CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 477 OF 2012

[Arising out of Order-in-Original No: 14/COMMR(KAP)/LTU/MUM/Cx/2011 dated 29th December 2011 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai.]

Reliance Industries Ltd
PO Petrochemicals, Dist: Vadodara, Gujarat - 301346 … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
LTU,
29th Floor, Centre-1, World Trade Centre, Cuffe Parade
Mumbai - 400005 ***…Respondent***

APPEARANCE:

Shri Ramnath Prabhu, Advocate for the appellant

Ms Anuradha S Parab, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86168 /2022

DATE OF HEARING: 10/06/2022
DATE OF DECISION: 09/12/2022

PER: C J MATHEW

Appeal of M/s Reliance Industries Ltd challenges order-in-original no. 14/COMMR(KAP)/LTU/MUM/Cx/2011 dated 29th December 2011 of Commissioner of Central Excise & Service Tax, LTU, Mumbai which, having disallowed CENVAT credit of ` 1,33,37,699/-, ordered recovery thereof under rule 14 of CENVAT Credit Rules, 2004, along with applicable interest, while imposing penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 by holding that the tax discharged on procurement of 'insurance service' for covering medical claims of employees who had opted for the Voluntary Separation Scheme (VRS) initiated by the appellant on 6th March 2007 was not to be availed as credit. The policy enabled the candidate employees along with spouse to be covered to the extent of ` 5,00,000 for the period up to which they would, but for pre-mature separation under this scheme, have attained the age of retirement. The tax charged on premium paid on 'Special Contigency Insurance Nivrutti Raksha Policy' was availed as credit to be utilized in connection with clearance of excisable goods manufactured by appellant. The impugned order has held that, while medical insurance of employees has been approved as eligible 'input service' in several decisions of the Tribunal as well as appellate courts in conformity with rule 2(l) of CENVAT Credit Rules, 2004, its applicability to policy for the benefit of employees who have ceased to be on the rolls should not be countenanced.

2. The matter was heard at length by a Division Bench of this

Tribunal on 16th August 2021 but, confronted with a number of decisions pertaining to availment of credit of tax paid on insurance premium and a particular submission of the appellant, drawing support from the decision of the Hon'ble High Court of Karnataka in *Commissioner of Central Excise, Bangalore – II v. Millipore India Pvt Ltd [2012 (26) STR 514 (Kar.)]*,that inclusion as cost in CAS-4 suffices for eligibility, it was considered appropriate to refer the matter to the Hon'ble President for constitution of a Larger Bench for determining

> *'i. Interpretation of rule 2 (l) of the 2004 Rules for the period prior to the amendment made in the year 2011.*
>
> *ii. Applicability of Cost Accounting Standard-4**6** for determination of eligibility to CENVAT credit in cases other than where the goods are captively consumed and valued in terms of rule 4 of Central Excise Rules, 2000.'*

3. The Larger Bench of the Tribunal, considering the facts of the case and the reference made to it, concluded that

> *'52. The interpretation of rule 2 (l) of the 2004 Rules has been conclusively settled by the jurisdictional Bombay High Court in **Coca Cola India** and **Ultratech Cement.** It has also been consistently so held in **Principal Commissioner** vs. **Essar Oil Ltd.**[25]**, Commr. of S.T., Mumbai-II** vs. **Willis Processing Services (India) Pvt. Ltd.**[26] and **Commr. of C. Ex. & Service Tax** vs. **Tata Consultancy Services Ltd.**[27]. It would be pertinent to reproduce the relevant portion of the judgment*

*of the Bombay High Court in **Tata Consultancy Services** and it is as follows:*

> *"2. The Revenue proposes the questions at page Nos. 6 and 7 as substantial questions of law. However, these very questions have been considered by this Court in the two judgments. One rendered in the case of Commissioner of Central Excise, Nagpur v. Ultratech Cement Ltd. reported in 2010 (260) E.L.T. 369. That judgment and order has been followed by another Bench in deciding Central Excise Appeal No. 168 of 2017 (The Commissioner, Service Tax, Mumbai -II v. M/s. Willis Processing Services (India) Pvt. Ltd. (formerly known as M/s. Tgrinity Computer Processing (India) Pvt. Ltd.) decided on 13th September, 2017. [2017 (7) G.S.T.L. 12 (Bom.)].*
>
> *3. In the light of these two judgments and orders, the questions proposed in the present appeal cannot be treated as substantial questions of law. The appeal is therefore disposed of in terms of the aforesaid two judgments.*

53. In view of the aforesaid discussion, it has to be held that credit can be availed on the amount of insurance premium paid by the appellant to the insurance company for availing medi-claim of employees who had opted for the VSS announced by the appellant as the service that was rendered would amount to „input service" in terms of rule 2(l) of the 2004 Rules, as it stood at the relevant time; it being in relation to activities relating to business.'

4. Furthermore, on the reference on applicability of CAS-4 the Larger Bench noted that

*'67. The above observations were made after referring to paragraph 5 of the judgment of the Karnataka High Court in **Millipore India**, wherein paragraphs 4.1 and 5.2 of CAS-4 were extracted. It is important to note that paragraph 5.2 is not the only provision in CAS-4, which deals with costs relating to employees. Paragraph 5.2 of CAS-4 deals only with the meaning of the expression, "direct wages and*

> *salaries", which is only one of the many items that go into preparation of a CAS-4 Certificate, as is clear from "direct wages and salaries " appearing at Serial No. 2 of the Certificate. There are other components such as works overheads, quality control cost, administrative overheads. This position has also been clarified in paragraph 4.1 of CAS-4, which defines the "cost of production" as the sum total of material consumed, direct wages and salaries, direct expenses, works overheads, quality control costs, research and development cost, packing cost, administrative overheads relating to production. Each of these heads include "employee costs" as an integral part of these other heads.*

before going on to hold that

> *'69. Since CAS-7 defines the expression „employee cost", in general, all references to employee costs in the Cost Accounting Standards, including in CAS-4, will have to take the same meaning as provided in CAS-7. It is clear from CAS-7, that employee costs include payments made in cash or kind and refers to not only the present costs by way of salaries, wages and employee welfare benefits, but also future benefits such as gratuity, leave encashment, VRS and other employee benefits. It also includes benefits to family members and dependents.*
>
> *70. It is thus clear from CAS-7 that medical benefits pertaining to employees and dependents, even if they are in terms of VRS/retirement/separation schemes, are an integral part of the „employee cost".'*

5. Thereafter, the Larger Bench directed that the matter be placed before the Division Bench for deciding the appeal on merits.

6. As seen from the records, the impugned order has held the service on which CENVAT credit had been availed was ineligible for having been incurred on employees who were to retire and consequently having no nexus with manufacturing activity that is essential for taking credit under rule 3 of CENVAT Credit Rules, 2004. The decision of the Larger bench has categorically spelt an end to the controversy over eligibility of credit in such circumstances.

7. Learned Authorised Representative submitted that the essence of the finding on CAS-4 in the very same order of the Larger Bench requires that the appropriate authority should scrutinize CAS-4 statement for ascertainment. We, however, take note that the reference to CAS-4 did not have its genesis in the adjudication proceedings but from a submission to the referral bench while placing reliance on the decision of the Hon'ble High Court of Karnataka in *re Millipore India Pvt Ltd*. The settlement of that principle of inclusion in CAS-4 as sufficing to avail credit was a response to the doubts entertained by the referral bench and, moreover, CAS-4 is of relevance only in captive consumption. Contextually, the Larger Bench held that the components of CAS-4 are also found on CAS-7 rendering both to be eligible for similar treatment. There is, thus, no scope for determination of facts afresh by the lower authority insofar as the present dispute is concerned. That aspect need not detain us in the present circumstances just as other cited decisions pertaining to

tax paid on insurance premium to cover spouse and family members of the employees are also no longer relevant.

8. In view of the response of the Larger Bench to the reference, eligibility for CENVAT credit of tax paid on premium for continuation of medical cover for retiring employees under the special scheme stands settled in favour of the appellant. Consequently, the impugned order is set aside and appeal is allowed.

(Order pronounced in the open court on 09/12/2022)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*