IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No. 40613 of 2013

(Arising out of Order-in-Appeal No. 78/2012 dated 30.11.2012 passed by Commissioner of Central Excise and Service Tax (Appeals), Large Taxpayer Unit, 1775, J.N. Road, Anna Nagar (W) Extension, Chennai – 600 101)

Commissioner of GST and Central Excise **...Appellant**
Large Taxpayer Unit,
1775, Jawarharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai – 600 101.

Versus

M/s. United India Insurance Company Ltd. **...Respondent**
No. 24, Whites Road,
Royapettah,
Chennai -600 014.

And

Service Tax Appeal No. 41446 of 2014

(Arising out of Order-in-Appeal No. 60/2014 dated 02.04.2014 passed by Commissioner of Central Excise and Service Tax (Appeals), Large Taxpayer Unit, 1775, J.N. Road, Anna Nagar (W) Extension, Chennai – 600 101)

M/s. United India Insurance Company Ltd. **...Appellant**
No. 24, Whites Road,
Royapettah,
Chennai -600 014.

Versus

Commissioner of GST and Central Excise **...Respondent**
Large Taxpayer Unit,
1775, Jawarharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai – 600 101.

APPEARANCE:

For the Assessee : Shri S. Muthuvenkataraman, Advocate

For the Department : Shri M. Ambe, Deputy Commissioner / A.R.
Shri Harendra Singh Pal, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 12.10.2023
DATE OF DECISION : 26.10.2023

FINAL ORDER Nos. 40949-40950 / 2023

Order : Per Ms. SULEKHA BEEVI C.S.

The issue involved in both these appeals being connected, they were heard together and disposed of by this common order. The parties hereby are referred to as assessee and Department for the sake of convenience.

2.1 Brief facts are that the assessee is engaged in providing the services of General Insurance business and having centralized registration for the services in the nature of General Insurance Business, Insurance Auxiliary Services & Renting of Immovable Property Services. They could not finalize their tax liability before the due dates on account of the data not reaching them on time from their large number of branches. They made a request to the Department for provisional assessment for the year 2009-2010. The said request was granted on 10.03.2009. Thereafter, while finalization of the provisional assessment, the original adjudicating authority disallowed CENVAT of Service Tax paid under the category of 'Service or Repair of Motor Vehicles' carried out by Authorized Service Station (ASS) of motor vehicle manufacturers and service provided by the Salvager under Port services for refloating a grounded dredger. The reason for denying the credit was that the invoices on which the credit has taken by assessee mentioned the name of clients of the assesse (vehicle owner, ship dredger owner, etc.). Against such order of finalizing the assessment and disallowing the credit, the assessee filed an appeal before the Commissioner (Appeals) and *vide* Order-in-Appeal No.

78/2012, the Commissioner (Appeals) held that the assessee is eligible for credit.

2.2 The assessee on 14.02.2013 filed a refund claim of Rs.1,96,75,899/- consequent to the order of the Commissioner (Appeals) allowing the credit in their favor. The Department passed a review order 19.03.2013, observing that the order passed by the Commissioner (Appeals) allowing the credit is erroneous and for filling an appeal against Order-in-Appeal No. 78/2012. On 20.03.2013, the appeal was filed by the Department against Order-in-Appeal No. 78/2012 before the Tribunal which is ST/40614/2013.

2.3 On 24.05.2013, the refund sanctioning authority *vide* Order-in-Original No. 171/2013-AC (Refund), sanctioned the refund of Rs.1,96,75,899/- to the assessee. The assessee was thus received the cheque of the sanctioned refund.

2.4 On 16.08.2013, Show Cause Notice was issued to the assessee proposing to disallow the credit of Rs.1,96,75,899/- which was granted as refund *vide* Order-in-Original No. 171/2013.

2.5 On 01.10.2013, the assesse filed reply to the Show Cause Notice specifically stating that after the amendment in Section 84, a Show Cause Notice against the refund order cannot sustain and that an appeal ought to have been filed.

2.6 On 29.08.2013, the Department filed an appeal against the Order-in-Original No. 171/2013 before the Commissioner (Appeals). On 02.04.2014, Order-in-Appeal No. 60/2014 was passed rejecting the refund claim that was earlier granted to the assessee and thereby allowing the appeal

filed by the Department. Against such order, the assessee has filed appeal No. ST/41446/2014.

3.1 The Ld. counsel Shri S. Muthuvenkataraman appeared and argued for the assessee. The assessee is providing taxable services under the category of General Insurance service. These services are output service which covers miscellaneous insurance business relating to risks involved in using motor vehicle insurance, general insurance which covers fire, etc.,. The cost of value of such general insurance service on which Service Tax is paid by the assessee includes the value or cost of input service provided by Authorised Service Station. The Department has proposed to reject the credit alleging that the invoices mention the name of the owner of the vehicle / owner of the dredger, etc., and therefore as per Rule 4A of Service Tax Rules, 1994, the documents are not correct for availing the credit. In this context, the sequence of the transaction was explained as under:-

i. The following parties are involved in the transaction *viz.,* the Buyer / Owner of the vehicle, the dealer / the Service Provider of the vehicle and the assessee (The Insurance Company). This is as far as new vehicles are concerned.
ii. For renewal / old vehicles, the owner would approach the assessee directly.
iii. In case the customer vehicle gets damaged or needs a repair which is duly covered by an insurance policy, the customer would approach the Authorized Service Station and deposit the vehicle.
iv. The Authorized Service Station would scrutinize the extent of damage / repair required to be done and repair estimate and hands it over to the customer who in turn furnishes it to the assessee along with intimation claim / claim form.

v. Based on the value of the repair estimate, the assessee would appoint a proper surveyor / surveyors to validate the process and obtains a survey report.

vi. The surveyor report forms the basis for the settlement of the claim by the assessee. Only the surveyor would scrutinize the rough estimate form in the presence of the Authorized Service provider and the Authorized Service Station would identify the extent of the damage and the repairs required. The surveyor and authorized service station would conclude the extent of repairs / replacements to be drawn and the assessee would bear the claim leaving the balance to be paid by the customer directly to the Authorized Service Station.

vii. The Authorized Service Station would effect the necessary repairs / replacements and hand over the bills to the assessee.

viii. Again, based on understanding, the assessee may effect payments directly to the Authorized Service Station or upon reimbursed by the customer. In the case of the former, there would be a satisfaction note through which the assessee undertakes to pay the Authorized Service Station. In the case latter, the customer has to provide proof of payment to the Authorized Service Station and upon satisfaction; the assessee would reimburse the customer.

3.2 From the above flow of things, the following emerges:-

a) The insurance policy is taken only by the customer and such a policy can be issued only by the assessee in the capacity as a service provider.

b) The customer shall always remain only as a service receiver.

c) There is no privity of contract between the customer and the Authorized Service Station.

d) The appellants validate/ recognize every activity of repair/ replacement through a set of processes referred to above to the extent covered by the policy.

e) Neither the customer nor the Authorized Service Station can take any unilateral decision in effecting repairs/ replacements.

f) The obligation to settle the claim is only on the assessee, the insurance company. As a business practice, the invoices in all cases are raised by the Authorized Service Station only in the name of the customers who had originally deposited the vehicles for repair/ replacements.

g) The payments governed by the claims duty evidenced by various collateral documents referred to above are settled only by the appellants and are not ultimately borne by the customer.

3.3 The Department has denied the credit alleging that the invoices are raised where the name of the owner of the vehicle is mentioned and not that of the assessee. In the particular nature of the transactions of General Insurance business, the invoice mentions the name of the owner of the vehicle. Rule 9 does not state that if the invoice or bill or challan is not issued in the name of input service receiver credit has to be denied even if the output service provider receives the input service and uses it in providing taxable service and pays Service Tax.

3.4 It is submitted that the issue stand covered by the decision in the assessee's own case *M/s. United India Insurance Co. Ltd. Vs. Commissioner of Central Excise and Service Tax, LTU, Chennai [2019 (27) GSTL 252 (Tri. – Chennai)]*. The Ld. counsel prayed that the appeal may be allowed.

4. The Ld. Authorized Representative Shri Harendra Singh Pal reiterated the grounds of appeal.

5. Heard both sides.

6. The issue is the disallowance of credit alleging that the invoices bear the name of the vehicle owner / dredgers and is not in conformity of Rule 4A of Service Tax Rules, 1994. The very same issue was considered by the Tribunal in the assessee's own case M/s. United India Insurance Co. Ltd. *(supra)*, the Tribunal held as under:-

> ***"6.1*** *The dispute is regarding the admissibility of Cenvat credit availed by the appellant on certain input services. Vehicle owners who have got their vehicles insured by the appellant, approach the ASS for carrying out the repairs. In cases where such repairs are covered by the insurance policies, the appellant pays for such repairs directly to the ASS (cashless settlement) and in other cases reimburses the vehicle owners for such repairs in full or in part. Such payments have been made by the appellant only as part of the settlement of the General Insurance claims for the insured vehicle.*
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> ***6.2*** *The stand of the Revenue is that the service tax paid to the ASS as part of the repair bill cannot be considered as an input service under the definition 2(l) of the CCR, 2004. From the definition of Rule 2(l), the input service means any service used by a provider of taxable service for providing an output service. In this case, the output service rendered by the appellant is general insurance service. The question to be answered is whether the tax paid on the category of ASS can be considered as a service used for providing output service.*
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> ***6.3*** *The connected question which has been discussed by the adjudicating authority is who is the recipient of service. There is no doubt that the service has been provided by the ASS. The adjudicating authority has taken the view that the ASS has provided the service only to the owner of the vehicle by repairing it. He has taken the view that such service cannot be taken as provided to the appellant or in parts to the appellant and the vehicle owner. In this connection it is not in dispute that the appellant has availed the credit only proportionately to the extent of amount borne by them.*
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> *The general insurance service provided by the appellant basically insures the vehicle against damages. It is obvious that such service can be provided to the customer i.e., owners of the vehicle only by way of reimbursement of the repair charges. We are unable to see any other way by which the vehicle insurance service can be delivered to the*

customer. In this scenario, we are of the view that the service tax paid on the bill of the ASS is to be considered as falling within the definition of the input service which is used for providing the output service of the vehicle insurance.

6.4 *The appellant has relied on the decision of the Tribunal in the Paul Merchants case (supra). We have gone through the said decision in which the Tribunal has made a distinction between the beneficiary of a service and the recipient of the service. The Tribunal observed that "the service recipient is the one who is obliged to pay for the services to the service provider and whose need is satisfied by the provision of the service, in other ways it is the buyer of the service". By following the above analogy, we come to the conclusion that the appellant becomes the recipient of the service of ASS even though the beneficiary remains the owner of the motor vehicle.*

6.5 *The appellant has also referred to the TRU Circular dated 26-2-2010, in which the following clarification has been given :-*

"2.2 A large number of health insurance schemes are being offered by the insurance companies under which charges for hospitalization, surgery, post-surgical nursing etc. are generally paid by the insurance company. Such insurance policies, which fall under the category of general insurance service, are already taxable. Under general insurance service, an insurance company is a service provider to its clients. Under the proposed new service, tax is also being imposed on the medical charges paid by the insurance companies to the hospitals on behalf of a business entity for its employees. As such, the insurance company would be the service receiver and the tax paid by the hospital would be available to the insurance companies as credit."

Even though the above clarification has been given in the context of health insurance services, we are of the view that the same is relevant for deciding the claim of the appellant for Cenvat credit. In the present case, the appellant being the service receiver will be entitled to the credit of service tax paid in terms of Rule 2(l) ibid.

6.6 *The Revenue has also raised the issue that the invoices issued by the ASS which is the document based on which the appellant has availed the Cenvat credit, is invariably in favour of the owner of the vehicle and is not in favour of the appellant. Hence, Cenvat credit cannot be allowed to the appellants. As discussed above, we have held that the above service is eligible to be considered as an input service for the appellant. In the peculiar facts and circumstances of the case, we appreciate that the invoices will be issued by the ASS only in favour of the vehicle owners who took the vehicle to them for repair. But it is a fact that the insurance claims will be admitted by the appellant only after proper survey and further from the record it is seen that the credit availed by them is restricted to the portion of the repair bill reimbursed by the appellant. There is also nothing on record to suggest that the owner of the vehicle has also made claims for Cenvat credit. Consequently, we are of the view that not having the invoice in favour of the appellant should*

be considered only as a procedural infraction and should not be used to deny the credit which otherwise they are eligible."

7. After appreciating the facts and noting that the Commissioner (Appeals) has allowed the credit after which the refund has been sanctioned to the appellant, we are of the considered opinion that the denial of credit is without any legal or factual basis.

8. In the result, the impugned Order-in-Appeal No. 60/2014 is set aside. The impugned Order-in-Appeal No. 78/2012 is sustained. The appeal filed by the assessee is allowed. The appeal filed by the Department is dismissed.

(Order pronounced in open court on 26.10.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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