IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2

Excise Appeal No.75020 of 2022

(Arising out of Order-in-Appeal No.130/Kol-South/21 dated 04.10.2021 passed by Commissioner of CGST & CX, Appeals-I, Kolkata.)

M/s. Diamond Beverages Private Limited
(P-41, Taratala Road, Kolkata-700088.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate
.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Ankit Kanodia & Ms.Megha Agarwal, both Advocates for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75485/2022

DATE OF HEARING : 6 July 2022
DATE OF DECISION : 23 August 2022

P.K.CHOUDHARY :

The present Appeal has been preferred by the Appellant being aggrieved by the Order-in-Appeal No. 130/Kol-South/21 dated 04/10/2021 passed by the Commissioner Of CGST & CX (Appeals-I), Kolkata by which Cenvat credit of Rs.4,38,273/- with respect to the Service Tax paid on the premium of the Group Mediclaim Policy for its employees was disallowed. The Ld. Commissioner (Appeals) had further remanded the matter to the Ld. Adjudicating authority for determination of penalty imposed on the Appellant vide the adjudication order dated 28.02.2019.

2. Heard both sides and perused the appeal records.

3. I find that the short issue to be decided in the present case is whether the Cenvat credit of Service Tax paid on the insurance

premium on the insurance policies taken for the employees of the Appellant which is covered under the Employees State Insurance Act 1948 as well as the Factories Act, 1948 are eligible for Cenvat credit as per Rule 2(l) of the Cenvat credit Rules, 2004.

4. I find from the appeal records that the above policy has been taken by the Appellant for its factory employees and that the Appellant is registered under the Employees State Insurance Act, 1948 as well as the Factories Act, 1948, which mandates such policy to be obtained by the Appellant.

5. Further, the Appellant relied upon the decision of the Tribunal in the case of HINDALCO INDUSTRIES LTD. Versus COMMISSIONER OF C. EX. & S.T., NAGPUR 2019 (25) G.S.T.L. 442 (Tri. - Mumbai) decided as follows :

> *"6. The primary dispute in the issue relates to the fact that when the appellant had not challenged inadmissibility ofcredit on insurance and group mediclaim policy, can it do so before the appellate authority? Going by Section 35A(2) ofthe Central Excise Act, 1944 which is equally applicable to service tax matters also, the Learned Commissioner (Appeals)may, at the hearing of the appeal, allow an appellant to go into any grounds of appeal not specified in the grounds ofappeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was notwilful or unreasonable. It is clear from the appeal record that the appellant had not challenged the legality of inadmissibilityof credit on insurance and group mediclaim services before the adjudicating authority, but on that score alone, the sameservice cannot be considered as inadmissible since its legality is to be scrutinized at any stage of the proceedings in thetouchstone of Article 265 of the Constitution of India. Not contesting a particular duty would not make the same admissibleunless it is in conformity to Section 265 of the Constitution of India. Therefore, the grounds agitated by the appellant beforethe Learned Commissioner (Appeals) challenging the inadmissibility of Cenvat credit on insurance and group insurancepolicy are not unreasonable. The Learned Commissioner (Appeals) should have*

entertained those grounds and given hisconsidered opinion on those. Instead, he erroneously interpreted Rule 5 of Central Excise (Appeals) Rules, 2001 andequated additional grounds with additional evidence, which appears to be improper in view of the fact that such extensionof insurance benefits to the employees is a statutory requirement without which a manufacturing unit of the appellant'sstature cannot manufacture the final product, besides the fact that the appellant claims that unless it provides medicalfacilities and insurance coverage to its employees and they are assured of proper medical attention that would generallyaffect their wellbeing, productivity and consequently, the manufacturing business of the appellant would suffer. In theexclusion clause introduced with effect from 1-4-2011 in the CCR, 2004, such insurance and mediclaim, etc., shall betreated as inadmissible if those are used primarily for personal use or consumption of any employee but not all employeesin a group when unrelated to their availing vacation or LTC. Hence, in my considered view, the credit taken by the appellant on insurance and group mediclaim policy services is admissible credit."

Thus, by agreeing with the above view, I am of the opinion that in the case at hand also, the Cenvat credit on group Mediclaim policy cannot be disallowed.

6. Further, it has been initimated by the Appellant that the penalty proceeding has also been dropped by the Ld. Adjudicating authority vide Denovo Order No. 01/Suptd.R.IV/Tara-II/Kol South/CGST & CX/2022-23 dated 12.04.2022.

Thus, the Appeal filed by the Appellant is allowed with consequential relief as per law.

(Order pronounced in the open court on 23 August 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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