

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

Service Tax Appeal No. 87543 of 2018

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-018/17-18 dated 12.03.2018 passed by Commissioner of Central Excise & GST, Pune-I)

M/s. Bajaj Allianz General Insurance Co. Ltd. Appellant

1st Floor, G.E. Plaza, Airport Road,
Yerawada, Pune 411 006.

Vs.

Commissioner of CGST & CE, Pune-I

Respondent

41-A, ICE House, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Service Tax Appeal No. 86082 of 2019

(Arising out of Order-in-Original No. PUN-EXCUS-001-COM-022/18-19 dated 24.12.2018 passed by Commissioner of Central Excise & GST, Pune-I)

M/s. Bajaj Allianz General Insurance Co. Ltd. Appellant

1st Floor, G.E. Plaza, Airport Road,
Yerawada, Pune 411 006.

Vs.

Commissioner of CGST & CE, Pune-I

Respondent

41-A, ICE House, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri Gajendra Jain with Shri Sachin Mishra, Advocates, for the Appellant

Shri Nitin Ranjan, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

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

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 19.10.2022

Date of Decision: 19.10.2022

FINAL ORDER NO. A/86058-86059/2022

PER: SANJIV SRIVASTAVA

These appeals are directed against Orders-in-Original No. PUN-EXCUS-001-COM-018/17-18 dated 12.03.2018 and No. PUN-EXCUS-001-COM-022/18-19 dated 24.12.2018 both passed

by Commissioner of Central Excise & GST, Pune-I. By the impugned orders, the Commissioner has held as follows:-

Order-in-Original No. PUN-EXCUS-001-COM-018/17-18 dated 12.03.2018

"ORDER

a) I determine and confirm the demand of CENVAT Credit amounting to Rs. 94,65,20,833/- (Rupees Ninety four crores sixty five lakhs twenty thousand eight hundred and thirty three only) being the ineligible CENVAT Credit availed and utilized by Ms Bajaj Allianz General Insurance Company Limited as discussed above under the provisions of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994 and order recovery of the same from the assessee M/s. Bajaj Allianz General Insurance Company Limited, under Section 73(2) of the Finance Act, 1994.

b) I confirm the demand of interest on the amount of CENVAT Credit confirmed as detailed in Sr. No. (a) above at the applicable rates, and order recovery of the same from the assessee M/s. Bajaj Allianz General Insurance Company Limited, under the provisions of Rule 14(1)(i) of the CENVAT Credit Rules, 2004 read with Section 75 of Finance Act, 1994. I accordingly order for its recovery.

c) I impose penalty of Rs. 94,65,20,833/- (Rupees Ninety four crores sixty five lakhs twenty thousand eight hundred thirty three only) on the assessee, i.e. M/s Bajaj Allianz General Insurance Company Limited, under the provisions of Rule 15 (3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act 1994. I accordingly order for its recovery.

d) However, I give an option to M/s Bajaj Allianz General Insurance Company Limited, under clause (ii) of first proviso and also second proviso to Section 78(1) of the Finance Act, 1994, as amended, to pay 25% of the CENVAT Credit determined and confirmed at Sr. No. (a) above as penalty, provided the assessee M/s Bajaj Allianz General Insurance Company Limited, pays the entire amount of CENVAT Credit, as determined/confirmed in Sr.

No. (a) above, along with interest payable thereon as ordered in Sr. No. (b) above as well as the reduced 25% penalty, within 30 days of the date of communication of this order."

Order-in-Original No. PUN-EXCUS-001-COM-022/18-19 dated 24.12.2018

"ORDER

a) I determine and confirm the demand of CENVAT Credit amounting to Rs. 49,26,42,431/- (Rupees Forty Nine Crores Twenty Six Lakhs Forty Two Thousand Four Hundred and Thirty One only) for the period July 2015 to September 2016 being the ineligible CENVAT Credit availed and utilized by M/s Bajaj Allianz General Insurance Company Limited as discussed above under the provisions of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994 read with the provisions of Section 174(2) of the CGST Act 2017 and order recovery of the same from M/s. Bajaj Allianz General Insurance Company Limited, under Section 73(2) of the Finance Act, 1994.

b) I confirm the demand of interest on the amount of CENVAT Credit confirmed as detailed in Sr. No. (a) above at the applicable rates, and order recovery of the same from M/s. Bajaj Allianz General Insurance Company Limited, under the provisions of Rule 14(1)(ii) of the CENVAT Credit Rules, 2004 read with Section 75 of Finance Act, 1994 read with the provisions of Section 174(2) of the CGST Act 2017.

c) I impose penalty of Rs. 4,92,64,243/- (Rupees Four Crores Ninety Two Lakhs Sixty Four Thousand Two Hundred and Forty Three only) on M/s Bajaj Allianz General Insurance Company Limited, under the provisions of Rule 15 (1) of the CENVAT Credit Rules, 2004 read with Section 76 of the Finance Act 1994 read with the provisions of Section 174(2) of the CGST Act 2017. I accordingly order for its recovery.

d) However, I give an option to M/s Bajaj Allianz General Insurance Company Limited, under Section 76(1) of the Finance Act, 1994, OS amended, to pay the entire amount of CENVAT Credit, as determined & confirmed at Sr. No. (a) above, along

with interest payable thereon as ordered in Sr. No. (b) above as well as the reduced 25% penalty, within 30 days of the date of communication of this order.

e) I refrain from imposing Penalty under the provisions of Section 78(1) of the Finance Act, 1994, read with Rule 15 (3) of the CENVAT Credit Rules, 2004 for the reasons discussed in Para 27.9 above."

2.1 Appellant is a general insurance company and is providing general insurance including motor vehicle insurance services.

2.2 Acting on intelligence that the appellant had availed Cenvat credit on ineligible input services on the strength of bogus input credit invoices issued by the automobile dealers of various automobile manufacturers which were not actually provided by them. Investigations were carried on by the DGCEI, Chennai. From the investigation, following was observed, as stated in the impugned order:-

"16.2. From the Scrutiny of documents of Dealers/ BAGIC and the statements as mentioned above, it appeared that

- Automobile Dealers collect premium from the customers and issue policies to them by accessing the portals of the Insurance Brokers. For insuring the vehicles the Dealers / Manufacturers are given PAYOUT calculated at an agreed percentage on OD Premium by the Insurance Companies.*
- The invoices raised by Automotive Dealers and Automotive Manufacturers to BAGIC were in the format specified by BAGIC and have been raised towards "Infrastructure expenses incurred as Office Space, Manpower used, Dedicated computers and printers used etc and display charges and transaction fees etc"*
- Automobile Dealers in their statements have admitted that though they have not provided any service as mentioned in the invoices, they issued the same as per the directions of BAGIC.*
- The Officials of BAGIC have in their statements admitted that the rates are not fixed according to the services*

mentioned in the invoices but calculated on the basis of the percentage on OD Premium and the dealers are paid payout accordingly and that the Dealers have not provided the services as mentioned in their Invoices.

16.4. On a combined reading of provisions of Service Tax Rules 1994, it therefore appeared that BAGIC have contravened the following provisions of Chapter V of the Finance Act, 1994:

(i) Rule 2(1)(i) of the CCR, 2004 in as much as BAGIC having not received any services from the Automobile dealers and manufacturers as mentioned in the invoices raised by such dealers and manufacturers in order to provide the output service and hence they are not input service on which BAGIC can avail the input credit.

(ii) Rule 9(2) of CCR, 2004 in as much as the services mentioned in the invoices have never been provided to BAGIC by the dealers and hence no CENVAT Credit can be taken on the strength of such invoices issued by the dealers."

2.3 Accordingly Revenue was of the view that the appellant has contravened the provisions of Chapter V of Finance Act, 1994.

2.4 Accordingly a show cause notice dated 16.10.2015 was issued to the appellant demanding an amount of Rs.94,65,20,833/- being the ineligible Cenvat credit availed by the appellant on the basis of the invoices raised by the automobile dealers and automobile manufacturers for the services which were not entered by them.

2.5 Subsequently a show cause cum demand notice dated 24.04.2018 asking the appellant to show cause as follows:-

"(i) The provisions of Section 174(2) of the Central Goods & Service Tax Act, 2017 should not be invoked for taking recourse to the provisions of erstwhile Finance Act, 1994 and the Rules made there under as if the same have not been so repealed;

(ii) Service Tax of Rs 49.26.42.431/- (Rs. Forty Nine Crore Twenty Six Lakh Forty Two Thousand Four Hundred Thirty One Only) for the period from July 2015 to September 2018 should not be demanded and recovered from them under proviso to Section 73 (1) of Finance Act 1994;

(iii) Interest as applicable should not be demanded and recovered from them on the amount demanded as at Sr. No. B) above under Section 75 of Finance Act 1994;

(iv) Penalty should not be imposed on them under the provisions of Section 76 and Section 78 of the Finance Act 1994."

2.6 The show cause notice and the demand notice have been adjudicated as per the impugned orders. Aggrieved appellant have filed these appeals.

3.1 We have heard Shri Gajendra Jain with Shri Sachin Mishra, Advocates for the appellant and Shri Nitin Ranjan, Deputy Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits:-

- The dealers are indeed providing services to the appellant and service tax has been correctly discharged on the said services. Therefore, Cenvat credit cannot be denied to the appellant under any circumstances. Contractual supply is the essence of applicability of service tax.
- The services provided by the dealers which – infrastructure sharing like desktops, personnel at dealer's premises for liasoning etc., to key in the details of the customer in the portal of the appellant, to collect the necessary premium from the customers and remit the same to the appellants, space for display of posters, fall under the category of business support services as defined in Section 65(104c) and the appellants are entitled to Cenvat credit of the same. In any case this classification is irrelevant post 01.07.2012.

- The manner of payment for consideration is not relevant to decide the nature of services provided to the appellant. Reliance in this respect is put on the decision in the case of *Senairam Doongarmall* [1961 (42) ITR 392 (SC)].
- Nomenclature used does not determine the nature of transaction and hence the incorrect description of services in the invoices would not render them void for the purpose of Cenvat credit.
- The issue involved in the present case is not the case of non-provision of service but mis-classification of service and the credit cannot be denied at the recipient's end without opening assessment of service at the service provider's end and for the purpose they would rely upon the decisions as follows:-
 - *Modular Auto Ltd.* [2018 VIL 541 MAD ST]
 - *MDS Switchgear Ltd.* [2008 (229) ELT 485 (SC)]
 - *Sarvesh Refractories P Ltd.* [2007 (218) ELT 488 (SC)]
 - *Nahar Granites Ltd.* [2014 (305) ELT 9 (Guj.)]
 - *Ford India Pvt. Ltd.* [2019 VIL 182 CESTAT CHE ST]
- The issue involved in the present case is squarely covered by the decision of this Tribunal in the case of *Cholamandalam MS General Insurance Co. Ltd.* [CGST 2021-VIL-78-CESTAT-CHE-ST] and *Cholamandalam MS General Insurance Co. Ltd.* [2021 (9) TMI 442 – CESTAT Chennai].
- Substantive benefit of credit cannot be denied on the basis of violation if any under IRDAI.
- First notice issued invoking extended period of limitation beyond is time barred.
- No interest and penalty can be imposed on them.

3.3 Arguing for the Revenue, learned AR while reiterating the findings recorded in the impugned orders relied upon the following decisions:-

- *Aanex Services* [2012 (28) STR 139 (Tri.-De.)]
- *Hira Steels Ltd.* [2011 (273) ELT 370 (Chhattisgarh)]
- *Karan Agencies* [2014 (36) STR 667 (Tri.-Mumbai)]
- *Tata Motors Ltd.* [2015 (318) ELT 437 (Tri.-Mumbai)]

- PB Nair C&F Pvt. Ltd. [2015 (318) ELT 437 (Tri.-Mumbai)]
- Shoppers Stop Ltd. [2018 (8) GSTL 405 (Tri.-Mumbai)].

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

4.2 For confirming the demand against the appellant, the Commissioner has after quoting the provisions observed as follows:-

"23.8 CENVAT scheme was mainly introduced to avoid cascading effect of tax for making the product competitive in that in the domestic market as well as in international market, indigenous goods. the end user does not pay the price which is including tax paid at multiple stages. CENVAT Scheme under Central Excise and service tax allows credit of specified duties/ service tax paid on eligible Inputs, Capital goods and Input services. CENVAT credit can be availed by Manufacturer of dutiable goods and provider of taxable output service. It can be availed on physical receipt of Inputs and Capital Goods in the factory of manufacturer/premises of Service provider with specified duty paying documents and input service received with prescribed invoice after receipt of service or on receipt of advances for the services to be provided. Availing of CENVAT credit is subject to some conditions. One among them is the condition to maintain documents as per rule 9 of the CCR. 2004. Since the CENVAT can be availed on duly paying document, such documents plays a very vital role in availment of the credit. The document on which the credit is being availed is as good a currency note and hence one has to take a special care on the documents on which the credit is intended to be availed.

23.9 Rule 9(1) of CCR, 2004. specifies the documents on which the CENVAT credit shall be availed by the manufacturer or the provider of output service or input service distributor as the case may be. However it is also important to note that Rule 9(2) requires that a document on which the credit is being availed should be having all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules. 1994, as the case may be, are contained in the said document.

24.0 As per Rule 4A of Service Tax rules, 1994, a service invoice should contain the following particulars:

Particulars	Requirement of content
Invoice No. and date	Mandatory
Name and Address of the service provider	Mandatory
Name and address of the service receiver	Not mandatory, credit can be allowed at the discretion of AC/DC as per proviso to Rule 9(2) of CENVAT Credit Rules, 2004
Service Tax Registration number of the service provider	Mandatory
Description and value of taxable service	Mandatory
Service tax payable thereon	Mandatory

24.1 As per above, even though few particulars of invoice are not mandatory. credit can still be allowed by the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be. on being satisfied that the goods or services covered by the said document have been received and accounted for in the books of the account of the receiver. If the Assistant Commissioner or Deputy Commissioner is satisfied. then he may allow the CENVAT Credit on the same.

25.1 I find that E-mails were received by the dealers from M/s. Tata Business Support Services Ltd. (hereinafter referred to as "TBSS") for preparation of Invoices on BAGIC for claiming Insurance commission. On enquiry with the dealers, it was informed that they use to receive such e-mails at the end of every month from TBSS indicating the monthly commission payable by BAGIC for the insurance business provided by them to BAGIC during the month. It was also informed that the e-mails invariably contained an attachment of the Invoice, prepared by TBSS, which has to be downloaded and printed on their Invoice format and sent back to BAGIC for claiming the insurance commission from them. The description of service provided was mentioned as "Reimbursement of Infrastructure expenses towards office space. trained & dedicated manpower. provision of dedicated computers & printers provided to you in various Insurance services being offered by you at our Dealership".

25.2 From the statements of the Officials of the Dealers and BAGIC and relevant documents recovered from the Dealers and BAGIC it was noticed that the Car Dealers collect the total amount towards on-road price of the car from the customers which included the amount towards insurance premium which are being remitted to the Insurance Companies by issue of cheques. The Car Dealers are being paid a percentage of Own Damage Premium as PAYOUT by the insurance companies. The Car Dealers are neither providing any service to the insurance company nor are they authorized to sell the Motor Vehicle insurance Policies, not being Insurance Agent or Broker approved by IRDA. BAGIC have sent emails to Automobile Dealers on a monthly basis attaching therein statement of monthly payouts and format of invoice to be raised by them to BAGIC for claiming the Insurance Commission on the policies sold by the Automobile Dealers for that particular month. BAGIC have thus directed the Automotive Dealers to raise invoices as per the format sent to them by e-mail. From the statement of payouts attached to the e-mail, it is noticed that the payout has been computed based on a percentage of the Own Damage premium amount collected by on Automotive Dealer during the month. The payout statement contains details of the workings of the payout amount from net premium amount. On perusal of invoices raised on BAGIC by the Automobile Dealers for claiming the Commission, it is noticed that the invoices were in the format specified by BAGIC and have been raised towards "reimbursement of Infrastructure expenses incurred as Office Space, Manpower used. Dedicated computers and printers used etc and display charges and transaction fees etc." As per the mail sent by BAGIC: Automobile Dealers in their respective statements have admitted that though they have not provided any service as mentioned in the invoices, they issued the same as per the directions of BAGIC: that they do not incur any expenditure for claim towards reimbursements: that they have not provided any service of Infrastructure expenses incurred as Office Space. Manpower used. Dedicated computers and printers used etc and display charges and transaction fees etc; that no amount was spent by them on marketing of the Insurance policies for Preferred Insurance Companies; that they have not

rented any portion of the premises on rent to the insurance company; that the income from Insurance Companies were being accounted as Insurance Commission received: that they have raised invoices during the past period also on the said Insurance company, as if services were provided to the said insurance company, only to get the payouts/commission from them as per their communication (by e-mail): Automobile Manufacturer M/s. Honda Cars India limited have also been raising computer generated invoices quoting reimbursement of Infrastructure expenses incurred as Office Space, Manpower used. Dedicated computers and printers used etc" on BAGIC for recognizing BAGIC as a Preferred Insurance Company (PIC) for Honda cars on which the CENVAT Credit has been availed by BAGIC and no services are rendered by such Automotive Manufacturers.

25.3 The Officials of BAGIC have in their statements admitted that the rates are not fixed according to the services mentioned in the invoices but calculated on the basis of the percentage on Own Damage Premium and the dealers are paid payout accordingly and that the dealers have not provided the services as mentioned in their Invoices: the payout is determined based on the policies generated by the Automobile Dealers, the amount payable and the nature of services to be incorporated in their Invoices are communicated to the dealers as a standard practice and in a standard template by BAGIC; it is the general practice followed in the insurance industry to settle the payouts, to the dealers by way of raising such invoices: that they follow the similar practice to settle the payouts to all their dealers: As per normal trade practice in the insurance industry and in order to run the business, in lieu of the stiff competition, they were compelled to issue payout to the dealers: they have no option but to pay the payout to the Automobile Dealers in order to remain the 'Preferred Insurance Company of the vehicle manufacturers: the Automotive Dealers were raising such invoices in order to complete the financial transactions as per their direction; the Automotive Dealers have charged service tax and they have made the entire payment. they were under the impression that they were eligible for CENVAT Credit: the Own

Damage premium collected by the automobile dealer in any month forms the basis for payment of brokerage to brokers, payout to dealers/intermediaries; the description of Services mentioned Honda Cars India Ltd., the manufacturer of Honda cars, an agreement is on the invoices raised by all Automotive Dealers were similar, in the case of M/s. charged BAGIC on monthly basis: M/s. Honda Cars India Ltd., raises invoices on entered with BAGIC for recognizing them as Preferred Insurance Company and BAGIC for recognizing BAGIC as a Preferred Insurance Company for Honda cars on which the CENVAT Credit has been availed by BAGIC and no services are rendered by such Automotive Manufacturers: to mention the above services in the invoices, Automotive Dealers/ Regional Offices of BAGIC are apportioning amounts between Display charges and Transaction Fees although the payout is based on a percentage of the Own Damage premium.

25.4 I find that BAGIC are paying to various car dealers an amount in the nature of Commission every month: towards the insurance premium sourced through the particular dealers but have asked the respective dealers through e mails to raise the invoices as if they have provided the infrastructure services, display service and transaction fees, which had admittedly been denied by the car dealers to have been provided by them. BAGIC have taken credit on the strength of invoices from the motor vehicle dealers as per their instruction without actually receiving the services as described in such invoices in violation of the CCR, 2004. The car dealers and the persons of BAGIC at their Regional Office at Chennai, have admitted to the fact that the dealers have not provided any service as mentioned in the invoices raised by them to BAGIC, it emerges that BAGIC are wrongly availing the input services CENVAT credit based on such invoices of car dealers in violations of Rule 4(1) of the CCR, 2004. BAGIC have deliberately devised a method by which the IRDA Commission/ORC payable to the car dealers and two-wheeler dealers for the insurance business sourced by them were passed on as 'Display charges and Transaction Fees, the services which both the car dealers and the officers of BAGIC Regional office at Chennai have categorically denied as discussed

in Paras above. Further the dealers have denied having incurred any expenditure towards the reimbursement of infrastructure charges as described in the invoices they had raised on BAGIC. Therefore find that amount passed on to the dealers by the insurance companies as Display charges and Transaction Fees and reimbursement of infrastructure charges as described in the invoices is nothing but the IRDA Commission/Over-riding Commission given to them for procurement of Insurance business by the dealers.

25.5 Further, Shri. Milind C Choudhari Chief Financial Officer (CFO) of BAGIC was evasive on the questions of the nature of actual services provided by the car dealers and the two-wheeler dealers, by merely stating that that the exact position in respect of the services actually provided by the dealers is known only to the Regional Office as they are dealing with the same. However the officers of BAGIC at their Regional Office at Chennai have admitted categorically in their respective statements that the dealers are not providing any of the services as mentioned in the monthly payout invoices, but the amount represents only the commission paid to them for procurement of insurance business. The CFO of BAGIC in his statement have also admitted that as an insurance company they are heavily dependent on the car dealers for selling of their insurance policies. Therefore it appeared from the statement of the CFO of BAGIC that the amount paid to the dealers is only a commission paid to them for the Insurance business procured by the dealers for the Insurance company at the time of selling the cars and subsequent renewals.

25.6 Further, from the statement of Shri Vijay Kumar, President - Motor of BAGIC it emerges that BAGIC have been paying the commission on insurance business to the Maruti dealers and that for that period also they have been receiving the invoices as for infrastructure charges' and that by merely stating that he does not have anything to say about the statements of the car dealers, that of his own Officers at the Regional Office and that of his own Executive at the HO, is only confirming that the Dealers were not providing any services as mentioned In their

invoices raised by them on monthly basis for receiving the commission on insurance business procured by them to SAGIC. Further he had tacitly admitted to the fact that the amount paid are only in the nature of commission by stating that in order to survive in the market, these Infrastructure expenses are required to be incurred to get access to the dealership for insurance business.

25.7 As per Section 40(1) of the Insurance Act 1938, no person shall after the expiry of six months from the commencement of this Act. pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary. As per IRDA Circular Ref: 011/IRDA/ Brok. Comm/August 2008 dated 25-08-2008 issued under Section 14 of IRDA Act 1999, which limits the payment of Commission or Brokerage to 10%. The Circular specifically states, "No payment of any kind including administrative or servicing charges" is permitted to be made to the agent or broker in respect of the business in respect of which he is paid agency commission or brokerage".

25.8 The officials of BAGIC in their voluntary statements have stated that as per the IRDA circular, only the brokers/licensed agents can solicit and procure insurance business on behalf of the insurance companies and hence to reiterate that these dealers should not involve in these activities, the clause "the Vendor shall not negotiate, accept any business, issue policies or other documents in the name of or for and on behalf of BAGIC and shall not make any promise, representation or negotiate with clients in respect of any business or claim..... except those provided by BAGIC or approved by BAGIC in writing" is mentioned in the agreement entered into with dealers; that the commission/remunerations are paid to the agents and brokers as per the IRDA guidelines. The Automobile Dealers have in their voluntary statements stated that they were not registered as Insurance Agent or Insurance Broker according to IRDA regulations. Since the Dealers of Motor Vehicles are not Agents/Brokers/ Intermediaries of the Insurance Companies,

they are not permitted to do insurance business and thereby are not entitled to receive any commission. Investigation conducted however, revealed that the Automotive Dealers have been selling insurance policies while selling vehicles to their customers and in order to receive commission for the policies sold, they have been advised to raise invoices in the guise of claiming Reimbursement of Expenses such as reimbursement of Infrastructure expenses incurred as Office Space, Manpower used, Dedicated computers and printers used and Display charges and Transaction Fees etc which has not been provided by them at any point of time.

25.9 From the statements of officials of BAGIC. I find that the selling of insurance policies along with the sale of Cars by the Automotive Dealers to BAGIC on which they are getting a percentage as 'PAYOUT are camouflaged into certain services like "Infrastructure expenses incurred as Office Space, Manpower used. Dedicated computers and printers used etc and display charges and transaction fees etc" and have been instructed through E-mails from BAGIC to all Automotive Dealers to mention the above service in their invoices. Thus neither the service rendered by the Automotive Dealers nor the Invoices raised by them to BAGIC have any relevance to the payment made to the Automotive Dealers as PAYOUT by BAGIC based on Own Damage premium. Though, the Automotive Dealers are accounting such 'PAYOUTS as Insurance Commission in their books of accounts, BAGIC are accounting the same under various heads such as 'Infrastructure Expenses. 'Business Support Service Expenses, etc. BAGIC, thus have advised the Automotive Dealers in fabricating the invoices by compelling the Automotive Dealers to raise invoices as per formats sent to them to avail ineligible CENVAT Credit. In general, when a Customer buys a new car/two wheeler, it is mandatory to have RTO registration and Insurance before taking delivery. Since, for any Automotive Dealer, issue of insurance policy is incidental to the business of selling cars, the insurance Companies are compelled to give Commission as PAYOUT to Automotive Dealers who are in turn compelled to raise fictitious documents as fabricated by BAGIC as per their requirements for availing CENVAT Credit. In view of the above, all the documents mentioned above are

'make-believe documents prepared merely to mislead the exchequer with the sole aim to avail ineligible CENVAT

25.10 From the Scrutiny of documents of Dealers/ BAGIC and the statements it is clear that Automobile Dealers collect premium from the customers and issue policies to them by accessing the portals of the Insurance Brokers. For insuring the vehicles the Dealers / Manufacturers are given PAYOUT calculated at an agreed percentage on OD Premium by the Insurance Companies. The invoices raised by Automotive Dealers and Automotive Manufacturers to BAGIC were in the format specified by BAGIC and have been raised towards Infrastructure expenses incurred as Office Space. Manpower used, Dedicated computers and printers used etc and display charges and transaction fees etc". Automobile Dealers in their statements have admitted that though they have not provided only service as mentioned in the invoices, they issued the same as per the directions of BAGIC. The Officials of BAGIC have in their statements admitted that the rates are not fixed according to the services mentioned in the invoices but calculated on the basis of the percentage on OD Premium and the dealers are paid payout accordingly and that the Dealers have not provided the services as mentioned in their Invoices.

25.11 Automotive Dealers were being paid an amount towards "Commission" by insurance companies like BAGIC for selling insurance policies to customers who come to the Dealership of cars for purchase of a new car for which invoices were raised in the standard format by the insurance companies. The IRDA regulations do not allow any person other than insurance agents and insurance brokers approved by IRDA, to sell vehicle insurance policies. Further the maximum brokerage/ commission payable for selling insurance policies is also capped at 10% of the premium. To circumvent these regulations, BAGIC asked the car dealers to raise invoices to show that the car dealers have provided the Insurance Companies services such as infrastructure expenses incurred as Office Space, Manpower used, Dedicated computers and printers used etc and display charges and transaction fees etc. As these services were never

provided by the car dealers, their invoices are not permissible documents under the CCR, 2004 and the Rules for availing CENVAT credit by the Insurance Companies. These facts have been confirmed by the employees of the Insurance Companies and the car dealers in their voluntary statements.

25.12 As per Rule 9(2) of the CCR, 2004 CENVAT credit cannot be availed unless all the particulars as prescribed under the Central Excise Rules, 2002 or the Service Tax Rules, 1994, as the case may be, are contained in the said document. Rule 4A of the Service Tax Rules, 1994 prescribed the particulars which are required to be contained in an Invoice issued by the provider of input service. As per which the main four elements are required to be shown on the invoices viz. (i) the name, address and the registration number of such person; (ii) the name and address of the person receiving taxable service; (iii) description and value of taxable service provided or agreed to be provided; and (iv) the service tax payable thereon required to be shown in an invoice.

25.13 in the present case, the invoice raised by the Automotive Dealers and Automotive Manufacturers on BAGIC does not contain the true description of the Service; a mandatory requirement, as such the requirements of Rule 4A of the Rules was not fulfilled. Further, the description of the service has not been mentioned correctly in terms of Rule 4A of the Rules, as such the services mentioned in the invoice cannot qualify as input service in terms of Rule 2(1)(1) of the CCR, 2004. BAGIC have not maintained any documentary evidences for having received the input services hence they have contravened the provisions of Rule 4(1) of the CCR, 2004. Thus, it is not disputed that services covered by the said invoices were never received by BAGIC and were never provided by the Dealers.

25.14 It is pertinent to mention here that after booking the cases on insurance companies by the DGCE for fraudulent availment of CENVAT Credit on the basis of invoices issued by the Automobile Dealers, the insurance regulator. Insurance Regulatory and Development Authority (IRDAI) formed a committee for bringing clarity and transparency in payouts.

Based on the examination of the report of the committee and the interaction held with insurers and other stakeholders, IRDAI issued Guidelines on Motor Insurance Service Provider under Section 34 of the Insurance Act, 1938 and Section 14 of the IRDA Act, 1999 vide Ref:IRDA/INT/GDL/ MISP/202/08/20 17 dated 31-08-2017 and effective from 01 11-2017 with a object to recognize the role of the automotive dealer in distributing and servicing motor insurance policies so as to have regulatory oversight over their activities connected to insurance. Accordingly, such Automobile Dealers can be appointed as "Motor Insurance Service Provider (MISP). According to clause 3(f) of the said guidelines MISP means an automobile dealer appointed by the insurer or the insurance intermediary to distribute and/ or service motor insurance policies of automotive vehicles sold through it. According to clause 15(5) of the said guidelines the MISPS will get Distribution fees capped at 22.5% for 2 wheelers and 19.5% for other than 2 wheelers and the MISP or any of its associate company, shall not receive directly or indirectly from the insurer and the insurer shall not pay directly or indirectly to the MISP or any of its associate company any fees, charges. infrastructure expenses, advertising expenses, documentation charges, legal fees, advisory fees, or any other payment by whatever name called except as specified in these guidelines. Thus, prior to issue of these guidelines to camouflage the actual nature of services provided by the Automobile Dealers for escaping from the wrath of provisions of the Insurance Act, 1938 and IRDA Act, 1999, Insurance companies with connivance of the Dealers had fabricated invoices by altering the description of services.

26 In view of the above, I find that the services mentioned in the invoices raised by Automotive Dealers and Automobile Manufacturers does not qualify as 'input' service as the same were never provided by the Service providers nor received by BAGIC, as such the said invoices are not eligible documents to BAGIC for availment of CENVAT Credit under Rule 9(2) of CCR. 2004. The documents based on which CENVAT was availed is inadmissible as eligible input document hence the CENVAT credit availed by BAGIC is not in order and is ineligible as per extant

law. An amount of Rs. 49.26.42,431/- (Rupees Forty Nine Crores Twenty Six Lakhs Forty Two Thousand Four Hundred and Thirty One only) being the ineligible CENVAT Credit availed by BAGIC based on invoices raised on BAGIC by Automotive Dealers and Automotive Manufacturers and TBSS on the Services which were not rendered by them is therefore liable to be demanded and recovered from them under Rule 14 of CCR. 2004.

27.1 The IRDA regulations do not allow any person other than insurance agents and insurance brokers approved by IRDA, to sell vehicle insurance policies. Further the maximum brokerage/commission payable for selling insurance policies is also capped at 10% of the premium. To circumvent these regulations, BAGIC asked the car dealers to raise invoices to show that the car dealers have provided services such as advertisement, renting of computers/ printers, training. arranging customer awareness program etc. to BAGIC. The invoice raised by the Automotive Dealers and Automotive Manufacturers on BAGIC does not contain the true description of the Service, thus the requirements of Rule 4A of the Service Tax Rules, 1994 is not fulfilled. Since the description of the service has not been mentioned correctly in terms of Rule 4A cited above, the services mentioned in the invoice cannot qualify as input service in terms of Rule 2(1)(1) of the CCR. 2004. Further, BAGIC have not maintained any documentary evidences for having received the input services thereby contravening the provisions of Rule 4(1) of CCR, 2004.

27.2 The services mentioned in the invoices have never been provided to BAGIC by the dealers. BAGIC having not received any services from the Automobile dealers and manufacturers as mentioned in the invoices raised by such dealers and manufacturers in order to provide the output service and hence they are not input service on which BAGIC can avail the input credit and hence no CENVAT Credit can be taken on the strength of such invoices issued by the dealers, therefore the invoices are not eligible documents to BAGIC for availment of CENVAT Credit under Rule 9(2) of CCR, 2004. As these services were never provided by the car dealers, their invoices are not permissible

documents under the CENVAT Credit Rules, 2004 and the Service Tax Rules, 1994 for availing CENVAT credit by BAGIC. These facts have been confirmed by the employees of BAGIC and the car dealers in their voluntary statements."

4.3 In the case of Cholamandalam MS General Insurance Co. Ltd. [2021 (3) TMI 24 –CESTAT Chennai, the Tribunal has dealt with the same issue and has held as follows:-

"6.1 *The allegation of the Department is that no services have been provided by the dealers to the appellant as per the invoices and therefore, the appellant is not eligible to avail credit of the Service Tax reflected in this invoices. In paragraph 31 of the Order-in-Original dated 30-1-2017, the crux of the allegations of the Department has been recorded by the Original Authority, as under :*

"31. On careful consideration of the statements of personnel of M/s. Chola and Dealers, I find that

(i) The payment made by M/s. Chola to M/s. Hyundai/Dealers of Motor Vehicles is only a percentage of OD premium collected and the said payout details are calculated by the Head Office of M/s. Chola and communicated to the Dealers;

(ii) M/s. Chola could not term such payout as commission (which would be in violation of IRDA guidelines) and hence the Dealers were given prescribed format to raise invoices as if they provided "computing network connectivity through extranet, internet space, furniture and fixtures, consumables, salary of staff, computers, printers, electronics and electricity";

(iii) the Dealers accordingly raised invoices on the insurance companies in the format provided to them and

(iv) the Dealers have not provided the services as mentioned in the description of the invoices. In other words, the description of the services contained in the invoices used for availing Cenvat Credit do not reflect the true description of the services."

6.2 *From the above, it can be seen that the case of the Department is that the payout paid by the appellant to the*

dealers on the OD premium collected by the dealers from the customers is camouflaged as service provided by the dealers to the appellant; that therefore, the services contained in the invoices have actually not been provided by the dealers to the appellant and thus, Cenvat credit is not eligible.

7.1 *Though in the Show Cause Notice the main allegation is that the description of services in the documents on which credit has been availed is not correct, at the time of adjudication, the main finding is that no services have been provided by the dealers to the appellant and that therefore credit is not eligible. At this juncture, it needs to be pointed out that the Department has no dispute with the Service Tax collected from the appellant by the dealer and remitted to the Government. The assessment of Service Tax paid at the dealer's end has not been disturbed/questioned by the Department; only the credit availed at the service recipient's end has been questioned by issuing the present Show Cause Notice.*

7.2 *If the Department contends that no service has been provided, the crucial question arises as to why Service Tax was collected from the dealer. The discussion by the Original Authority at paragraph 37 countering this argument is as under :*

"37. As regards their contention in Para N.1 to N.7 that if no service is provided by the Dealer there is no requirement to pay service tax; that at the time of accepting service tax from the dealer, the department chooses to look at the form of transaction and accept service tax. In this regard, I find that the issue involved is not about the service tax payable by the Dealer. It is about the mentioning of true description of services in the invoice and the services mentioned in the invoices in the instant case admittedly were not provided by the Dealers. Only after the in-depth investigation conducted with the Dealers, the fact of Dealers issuing invoice with the description suggested by the Taxpayer have come to light. Hence their contention that department cannot approbate and reprobate in the same case is not valid."

7.3 *It is not disputed that the dealer has paid Service Tax on the services described in the invoices. If that be so, the denial of credit at the recipient's end cannot be justified by the Department without reopening the assessment at the dealer's end.*

8.1 *A similar issue came up for consideration in the case of M/s. Modular Auto Ltd. (supra). The substantial questions of law considered in the above case are as under :*

"2. The above appeals are admitted on the following substantial questions of law;

(a) When the service provider was not before the Tribunal, whether the Tribunal can go into the question as to whether the said service provider had provided service to the appellant or not, more so when the said service provider has been assessed to service tax under Business Support Service for the service rendered by them to the appellant.

(b) Is the Tribunal not in error in refusing credit to the appellant for service tax paid by them to service provider when payment of service tax by the appellant for the service rendered by service provider is not in dispute and that it is settled, the assessment to tax at the hands of the service provider end cannot be questioned in the hand of service receiver (appellant in this case)?"

8.2 *The brief facts of the said case are that the appellant therein had availed input service credit on "Multi Protocol Label Switching" (MPLS) service based on the invoices issued by M/s. Brakes India Ltd., Chennai ("M/s. BIL" for short). The appellants were job workers for M/s. BIL. The services were utilized by M/s. BIL for communicating and retrieving the data from the appellant's therein. The Department alleged that the services were rendered by BSNL and Reliance Communications Ltd. to M/s. BIL and that M/s. BIL had raised invoices on the appellants claiming reimbursement under these invoices as MPLS charges along with Service Tax. The Department was of the view that the invoices were raised for reimbursement of expenses and that no service was rendered by M/s. BIL to the appellants and that the*

appellants were not eligible for credit. The appellants therein had contended that M/s. BIL are retrieving data relating to the assessees from the server and are further processing the same for their end use and therefore, M/s. BIL is rendering the service. It was also explained by the appellant therein that but for M/s. BIL retrieving the data, the appellant would have retrieved the data and passed on the same to M/s. BIL. The Hon'ble High Court, after analysis of the issue, observed as under :

"11. The short question, which falls for consideration, is whether the department as well as Tribunal could have held what was availed by the assessees as credit is only a reimbursement and it is an attempt of BIL to pass costs incurred by them towards MPLS.

12. Mrs. Aparna Nandakumar, Learned Senior Panel Counsel for the Revenue, produced a lecture on Multi Protocol Label Switching with Quality of Service in High Speed Computer Network to explain as to what is Multi Protocol Label Switching (MPLS) and it has been stated therein that it is a method that directs data from one system node to the next based on short path lables rather than long network addresses in high-performance telecommunication association. Referring to a chart showing the working methodology, it is submitted that it is a facility created and the beneficiary is BIL and no input service is rendered by the BIL to the assessees for them to claim Input Tax Credit.

13. To test the correctness of the said submission, we give the following illustration, which is broadly the nature of transactions done by the assessees with BIL.

14. The BSNL/Reliance Communications Private Limited have provided the MPLS facility to BIL and assuming the amount to be paid is Rs. 100/- towards the cost and Rs. 10/- towards the Service Tax, when the invoice is raised by the BSNL/Reliance Communications Private Limited for the said amount and the BIL has paid Rs. 110/- to BSNL/Reliance Communications Private Limited, which includes the cost as well as Service Tax element,

the BIL, in turn, has raised an invoice on the assessees claiming proportionately the costs which they have incurred to BSNL/Reliance. By way of illustration, if Rs. 20/- has been passed on to one of the assessees, a sum of Rs. 2/- is collected as Service Tax and each of the assessees pays Rs. 22/- to BIL, on which Rs. 2/- is the Service Tax paid. The assessees have taken Cenvat credit on the said Rs. 2/- paid by it as Service Tax to BIL. Therefore, the question would be as to whether the department can dispute the nature of transaction at this juncture, more particularly, when the assessment made on the BIL and the collection of Service Tax on them has not been reopened.

15. From the reasons assigned by the Commissioner (Appeals), we find that the Commissioner (Appeals) has travelled beyond the scope of allegation made in the show cause notices. By giving a different interpretation to the nature of transaction, which, in our considered view, could not have been done by the Appellate Authority in the light of the settled position with regard to the Service Tax liability admitted and paid by BIL. Therefore, unless and until, the assessment on BIL had been reopened, the nature of transaction as referred by BIL has to be held to be wrong and the Commissioner (Appeals) could not have given a different interpretation to the nature of claim made by the BIL from the assessees by interpreting the terminology used in the invoice. The correct test, which ought to have been applied by the Adjudicating Authority, Appellate Authority and the Tribunal, is as to what is the character of payment made by the assessees on which they have availed the Cenvat credit.

16. In the instant cases, it is not in dispute that whatever the portion of Service Tax component which was collected from the assessees by BIL was only the amount on which the Cenvat credit has been claimed by the assessees. Therefore, unless and until the assessment made on BIL was revised, which obviously could have been done, at this juncture, on account of the expiry of the period of limitation, the interpretation given by the Commissioner (Appeals) as well as the Tribunal with regard to the nature of invoice raised on the assessees is unsustainable. Furthermore, we find that the reason assigned by the Tribunal in

paragraph 6.2 stating that the activity performed by the BIL for monitoring of production activities of the assesseees cannot by any stretch of imagination be considered as an input service or in relation to the manufacture of final products of the assesseees, is a statement, which is unsubstantiated by any record. At best, it can be taken as a personal opinion of the Tribunal, which could not have been a reason to reverse the credit availed by the assesseees.

17. What is important to note that the assesseees' specific case is that there has been a service by BIL to the assesseees in the matter of retrieval of data and service tax has been collected and paid by BIL and the correctness, legality or otherwise of the tax paid by the subject providers cannot be called in question by the Central Excise Officer having the jurisdiction over the assesseees availing the credit. This question has not been considered. If the impugned orders are allowed to stand, then it would in effect mean that the jurisdictional assessment officers of the assesseees are sitting in the judgment over the assessment made on BIL, over which, they have no jurisdiction."

(Emphasis added)

8.3 *The above decision squarely applies to the facts of the case before us. As discussed by the Hon'ble High Court, unless and until the assessment made by the dealer is revised, the credit at the recipient's end cannot be denied.*

9. *Before we part, we must state that we have gone through the several decisions placed by the Learned Authorized Representative for the Department before us; none of these decisions are applicable to the issue or facts under consideration in this appeal.*

10. *From the foregoing, after appreciation of the facts and following the decision of the Hon'ble High Court in M/s. Modular Auto Ltd. (supra), we hold that the impugned order cannot sustain and requires to be set aside, which we hereby do."*

4.4 This judgment was followed again by the Tribunal in the case of Cholamandalam MS General Insurance Co. Ltd. [2021

(9) TMI 442 –CESTAT Chennai, the relevant para of which is reproduced below:-

"5. It is brought to our notice that the issue in this appeal has been analyzed and decided in the appellant's own case for the previous period vide decision reported in 2021 (3) TMI 24-CESTAT Chennai. The Tribunal had followed the decision of the Hon'ble jurisdictional High Court in Modular Auto Ltd. Vs. CCE, Chennai-2018 (8) TMI 1691 Madras High Court. The relevant paragraph of the decision of the Tribunal reads as under:-

"6.1 The allegation of the Department is that no services have been provided by the dealers to the appellant as per the invoices and therefore, the appellant is not eligible to avail credit of the Service Tax reflected in this invoice. In paragraph 31 of the Order-in-Original dated 30.01.2017, the crux of the allegations of the Department has been recorded by the Original Authority, as under

"31. On careful consideration of the statements of personnel of M/s Chola and Dealers, I find that

(i) The payment made by M/s. Chola to Ms. Hyundai / Dealers of Motor Vehicles is only a percentage of OD premium collected and the said payout details are calculated by the Head Office of M/s. Chola and communicated to the Dealers;

(ii) M/s. Chola could not term such payout as commission (which would be in violation of IRDA guidelines) and hence the Dealers were given prescribed format to raise invoices as if they provided "computing network connectivity through extranet, internet space, furniture and fixtures, consumables, salary of staff, computers, printers, electronics and electricity";

(iii) the Dealers accordingly raised invoices on the insurance companies in the format provided to them and

(iv) the Dealers have not provided the services as mentioned in the description of the invoices. In other words, the description of

the services contained in the invoices used for availing Cenvat Credit do not reflect the true description of the services."

6.2 From the above, it can be seen that the case of the Department is that the payout paid by the appellant to the dealers on the OD premium collected by the dealers from the customers is camouflaged as service provided by the dealers to the appellant that therefore, the services contained in the invoices have actually not been provided by the dealers to the appellant and thus CENVAT Credit is not eligible.

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10. From the foregoing, after appreciation of the facts and following the decision of the Hon'ble High Court in M/s. Modular Auto Ltd (supra), we hold that the impugned order cannot sustain and requires to be set aside, which we hereby do."

4.5 We find that the issue is squarely covered by the above two decisions. We do not find any merits in the impugned order.

4.6 The decisions relied upon by the Revenue during the course of argument are the decisions rendered in specific facts and circumstances of those cases and would not be applicable to the facts of this case.

5.1 Appeals are allowed setting aside the impugned orders.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)