

Custom, Excise & Service Tax Tribunal

Tata Aig General Insurance Coltd vs Commr Service Tax- Vi Mumbai on 8 November, 2023

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 85359 of 2017

(Arising out of Order-in-Original No. MUM-SVTAX-006-COM-48-16-17 dated

28.11.2016 passed by the Commissioner of Service Tax-VI, Mumbai.)

M/s. Tata AIG General Insurance Co. Ltd.
.....Appellant

Infinity I.T. Park, A - 501,
5th Floor, Building No.-4,
Dindoshi, Malad (East)
Mumbai - 400 097

VERSUS

Commissioner of Service Tax-VI, Mumbai
.....Respondent

1st Floor, Mahavir Jain Vidyalaya,
CD Barfiwala Marg, Andheri West,
Mumbai - 400 058

WITH

Service Tax Appeal No. 85635 of 2021

(Arising out of Order-in-Original No. 35/MG/Pr.COMMR/ME/2020-21 dated 30.01.2021 passed by the Principal Commissioner of GST & Central Excise, Mumbai East.)

M/s. Tata AIG General Insurance Co. Ltd.
.....Appellant
Peninsula Corporate Park,
G.K. Marg, Lower Parel,
Mumbai - 400 013

VERSUS

The Principal Commissioner of CGST & CX,Respondent
Mumbai East
9th Floor, Lotus Info Centre,
J.B. Marg, Near Parel Station,
Mumbai - 400 012

APPERANCE:

Shri Vinay Jain, Advocate for the Appellant

Shri Anand Kumar, Commissioner with Shri A.K. Srivastava,
Assistant
Commissioner Authorised Representative for the Respondent

ST/85359/2017

ST/

85635/2021

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 87119-87120/2023

21.09.2023

Date of Hearing:

08.11.2023

Date of Decision:

PER: DR. SUVENDU KUMAR PATI

Denial of CENVAT Credit at the receiver's end, on the ground of

incorrect description of services in the invoices raised by the service

provider, is assailed in this appeal.

2. Facts

of the case, in a nutshell, is that Appellant is engaged in the business of providing general insurance services. It has been receiving infrastructure facilities and support services from various motor car dealers as well as availing input credits against payment of tax paid towards availment of such services alongwith other services like work stations, advertisement etc. On

the basis of intelligence gathered by the DGCI that the dealers of cars were collecting insurance premium from the car customers and remitting the insurance amount to the insurance companies against receipt of certain percentage towards 'own damage premium' and 'pay out' without a valid insurance agency/brokerage licence, investigations were conducted that revealed that actually services like "work stations, support services and display service" were not provided by the dealers to the Appellant and amount paid to the dealers were ST/85359/2017 ST/ 85635/2021 certain percentage of the amount paid only towards insurance premium collected by them and remitted to the Appellant insurance company. Accordingly, show-cause cum-demand notice under Rule 15(3) of the CENVAT Credit Rules, 2004 read with Section 78 of the Finance Act, 1994 for the period from April 2010 to March 2015 was issued on 15.10.2015 denying CENVAT Credit availed to the extent of Rs.7,53,33,677/- that got confirmed vide Order-in-Original dated 28.11.2016 alongwith interest and equal penalty under Section 78 of the of the Finance Act, 1994. For the subsequent period, statement of demand was made on 18.01.2018 under Section 73(1A) of the Finance Act, 1994 for recovery of inadmissible credit of Rs.27,76,90,722/- computed for the period between April 2015 and June 2017 that also got confirmed vide Order-in-Original dated 30.01.2021 with interest and equal penalty under Section 76 as well as penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994 accordingly. Both the orders are assailed in these two appeals.

3. During course of hearing of the appeal learned Counsel for the Appellant Mr. Vinay Jain submitted that Appellant had entered into several agreements with motor car dealers for providing facilities including sharing of desktops, telephones, fax, photocopying machines, storage room for storage of advertisement materials, safe custody of policies etc. which were specifically incorporated in the agreement and the motor vehicle dealers raised invoices with service charges and service tax for the services provided by them against ST/85359/2017 ST/ 85635/2021 which Appellant had rightly availed the credits since the output service in completing insurance business was becoming fruitful through those inputs but instead of raising invoices with description as business support service defined under Section 65(104)C of the Finance Act, 1994, they had put incorrect description of services in the invoices but that would not make the nature of transaction invalid in view of the decision of the Hon'ble Supreme Court passed in the case of Senairam Doongarmall Vs. CIT reported in 1961 42 ITR 392 (SC), apart from the fact that classification of service is no more relevant for the period post 01.07.2012 after which the definition of service have undergone a change. He further submitted that there is a plethora of decision including the one passed by the Hon'ble Madras High Court in Modular Auto Ltd. Vs. CCE reported in 2018 VIL 541 MAD ST and orders by this Tribunal in several other cases of similar nature including cases in which investigation was undertaken by DGCEI, Chennai against other insurance companies namely in the case of Cholamandalam Ms General Insurance Co. Ltd. Vs. CGST & CENTRAL EXCISE, reported in 2021 (3) TMI 24 - CESTAT CHENNAI reported in 2021 (9) TMI 442 CESTAT CHENNAI, Bajaj Allianz General Insurance Co. Ltd. Vs. CCGST & CE reported in 2022 (10) TMI 1165 - CESTAT MUMBAI, ICICI Lombard General Insurance Co. Ltd. Vs. CGST & CE reported in 2023 (2) TMI 1093 - CESTAT MUMBAI, Future Generali India Insurance Co. Ltd. Vs. CC reported in 2023 (4) TMI 922 - CESTAT MUMBAI, in which it was categorically and consistently held that credit cannot be denied at the recipients ST/85359/2017 ST/

85635/2021 end without opening the assessment at the service providers end, for which the order passed by the Commissioner is unsustainable in both facts and law.

4. Per contra learned Authorised Representative for the Respondent-Department Mr. Anand Kumar argued in support of the reasoning and rationality of the order passed by the Commissioner and tried to justify that due to incorrect description in the invoices, that failed to meet the requirement of Rule 4A(1) of the Service Tax Rules, credit was justifiably denied to the Appellant. He further submitted that the amount transferred to the vehicle dealers were dependent on the number of vehicles sold and insured and not based on the provision for supply of infrastructure or business support services, for which interference in the order passed by the Commissioner is uncalled for.

5. We took note of the submissions and examined the appeal case records as well as the relied upon judgments. As could be noticed, in the instant case the motor vehicle dealer as an agency was providing services to the Appellant and raising invoices with description of services as per the format provided to it by the Appellant through email. The contract copy filed in response to the summons issued for appearance is not in respect of M/s. Anamallais Motors Pvt. Ltd. who issued the invoices and whose proprietor Smt. A. Umadevi is the authorised insurance agent for the Appellant but Appellant claims ST/85359/2017 ST/ 85635/2021 that agreements entered with car dealers, including the copy of agreement dated 01.11.2012 signed with M/s Unic Automobile (MAH) Pvt. Ltd. (copy filed) are by and large containing same provisions. It is further noticed that the said agreement annexed to the appeal memo as Annexure-4 doesn't contain provision for payment against such services and the modalities of such payment, which Respondent-Department has linked to the number of insurance policies sold but if the same is treated as service received from the car dealers against which Service Tax liability was discharged by the car dealers and the same remained undisputed, there is no point in the denying credits to the Appellant who had availed those services to sale its car insurance policies and this being a separate transaction it is immaterial as to who received commission against generation of a car insurance policy by availing such services. The same fact is also applicable in respect of retainer/retailers who also had provided certain services to the Appellant and this fact has been fortified and approved by the Tribunal and also by Hon'ble High Courts through series of judgments. We are, therefore, of the considered view that the issue is no more res integra that without opening assessment of the provision of service extended by the service provider, CENVAT Credits cannot be denied to the recipient who had paid the required Service Tax through the service receiver in order to avail the input services. Therefore, in furtherance to the judicial precedent set by this Tribunal as well as by the Appellate Courts, the following order is passed.

ST/85359/2017 ST/ 85635/2021 THE ORDER

6. Both the appeals are allowed and the order passed by the Commissioner of Service Tax-VI, Mumbai vide Order-in-Original No. MUM-SVTAX-006-COM-48-16-17 dated 28.11.2016 and the order passed by the Principal Commissioner of GST & Central Excise, Mumbai East vide Order-in-Original No. 35/MG/Pr.COMMR/ME/2020- 21 dated 30.01.2021 are hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 08.11.2023) (Dr. Suwendu Kumar Pati) Member
(Judicial) (Anil G. Shakkarwar) Member (Technical) Prasad