IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 42723 of 2018

WITH

Service Tax Appeal No. 42724 of 2018

AND

Service Tax Appeal No. 40381 of 2019

(Arising out of common Order-in-Appeal Nos. 513-515/2018 (CTA-I) dated 26.09.2018 passed by the Commissioner of G.S.T. and Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. United India Insurance Company Limited : Appellant
No. 24, Whites Road,
Chennai – 600 014

VERSUS

Commissioner of G.S.T. and Central Excise : Respondent
Chennai North Commissionerate
26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034

APPEARANCE:

Shri S. Muthu Venkataraman, Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 40119-40121 / 2024

DATE OF HEARING: 17.01.2024

DATE OF DECISION: 01.02.2024

Order : [Per Hon'ble Mr. P. Dinesha]

[Period of dispute: 2014-15, 2015-16 and 2016-17]

Brief undisputed facts, as could be gathered from the common impugned Order-in-Appeal are that the appellant is engaged in providing the following services: -

1. General Insurance Services
2. Insurance Auxiliary Services – Reverse Charge
3. Renting of Immovable Property Services
4. Sponsorship Services – Reverse Charge
5. Renting of Motor Vehicle Services – Reverse Charge
6. Legal Services – Reverse Charge
7. Works Contract Services – Reverse Charge
8. Manpower Supply Services – Reverse Charge
9. Other Taxable Services – Reverse Charge

2. They opted for provisional assessment on the ground that they could finalize the tax liability only after collecting data from all their operating offices and hence, provisional assessment was granted for the years 2014-15, 2015-16 and 2016-17; the appellant thereafter filed the final S.T.-3 returns as under: -

For the year	**Date of filing**
2014-15	28.10.2015
2015-16	25.10.2016
2016-17	31.10.2017

3.1 It appears that after due process, Orders-in-Original for the above period were passed which are tabularized in the impugned order. The same is reproduced hereinbelow for convenience: -

Order-in-Original No. & Dt.	**Period**	**Amount**	**Issue Involved**
01/2017-18(PA) dated 27.03.2018	2014-15	Rs.8,00,82,567/-	1) Demand of CENVAT Credit under Rule 6 of the CENVAT Credit Rules, 2004
		Rs.4,920/- + Rs.52,96,642/-	Disallowed CENVAT Credit on Hotel Accommodation and Medical Insurance
02/2017-18(PA) dated 27.03.2018	2015-16	Rs.10,23,08,928/-	1) Demand of CENVAT Credit under Rule 6 of the CENVAT Credit Rules, 2004
		Rs.34,057/- + Rs.2,11,61,241/-	2) Disallowed CENVAT Credit on Hotel Accommodation and Medical Insurance
03/2017-18(PA) dated 27.03.2018	2016-17	Rs.6,484/- + Rs.2,72,32,533/- + Rs.74,50,701/-	Disallowed CENVAT Credit on Hotel Accommodation, Medical Insurance and General Insurance Business

3.2 It appears that there was a Corrigendum dated 04.05.2018 issued in respect of agricultural premium.

4.1 Aggrieved by the demand confirmed in the Orders-in-Original, as depicted in the table above, the appellant appears to have filed appeals before the first appellate authority. Issues made out in the grounds-of-appeal before the first appellate authority, as could be seen from the copy of the grounds-of-appeal in Form ST-4 placed in the appeal folder, are: -

(1) Whether the calculation of the amount to be reversed on common input services in terms of Rule 6(2) of the CENVAT Credit Rules read with Rule 6(3A) is correct?

(2) Whether the denial of credit on the input services related to Hotel Accommodation and staff Mediclaim is correct?

4.2 In respect of the period 2016-17, the following additional issue has been made out by the appellant in the grounds-of-appeal: -

- Whether the short payment ascertained for the finalisation of provisional assessment for the year 2016-17 in the impugned order is correct on facts and on law?

5.1 The first appellate authority having heard the representative of the appellant, has dismissed the appeals vide common impugned Order-in-Appeal Nos. 513-515/2018 (CTA-I) dated 26.09.2018. In the impugned order, the first appellate authority has followed an order of the Ld. Mumbai Bench of the CESTAT in the case of *M/s. Thyssenkrupp Industries (India) Pvt. Ltd. v. Commissioner of Central Excise, Pune [2014 (310) E.L.T. 317 (Tri. – Mumbai)]* to hold that the impugned Orders-in-Original were correct in re-determining the amount payable under Rule 6(3A) of the CENVAT Credit Rules, 2004 thereby holding that the finding of the original authority requiring reversal of CENVAT Credit by the appellant was justified.

5.2 Regarding the denial of CENVAT Credit on Hotel Accommodation and Health Insurance for employees, the first appellate authority has noted the specific exclusion of the above services with effect from 01.04.2011 with the insertion of clause (C) to Rule 2(l) of the CENVAT Credit Rules and hence, has confirmed the denial of CENVAT Credit in the Orders-in-Original of the above services as in order and that the appellant was not eligible to take CENVAT Credit on the Hotel Accommodation and Health Insurance for their staff.

5.3 Regarding the Corrigendum issued after the Orders-in-Original, the first appellate authority has held that the appellant had not contested on merits and that their only contention was that the Corrigendum was not permissible under law; and that since the demand in the Corrigendum was not confirmed in the impugned orders, the Commissioner (Appeals) had chosen not to interfere with.

6. Seriously aggrieved by the above common Order-in-Appeal, the appellant has preferred the present appeals before this forum. In the grounds-of-appeal, the appellant has made out the following issues: -

(1) Whether the adjudicating authority was correct in finalizing the provisional assessment when certain issues relating to the provisional assessment were pending for adjudication by issue of separate notices and whether the Commissioner (Appeals) could pass an Order-in-Appeal without considering this legal proposition? And whether the finalization of provisional assessment could be done without issue of a notice and without following principles of natural justice?

(2) Whether the corrigendum issued to the original order of Finalization of Provisional Assessment was legally sustainable and whether on this issue the Commissioner (Appeals) finding is correct when he has not taken into consideration the grounds taken before him on this issue?

(3) Whether the reversal of credit attributable to common input services used for taxable services and exempted services as done by the appellants was correct in terms of the relevant rules? Whether the methodology adopted is in tune with the legal provisions?

(4) Whether credit attributable to input services towards Hotel Accommodation and staff Mediclaims could be denied for the reasons stated, if any, in the order of Finalization of Provisional Assessment and whether the Commissioner (Appeals) order confirming such denial of credit is correct?

7.1 Shri S. Muthu Venkataraman, Ld. Advocate, would contend at the outset that no Show Cause Notices were issued in the present cases. He would also submit that the issue of reversal of CENVAT Credit under Rule 6 of the CENVAT Credit Rules should

be on the total value of CENVAT Credit and not on the common CENVAT Credit used for both taxable and exempted services. He would rely on the following orders of various co-ordinate CESTAT Benches in this regard: -

i. *Commissioner of Central Excise & Service Tax, Rajkot v. Reliance Industries Ltd. [2019 (28) G.S.T.L. 96 (Tri. – Ahmd.)=2019 (3) TMI 784]*

ii. *E-Connect Solutions (P) Ltd. v. Commissioner of Central Excise and Central Goods and Service Tax, Udaipur [2021 (376) E.L.T. 678 (Tri. – Del)=2020 (11) TMI 282]*

iii. *JSW Steel Ltd. v. Commissioner of Central Tax and Central Excise, Belgaum [2024 (1) TMI 446 – CESTAT, Bangalore]*

iv. *Toshiba JSW Power Systems Pvt. Ltd. v. Commissioner of G.S.T. and Central Excise, Chennai [2023 (6) TMI 543 – CESTAT, Chennai]*

v. *Dalmia Cement (Bharat) Ltd. v. Commissioner of G.S.T. and Central Excise, Tiruchirappalli [2023 (9) TMI 1136 – CESTAT, Chennai]*

vi. *Lotte India Corporation Ltd. v. Commissioner of G.S.T. & Central Excise [2020 (3) TMI 307 – CESTAT, Chennai]*

7.2 With regard to the denial of CENVAT Credit on Medical Insurance and Hotel Accommodation Services, he would submit that these issues are also no more *res integra* by virtue of the following rulings:-

- Medical Insurance:

  i. *Ganesan Builders Ltd. v. The Commissioner of Service Tax [2019 (20) G.S.T.L. 39 (Mad.)=2018 (10) TMI 269]*

  ii. *Essjay Ericsson (P) Ltd. v. Commissioner of C.G.S.T., Delhi East [2023 (7) TMI 261 – CESTAT, New Delhi]*

  iii. *Rajratan Global Wire Ltd. v. Commissioner, Central Goods & Service Tax, Ujjain [2021 (4) TMI 400 – CESTAT, New Delhi]*

  iv. *ETA Travel Agency Pvt. Ltd. v. Commissioner of Service Tax, MHU Complex, Chennai [2023 (2) TMI 894 – CESTAT, Chennai]*

  v. *Alstom T & D India Ltd. & Scheider Electric Infrastructure Ltd. v. Commissioner of Central Excise & Service Tax [2020 (3) TMI 74 – CESTAT, Chennai]*

  vi. *Hydus Technologies India Pvt. Ltd. v. Commissioner of C.Ex., Cus. & S.T., Hyderabad-II [2017 (52) S.T.R. 186 (Tri. – Hyd.)=2017 (2) TMI 538]*

- Hotel Accommodation Service:

  i. *Temenos India Pvt. Ltd. v. Commissioner of Service Tax, Chennai [2020 (2) TMI 354 – CESTAT, Chennai]*

  ii. *Bharat Heavy Electricals Ltd. v. Commissioner, Central Excise & C.G.S.T., Dehradun [2022 (10) TMI 286 – CESTAT, New Delhi]*

  iii. *Aban Offshore Ltd. v. Commissioner of G.S.T. & Central Excise (Appeals-III), Mumbai [2020 (9) TMI 937 – CESTAT, Mumbai]*

7.3 In addition, he would also contend that insofar as the alleged short payment of tax for General Insurance Services is concerned, there is no finding in the impugned order and hence, the matter requires re-consideration. But however, from the perusal of the grounds-of-appeal urged before the lower appellate

authority, we do not see any grounds being taken in this regard and quite naturally, there is no finding given by the lower appellate authority on this issue. Hence, the said grievance of the appellant is not arising out of the impugned order and thus, we do not propose to give any finding on this issue.

7.4 Without prejudice, Ld. Advocate would also submit that the first appellate authority has only followed an interim order of the Mumbai Tribunal in the case of *M/s. Thyssenkrupp Industries (India) Pvt. Ltd. (supra)* whereas the very same Tribunal in its Final Order has reversed the interim order. However, no copy of the Final Order was placed before us. It was thus his case that even this issue may be remanded for fresh consideration since the Commissioner (Appeals) has not considered Final Orders of various Tribunals in this regard.

8. *Per contra*, Shri M. Ambe, Deputy Commissioner, supported the findings of the lower authorities.

9. We have heard the rival contentions and we have carefully perused the documents placed on record and also the orders of various Benches of the CESTAT relied upon before us.

10. After hearing both sides, the following common issues arise for our consideration: -

(1) Whether the first appellate authority was correct in upholding the finalization of provisional assessment when certain issues relating to the provisional assessment were pending for adjudication by issue of separate notices and whether the Commissioner (Appeals) could pass an Order-in-Appeal without considering this legal proposition? And whether the finalization of provisional assessment could be done without issue of a notice and without following principles of natural justice?

(2) Whether the corrigendum issued to the original order of Finalization of Provisional Assessment was legally sustainable and whether on this issue the Commissioner (Appeals) finding is correct when he has not taken into consideration the grounds taken before him on this issue?

(3) Whether the reversal of credit attributable to common input services used for taxable services and exempted services as done by the appellants was correct in terms of the relevant

rules? Whether the methodology adopted is in tune with the legal provisions?

(4) Whether credit attributable to input services towards Hotel Accommodation and staff Mediclaims could be denied for the reasons stated, if any, in the order of Finalization of Provisional Assessment and whether the Commissioner (Appeals) order confirming such denial of credit is correct?

11.1 From a perusal of the impugned order, we find that there is no discussion as regards the reversal of proportionate CENVAT Credit, but however, the Commissioner (Appeals) has only followed the order of the Mumbai Bench of the CESTAT in Stay Petition No. *E/Stay/94212/2014-Mum. In Appeal No. E/86112/2014-Mum [2014 (310) E.L.T. 317 (Tri. – Mumbai)].* We have gone through the said order relied upon by the lower appellate authority, from which it is clear to us that the same is in the nature of an interim order passed while disposing of the stay petition filed for waiver of pre-deposit and hence, the said order cannot be considered as a Final Order. From the assertion of the Ld. Advocate, we find that the Mumbai Tribunal in the said case in *Final Order No. A/85557-85558/2023 dated 10.02.2023 in Excise*

Appeal No. 86112 of 2014 and Excise Appeal No. 85932 of 2015 has, however, set aside the demand confirmed, which is required to be considered by the Commissioner (Appeals).

11.2 Even from a perusal of the Orders-in-Original, we find that the adjudicating authority has proceeded to finalize the provisional assessments without putting the appellant on notice and hence, the Orders-in-Original have been passed without adhering to the principles of natural justice. Hence, we find that the grievance of the appellant as to the finalization of provisional assessment having been done without issuance of Show Cause Notice requires redressal, for which reason we deem it fit and proper to remand the matter for *de novo* adjudication insofar as the first and third issues are concerned. The adjudicating authority shall pass a *de novo* order within a period of ninety days from the date of receipt of the Order of the CESTAT by the jurisdictional Commissionerate.

11.3 Hence, acceding to the request of the appellant, we deem it appropriate to set aside the impugned order to this extent and direct the adjudicating authority to consider the contentions of the appellant and also the principle laid down on this issue by various higher judicial fora which are relied upon by

the appellant and pass a speaking order. The first and third issues are therefore answered accordingly. All the contentions of the appellant on these issues are left open, and the appellant shall co-operate with the adjudicating authority without seeking unnecessary adjournments.

11.4 Though the appellant feels aggrieved in the above manner, but however, the same is only an assertion, not supported by any documents, no documents evidencing the pendency as alleged in the above paragraph is placed before us. Hence, we do not propose to give any finding on this issue, but however, the appellant is at liberty to bring to the notice of the adjudicating authority as to the finalization of any assessment/adjudication, if any, post the passing of the impugned order which relate/s to any of the periods under dispute.

12. Insofar as the second issue is concerned, we find that the appellant has seriously contested the same since the corrigendum was issued after Finalization of the Provisional Assessment. We find that under the guise of corrigendum, the original authority has re-visited the concluded original proceedings and thereby substantially modified paragraphs (f), (h) and (h) of the Order-in-Original

No. 01/2017-18 (PA) dated 27.03.2018, Order-in-Original No. 02/2017-18 (PA) dated 27.03.2018 and Order-in-Original No. 03/2017-18 (PA) dated 27.03.2018 respectively, thereby holding that "… *the assessee are not eligible for exemption* …". This is impermissible in law since admittedly, he has passed speaking Orders-in-Original and thereafter, no Notice was issued to the appellant for withdrawing an exemption already granted. Hence, the Commissioner (Appeals) has clearly erred in holding that "… *demands confirmed in the impugned orders do not have any bearing with respect to corrigendum … there is no question of interference by me in the impugned orders* …". We find it difficult to accept the above view of the lower appellate authority since the corrigendum is clearly issued without adhering to the principles of *audi alteram partem* and secondly, all the speaking Orders-in-Original were passed after due application of mind. Moreover, it is also the settled position of law that other than carrying out corrections, if any, denial or withdrawing any relief granted earlier which is substantial in nature cannot be made by issuing a mere corrigendum. The action of the adjudicating authority has clearly amounted to reviewing his own earlier order, which is impermissible in law, also for the reason that it may be a debatable issue. Hence,

the grievance of the appellant is required to be sustained and accordingly, we set aside the impugned order to the above extent.

13.1 Insofar as the fourth issue is concerned, we find that vide Notification No. 3/2011-C.E.(N.T.) dated 01.03.2011 certain services were specifically excluded, as noted by the lower appellate authority and hence, the lower appellate authority has only followed the law as applicable. Clause (C) to Rule 2(l) of the CENVAT Credit Rules, which has been relied, as extracted in the impugned order at paragraph 8, specifically excludes, *inter alia*, health insurance and travel benefits extended to employees.

13.2 In that view of the matter, we do not find any merit in the appellant's claim insofar as Hotel Accommodation and Medical Insurance are concerned. Accordingly, the grounds-of-appeal to this extent are dismissed.

14. In the result, the appeals are disposed of, as indicated above.

(Order pronounced in the open court on **01.02.2024**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd