

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 89570 of 2018

(on behalf of Appellant/Respondent)

(Arising out of Order-in-Original No. 15/Commr./(Dr.KNR)/CGST & CEX/MC/2018 dated 02.04.2018 passed by Commissioner of CGST & Central Excise, Mumbai)

**ICICI Lombard General InsuranceAppellant
Company Ltd.**

414, Veer Savarkar Marg, Near Sidhi Vinayak Temple,
Prabhadevi, Mumbai-400025.

VERSUS

**Commissioner of CGST And Central
Excise, Mumbai Central**

GST Bhavan, 115, Maharshi Karve Road, OppositeRespondent
Churchgate Station, Mumbai-400020.

Appearance:

Shri V. S. Nankani, Senior Counsel with Ms Stella Joseph and Prakhil
Mishra, Advocates for the Appellant

Shri Nitin M. Tagade, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85169/2023

Date of Hearing: 05.08.2022

Date of Decision: 06.02.2023

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the appellant is a general insurance company, *inter alia*, engaged in the business of providing insurance services in respect of automobiles. For providing such services, the appellant got itself registered with the service tax department as a service provider as well as a service recipient, in terms of the Finance Act, 1994. As per industry practice, automotive dealers, being the first point of contact with the buyers of the automotive car/vehicle, interact with the buyer and facilitate the

availment of insurance services of the appellant by the buyer. Based on the same, buyer procures the insurance policies for the cars/vehicle from the appellant. Out of the premium collected from the buyer of the motor car/vehicle, a portion thereof is paid by the appellant to the automotive dealer as a commission, on which amount, the automotive dealer also charged service tax and duly discharged such liabilities on making payment into the Central Government Account. On the basis of the invoices issued by the automotive dealer and the service tax paid by the automotive dealer to the government, the appellant had availed Cenvat credit, which had been sought to be denied and recovered along with interest and penalty. The show cause notice dated 17.10.2015 issued by the DGCEI, Chennai was adjudicated by impugned order dated 15.02.2018 by the Learned Commissioner of CGST & Central Excise, Mumbai Central, wherein service tax demand of Rs.135,72,98,778/- was confirmed along with interest and also penalty of equivalent amount was imposed on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The learned Senior Advocate appearing for the appellant submitted that the issue involved in the present appeal is no more *res-integra*, in view of the order passed by the Tribunal in the case of M/s. Cholamandalam Ms General Insurance Co. Ltd. v. The Commissioner of G.S.T. & Central Excise, Chennai [2021 (47) G.S.T.L. 263 (Tri.-Chennai)], TVS Motor Company Ltd. v. Commissioner of Central Excise, Chennai [2012 (28) S.T.R. 127 (Tri.-Chennai)] and CCE&C v. MDS Switchgear Ltd. [2008 (229) E.L.T. 485 (S.C.)].

3. On the other hand learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order and supported confirmation of the adjudged demands on the appellant.

4. Heard both sides and perused the records.

5. In this case, it is an undisputed facts that the automotive dealers had paid service tax on the nature of services described in the invoices issued to the appellant; that payment of service tax by

such dealers have been accepted by the service tax authorities having jurisdiction over their business premises. Since, the service tax paid by such dealers was availed as Cenvat credit by the appellant, availment of such credit is in conformity with the Cenvat statute. We find that in an identical case, Cenvat credit was denied by the Department, holding that the invoices issued by the automotive dealers are false/fraudulent/invalid, since no service of the description contained therein was rendered by the auto dealer. The dispute was resolved by the co-ordinate Bench of the Tribunal in the case of M/s. Cholamandalam Ms General Insurance Co. Ltd. (supra), holding that since the service tax was paid by the auto dealer, under the taxable head of "Business Auxiliary Service" and the assessment of auto dealer has not been re-opened or questioned, credit availed cannot be denied to the insurance company. This is also the ratio of the judgment of the Hon'ble Supreme Court in the case of MDS Switchgear Ltd. (supra), wherein it was held that once the tax liability has been discharged and accepted by the Department, the consequential Cenvat credit cannot be denied at the recipient's end.

6. The learned Original Authority has held that no commission could have been paid by the appellant to the automotive dealer under Section 40 of the Insurance Act, 1938 and that such payment, which is recorded by the automotive dealers in their books of account as a commission, is illegal. Such findings, as per our considered view, are untenable on the question of the eligibility to avail Cenvat credit, when tax had undisputedly been received by the Government from the automotive dealers. In addition, the regulatory authority namely, Insurance Regulatory Development Authority (IRDA) has also clarified the correct position in the letter dated 12.08.2015 addressed to the Chairman, CBEC. Such clarification furnished by the Regulatory Authority regarding the procedures followed for outsourcing non-core services of the automotive/automobile dealers, is binding on the Revenue. In this context, the law is well settled that when a competent authority has issued an opinion on a particular matter, the same shall be binding and cannot be questioned by the other agencies.

7. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as; it has confirmed the adjudged demands on the appellant. Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Order pronounced in the open court on 06.02.2023)

(C.J. Mathew)
Member (Technical)

(S. K. Mohanty)
Member(Judicial)

Sm/ys