for employees will qualify to be taken as

Cenvat credit. However, in the case of premium attributable to the families of employees it cannot have any direct nexus and will not qualify as input services. The impugned order is set aside and the matter is remanded back to the adjudicating authority to quantify the eligibility of Cenvat credit. The applicant is directed to provide all the required information to help the adjudicating authority to quantify the eligible Cenvat credit."

4.5 In the case of Titan Industries Ltd. [2018 (15) GSTL 75 (Tri.-Chennai)], the Tribunal has observed as follows:-

*"5. In the reply to the show cause notice, it is submitted by the appellant that the insurance services for health/mediclaim policy was availed for the company's staff and employees and their family members. **The payment of premium as well as the service tax paid on such premium pertaining to the dependents/family members of the employees cannot be considered to be activities directly or indirectly in relation to the manufacture. Whether the policy covers the entire family with the single premium or whether separate premium has been paid for each dependent has to be verified. The Ld. Counsel has not been able to produce any document in this regard. We therefore deem it fit to remand the matter to the adjudicating authority to analyse the issue afresh after verification of the documents produced by the appellant. The adjudicating authority shall also take into consideration the case laws in respect of the said issue."***

4.6 In the case of Mercedes Benz India Pvt. Ltd. [2018 (364) ELT 1019 (Tri.-Mumbai)], the following has been held:-

"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 statute for the employees and their families. 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 (he employees or personal accident or the employees and not or the family members of employees. Therefore the said decision is not relevant to the facts of this case. Therefore the credit is denied."

4.7 Similar view has been expressed by various High Courts in the decisions referred to by the learned counsel.

4.8 Thus in view of the above referred decisions, in my view, the Commissioner (Appeals) should not have denied Cenvat Credit in respect of group mediclaim policy and personal accident policy to the extent it pertains to the employee only. However, the case law cited above although say that the benefit should not be admissible to that part of the service which is in respect of the family members of the employees, as I do not have the breakup of the part which is in respect of the employees and that in respect of family members of the employee, the matter needs to be remanded back to the original authority for determination of the credit amount which is in respect of the family members of employee.

4.9 On issue of limitation I find that the facts in respect of availment of Cenvat Credit in respect of these services was in the knowledge of the Revenue, neither the show cause notices nor the order-in-original have given any reason for invoking extended period of limitation. The adjudicating authority has in para 21, only recorded as follows:-

"21. In view of above discussions & findings I hold that the assessee have in fact availed inadmissible input services credits on. "General Insurance Policy amounting to Rs. 11,66,093/- and Rs. 18,18,131/- as alleged in the Show Cause Notices dated 15/04/2011 and 29/08/2011 respectively as the same do not fall within the ambit of definition of admissible "Input Services" under Rule 2(1) of CCR, 2004. Therefore, the same are recoverable from the assessee under the provisions of Rule 14 of CCR, 2004 read with Section 73(1) of the Finance Act, 1994 and erstwhile Section 11A(1) of Central Excise Act, 1944, as applicable for the relevant period. I further hold that since the assessee has availed the input service credit, as above, which they were not eligible for, interest is also chargeable/recoverable from them under the provisions of Rule 14 of CCR, 2004 read with Section 75 of the Finance Act, 1994 and erstwhile Section 11AB of Central Excise Act, 1944 as applicable for the relevant period. Furthermore, I hold that the assessee is also liable for imposition of penalty under Rule 15(1) of Cenvat Credit Rules 2004 for the discussions & finding in the forgoing paras."

5.1 In absence of any finding of existence of the ingredients required for invocation of extended period of limitation, I do not find much merits in invoking the same for making the demand of inadmissible cenvat credit. The order to this extent is set aside and also the order to the extent it pertains to imposition of penalty under Rule 15(1) of Cenvat Credit Rules.

6.1 The appeal is partly allowed to the extent as indicated above and the matter remanded back to the original authority for redetermination of the inadmissible cenvat credit i.e. in respect of the insurance services pertaining to the family members of the employee of the appellant.

6.2 As the matter is substantially old, the adjudicating authority should in remand proceedings decide the matter within three months from the date of receipt of this order.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

tvu