CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20406 of 2020

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-212-2020 dated 12.08.2020 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals) Kochi]

M/s. Kalyan Jewellers India Limited **.....Appellant**
TC-32/304/2, Sitaram Mill Road
Punkunnam
Thrissur-680 002

VERSUS

Commissioner of Central Tax &
Central Excise, Cochin **.....Respondent**
C.R. Buildings, I.S. Press Road
Cochin-682 018

WITH
Service Tax Appeal No. 21324 of 2016

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-003-16-17 dated 11.04.2016 passed by the Commissioner of Central Excise, Customs & Service Tax, Calicut]

M/s. Kalyan Jewellers India
Private Limited **.....Appellant**
TC-32/204/2, Sitaram Mill Road
Punkunnam
Thrissur-680 002

VERSUS

C.C., C.E. & S.T., Calicut
Central Revenue Building **.....Respondent**
Mananchira, Calicut
Kozhikode -673 001

Appearence:
Mr. M.S. Nagaraja, Advocate for the Appellant
Mr. Dyamappa Airani, Authorised Representative for the Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20069/ 2024

Date of Hearing: 06.10.2023

Date of Decision: 08.02.2024

Per: P. A. Augustian

M/s Kalyan Jewellers, appellant herein, is engaged in retail business of gold jewelry. The issue involved in the appeals are eligibility of CENVAT credit of service tax paid on the services provided by M/s Oriental Insurance Co., Ltd., to the appellant. Since, the issue involved in both the appeals is common the cases are together taken up for hearing and disposal by this order.

2. The brief facts of the case are that the appellant is an interface between M/s Oriental Insurance Co. Ltd., and customers purchasing jewelry. As per the Tripartite agreement dated 10.04.2011 with insurance company and M/s ALEgION Insurance Broking Ltd, the Insurance Company shall arrange for issue of master insurance policy to the appellant and appellant in turn issues subsidiary policy to the customers. Appellant had collected certain amount from its customers towards the issue of such subsidiary policies, which include premium amount and administration charges and had paid service tax on the said amount. The appellant had paid premium along with service tax to the insurance company on receipt of invoices/documents from the said insurance company. The appellant had taken CENVAT credit of the service tax paid by the insurance company on the premium for the master insurance policy issued to the appellant, which is the subject matter of dispute as to its eligibility. As per the impugned order, it is held that said service is not eligible as input service and not eligible for CENVAT credit. The adjudicating authority has not considered the submission made by the appellant and as per the impugned order, it is held that the Insurance Company was providing service in relation to

insurance of the gold belonging to the customers of the appellant and which was purchased from the appellant. Thus, adjudicating authority confirmed demand of Rs.55,02,796/- and Rs. 45,13,601/ with interest and penalty. Aggrieved by said order, present appeals are filed.

3. When the matter came up for hearing, the Learned Counsel for the appellant submits that as per the impugned order, adjudicating authority held that appellant is providing service under the category of Business Auxiliary Service by implementing the GKL warrant scheme. However, while doing so, it cannot be alleged that insurance service, which is an inevitable part of providing gold care warranty scheme is not an input service of the appellant. The Learned Commissioner has not given any cogent reason as to how the insurance service received by the appellant would not qualify as input service. Further the finding in the impugned order that the appellant has not received any service is contradictory to the actual facts of the case. Learned Counsel further submits that the issue in the present appeal is squarely covered by various judgments including the larger bench order in the matter of M/s South Indian Bank Vs CC, CE & ST, Calicut (reported in 2020 (41) GSTL 609 (Tri.LB), where the Tribunal considered similar issue, where the service provided by the Deposit Insurance and Credit Guarantee Corporation to the banks for insuring the deposits of public with the banks can be considered by the banks as an "input service" and whether CENVAT credit of Service Tax paid by the banks for this service can be rightly availed by the banks for rendering "output services". After detailed hearing, Larger Bench of the Tribunal answered in the following terms:

"The insurance service provided by the Deposit Insurance Corporation to the banks is an "input service" and CENVAT credit of service tax paid for this service received by the banks from the Deposit Insurance Corporation can be availed by the banks for rendering 'output services'."

4. Learned Counsel further submits that the issue in the present appeal is also covered by judgment of Hon'ble High Court of Karnataka in *Commissioner of Central Excise, Bangalore* Vs*. PNB Metlife India Insurance Co. Ltd.* [2015 (39) S.T.R.561 (Kar.)], M/s Carrier Air conditioning & Refrigeration Ltd Vs CCE, Gurgaon (reported in 2016 (41) STR 1004 (Tri.Del) and CCE, & C, Vadodara Vs. M/s Narmada Chematur Pharmaceuticals Ltd (reported in 2005 (179) E.L.T 276 (SC).

5. Regarding finding of the adjudication authority that the documents issued by the insurance company based on which the credit has been availed is not and invoice, bill or challan as specified in Rule 9 of the CCR 2004, Learned counsel for the appellant submits that the said finding is also unsustainable. Learned counsel brought our attention to the Reserve Bank of India Act, 1934, where definition of Financial institution is given and it include "carrying on any class of insurance business". Further, the proviso of Rule 4(a)(1) Service Tax Rules, 1994 make it abundantly clear that in case of service provided by a non-banking financial company, any document by whatever named called would be used in the place of an invoice, bill or challan. Thus, the reason given by the Adjudicating authority denying the benefit on the ground that the document is without proper serial number is illegal and unsustainable.

6. Regarding the penalty, Learned Counsel submits that the appellant had availed the CENVAT credit on bonafide belief that insurance service is being an inevitable part of the Gold Care warranty scheme and insurance service utilized for said scheme would an eligible input. Therefore, the provisions of Section 11(AC), which are conditional proceeding for imposing penalty under Section 15(1) of the CENVAT Credit Rules is unsustainable. Moreover, there is no evidence to allege that the appellant had suppressed the details of the transactions so as to attract the provisions of Section 11(AC) of the Central Excise Act, 1944. Thus, the penalty imposed on the appellant is also unsustainable.

7. Learned Authorised Representative (AR) for Revenue reiterated the finding in the impugned order and further submits that the input service means any service used by the provider of the output service for providing an output service. In appellant's case, main insurance company M/s Oriental Insurance Co., Ltd., issued Master insurance policy to the appellant. Further, the appellant issued subsidiary polices to the customers, who had purchased gold. Learned AR also drew our attention to Clause 14-of the agreement, where it is stated that in case the insured could not issue individual policies within the stipulated period of the Agreement, the insurance company has agreed to receive back the balance policy from the Insured and they shall arrange to pay the balance amount covered under the insured policy to the insured without raising any dispute whatsoever. Thus, appellant was not receiving any service from Insurance Company and in fact, Insurance Company was rendering service only to the purchasers of gold and not to the appellant. Further, submits that the Statement issued by the

Insurance Company cannot be considered as a document as prescribed under Rule 9 of the Cenvat Credit Rules, 2004 for taking credit. Regarding the Larger bench decision in the matter of M/s South Indian Bank (supra), Learned AR submits that in appellant's case, the insurance service received by the Appellant from the Insurance Company is not mandatory and without this service the Appellant can function.

8. Heard both sides perused the records. We have gone through the submissions. considering the above submission, it is an admitted fact that appellant was providing taxable service and paid service tax on 50% of the value collected from the customers. "Output service" is defined under Rule 2(p) of the 2004 Rules. Prior to 1 July, 2012, as follows:

> *"2(p) "output service"* means any taxable service, excluding the taxable service referred to in sub-clause (zzp) of clause (105) of Section 65 of the Finance Act, provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions "provider" and "provided" shall be construed accordingly;"

After 1 July, 2012, "output service" is defined as follows:

> *"2(p) "output service"* means any service provided by a provider of service located in the taxable territory but shall not include a service,
>
> (1) specified in Section 66D of the Finance Act; or
>
> (2) where the whole of service tax is liable to be paid by the recipient of service."

9. Sub-rule (1) of Rule 3 of the 2004 Rules provides that a provider of output service shall be allowed to take Cenvat credit of the service tax leviable under Sections 66, 66A and 66B of the Finance Act. Sub-rule (4) of Rule 3 provides that the Cenvat credit may be utilised for the payment of service tax on any output service.

10. The issue in present appeals is similar to the issue considered by Larger bench in the matter of M/s South Indian Bank (supra) and held that insurance service provided by the Deposit Insurance Corporation to the banks is an "input service" and Cenvat credit of service tax paid for this service received by the banks from the Deposit Insurance Corporation can be availed by the banks for rendering 'output services'. Similarly in the matter of Commissioner of Central Excise, Bangalore Vs. PNB Metlife India Insurance Co. Ltd. [2015 (39) S.T.R. 561 (Kar.)], the issue that came up for consideration before the Karnataka High Court was whether an assessee can avail Cenvat credit of service tax paid on re-insurance services by treating the said service as an "input service". PNB Metlife India Insurance Company was carrying on life insurance business and on the insurance policy issued by it, service tax was charged from the customers. It also procured re-insurance service from overseas insurance companies and availed Cenvat credit of service tax paid on such services received by it. The Cenvat credit was denied by the Department for the reason that re-insurance service cannot be considered as an "input service" since it takes place after the insurance policy is issued. The Hon'ble Karnataka High Court examined whether Cenvat credit availed and utilized by the insurance company on service tax paid for re-insurance service is an "input service" for the output service of insurance that the company was providing and held that the

process of issuance of the policy by the insurer and subsequent procurement of re-insurance policy from another company, which is a statutory requirement, is an integral part of the entire process and the insurance process does not come to an end merely on the issuance of the insurance policy, since it continues till the existence of the term of the policy. The Hon'ble High Court noted that since re-insurance has to be taken under Section 101A of the Insurance Act, 1938, it is a statutory obligation and, therefore, has to be considered as having nexus with the "output service" and, therefore, would be an "input service", for which Cenvat credit can be availed. Hon'ble High Court held that "We only reiterate that the issuance of insurance policy by insurer, and then taking of reinsurance by it, is a continuous process, and in the facts of the present case, it cannot be said that the same would not be an 'input service' eligible for Cenvat credit within the meaning of Rule 2(l) of the Cenvat Credit Rules, 2004". Further, held that denial of such CENVAT credit would be against the ethos of Cenvat credit policy, as the same would amount to double taxation, which is not permissible in law." In a similar case, Tribunal in the matter of M/s Carrier Air conditioning & Refrigeration Ltd Vs. CCE, Gurgaon (reported in 2016 (41) STR 1004 (Tri.Del) held that "The point of dispute is as to whether the appellant would be eligible for Cenvat credit of the service tax paid on the Business Auxiliary Service received by them from their sub-contractors".

11. Regarding finding of the Adjudicating authority denying the benefit on the ground that the document produced by the appellant are without proper serial number, considering the provisions of Reserve Bank of India Act, 1934 on Financial Institutions and also by considering

the proviso of Rule 4(a)(1) Service Tax Rules, 1994, any document by whatever named called would be used in the place of an invoice, bill or challan. Thus, the reason given by the Adjudicating authority for such finding is per se illegal and unsustainable.

12. In view of above discussion and the decisions of the Hon'ble High Court of Karnataka in M/s PNB Metlife India Insurance (supra) the cenvat credit on the service tax paid by the Insurance Company on the premium paid by the appellant cannot be denied and has to be considered as input service received from the Insurance Company.

13. Hence Appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 08.02.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Ganesh