# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

## Service Tax Appeal No. 1036 of 2009

(Arising out of Order-in-Original No.42/2009-ST dt.19.10.2009 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II)

**Satyam Computer Ltd.**
SSL Building, Hitech City, 2nd Floor,
Block 3, Madhapur, Hyderabad,
Telangana – 500 081 **……Appellant**

*VERSUS*

**Commissioner of Central Tax, Hyderabad-II**
Kendriya Shulk Bhavan, Basheerbagh,
Hyderabad, Telangana – 500 004 **……Respondent**

**Appearance**
Shri Satya Sai, Advocate for the Appellant.
Shri A. Rangadham, Authorized Representative for the Revenue.

**Coram:**
**HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)**
**HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

## FINAL ORDER No. A/30096/2022

**Date of Hearing: 07.09.2022**
**Date of Decision: 07.09.2022**

**[Order per: P.V. SUBBA RAO]**

This appeal is filed by M/s Satyam Computer Ltd[1] assailing Order-in-Original dated 19.10.2009 passed by the Commissioner of Central Excise & Service Tax, Hyderabad-II, whereby CENVAT credit amounting to Rs.4,15,09,544/- taken by the appellant on the service tax paid on insurance services under group Medishield policies and personal accident policies provided to its employees and their families was denied for the period January, 2006 to July, 2007. A penalty of Rs.4,16,00,000/- was also imposed upon the appellant under section 78 of the Finance Act, 1994.

[1] **Appellant**

2. The appellant provides information technology services such as e-business solutions, engineering services, enterprise solutions, customized software development services and ERP implementation services and is registered with the department and has been paying service tax. The appellant also avails Cenvat credit on various input services used for providing output services as per Cenvat Credit Rules, 2004[2]. During audit conducted in 2006, the appellant was advised by the department that the service tax paid in respect of insurance premium towards medishield policies and personal accident policies would not be eligible for Cenvat credit and the appellant reversed entire amount of Cenvat credit of Rs.4,15,09,544/- and reflected the reversal in its Service tax return for the month of August, 2007 and also intimated the department about the reversal by letter dt.19.10.2007.

3. Later, the appellant felt that they were, indeed, eligible for the Cenvat credit and took the credit back and intimated to the department that it took the credit back by a letter dt.25.03.2009. The appellant was then served a show cause notice dt.04.07.2009 seeking to recover this Cenvat credit which was said to be wrongly availed by the appellant during the period January, 2006 to July, 2007. The appellant replied by letter dt.27.08.2009. Thereafter, the impugned order was passed confirming the recovery of the Cenvat credit so availed.

4. On behalf of the appellant, the following submissions were made.

i) The definition of input services in Rule 2(l) of the CCR as it existed prior to 01.04.2011 was as follows:

> *"(l) "input service" means any service, -*
>
> *(i) used by a provider of output service for providing an output service; or*
> *(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,*
>
> *and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,* ***activities relating to business*** *such as accounting, auditing, financing, recruitment and*

[2] **CCR**

*quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal."*

Thus, the definition of input service has wide amplitude and includes any service used in activities relating to business. In their case, they are in the business of providing software solutions and the main resource for providing this service are their employees, who and whose families were provided the mediclaim insurance by the appellant. Therefore, the premium paid for such insurance qualifies as input service. Reliance was placed on the judgment of the Hon'ble High Court of Bombay in the case of Coca Cola India Pvt Ltd vs CCE, Pune-III[3].

ii) The appellant also placed reliance on the following decisions:
   a) Reliance Industries Ltd vs CCE & ST (LTU), Mumbai[4]
   b) CCE, Bangalore-II vs Millipore India Pvt Ltd[5]
   c) Prism Cement Ltd vs CCE, Bhopal[6]
   d) PTC Software (India) Pvt Ltd vs CCE, Pune-III[7]
   e) Ramboll Imisoft Pvt Ltd vs CCE, Hyderabad-II[8]

In particular, learned counsel for the appellant placed reliance on the order of the Larger Bench in the case of Reliance Industries Ltd in which the very specific issue of Cenvat credit on medical insurance was dealt with.

5. Learned Authorized Representative for the Revenue vehemently supported the impugned order and asserted that the premium paid for medical insurance of employees and their families does not qualify as input service under the CCR. He submitted that the "activities relating to business" occurring in Rule 2(l) of CCR was followed by the words "such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital

[3] **2009 (242) ELT 168 (Bom.)**
[4] **2022 (60) GSTL 442 (Tri-LB)**
[5] **2012 (26) STR 514 (Kar.)**
[6] **2019 (369) ELT 1205 (Tri-Del)**
[7] **2014 (35) STR 632 (Tri-Mumbai)**
[8] **2017 (47) STR 61 (Tri-Hyd)**

goods and outward transportation upto the place of removal'. Therefore, only such activities as would fall in the same category as the aforesaid services would qualify as input services and not any service which may have been availed in the course of business. He relies on the judgment of the Hon'ble High Court of Gujarat in the case of CCE, Ahmedabad-II vs Cadila Health Care Ltd[9]. Para 5.2(a)(ix) reads as follows:

> *"(ix) As regards the contention that in any event the service rendered by a commission agent is a service received in relation to the assessee's activity relating to business, it may be noted that the includes part of the definition of input service includes activities relating to the business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security. The words activities relating to business are followed by the words such as. Therefore, the words such as must be given some meaning. In Royal Hatcheries (P) Ltd. v. State of A.P., 1994 Supp (1) SCC 429, the Supreme Court held that the words such as indicate that what are mentioned thereafter are only illustrative and not exhaustive. Thus, the activities that follow the words such as are illustrative of the activities relating to business which are included in the definition of input service and are not exhaustive. Therefore, activities relating to business could also be other than the activities mentioned in the sub-rule. However, that does not mean that every activity related to the business of the assessee would fall within the inclusive part of the definition. For an activity related to the business, it has to be an activity which is analogous to the activities mentioned after the words such as. What follows the words such as is accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security. Thus, what is required to be examined is as to whether the service rendered by commission agents can be said to be an activity which is analogous to any of the said activities. The activity of commission agent, therefore, should bear some similarity to the illustrative activities. In the opinion of this court, none of the illustrative activities, viz., accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security is in any manner similar to the services rendered by commission agents nor are the same in any manner related to such services. Under the circumstances, though the business activities mentioned in the definition are not exhaustive, the service rendered by the commission agents not being analogous to the activities mentioned in the definition, would not fall within the ambit of the expression activities relating to business. Consequently, CENVAT credit would not be admissible in respect of the commission paid to foreign agents."*

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[9] **2013 (30) STR (3) (Guj.)**

6. He submits that the appellant had reversed the Cenvat credit during audit and after one and half year had taken the credit back *suo moto* which is not proper. Further, the insurance is in the nature of a welfare measure for the employees of the appellant and their families and does not squarely fall under the category of "activities relating to business". For these reasons, he prays that the appeal may be rejected.

7. We have considered the arguments on both sides and perused the records. The question which falls for consideration in this appeal is whether the premium paid for medical insurance of employees and their families qualifies as input service under CCR and accordingly, whether the appellant was correct in taking the Cenvat credit of the service tax paid on it or otherwise. It is the submission of the learned Authorized Representative of the Revenue that while expenses on activities relating to business are covered by the definition of input service, this expression is followed by "such as" and a list of services have been indicated. Therefore, the service on which Cenvat credit is admissible must fall in the same category as the listed services. Medical insurance does not fall in that list and is also not similar to the services indicated in that list. Therefore, the appellant is not entitled to Cenvat credit. He relies on the judgment of the Hon'ble Gujarat High Court in the case of Cadila Health Care Ltd. On the contrary, learned counsel for the appellant relies on the judgment of the Hon'ble Bombay High Court in the case of Coca Cola India Pvt Ltd. Para 27 of which is reproduced below:

> *"27. Similarly, the use of the word activities in the phrase activities relating to business further signifies the wide import of the phrase "activities relating to business". The Rule making authority has not employed any qualifying words before the word activities, like main activities or essential activities etc. Therefore, it must follow that all and any activity relating to business falls within the definition of input service provided there is a relation between the manufacturer of concentrate and the activity. Therefore, the phrase "activities relating to business" are words of wide import."*

8. Therefore, according to the learned counsel for the appellant, the term activities relating to business has very wide amplitude and as long as expenditure is related to business activities, Cenvat credit cannot be denied. We find that there is no judgment of the jurisdictional High Court of this Bench and the two judgments by two other High Courts interpret the term

"activities relating to business" differently. While as per the Hon'ble Bombay High Court's judgment in the case of Coca Cola India Pvt Ltd, this term has very wide amplitude, as per the Hon'ble Gujarat High Court's judgment in the case of Cadila Health Care Ltd, this term is followed by the words "such as" with an illustrated list of services. To qualify as activity relating to business, the service in question must fall within the same category as those in the list.

9. We find that the issue of Cenvat credit on insurance services provided to the employees has been dealt with by the Larger Bench of this Tribunal in the case of **Reliance Industries Ltd** and it has been held that Cenvat credit is available on the service tax paid on such premium. **Reliance Industries Ltd** dealt with the question whether such premium was paid for insurance of not the employees but those who have opted for voluntary separation scheme announced by the company. In other words, the persons who would benefit from this insurance premium will cease to be employees of the company in that case. In the present case, the claim of the appellant is on a much better footing, inasmuch as the premium in this case is paid for medical insurance of its own employees and their families. In view of the above, the impugned order cannot be sustained and needs to be set aside and we do so.

10. The appeal is allowed and the impugned order is set aside with consequential relief, if any, to the appellant.

(Operative part of the order was pronounced in the Open Court)

**(ANIL CHOUDHARY)**
**MEMBER (JUDICIAL)**

**(P.VENKATA SUBBA RAO)**
**MEMBER (TECHNICAL)**

**Veda**