IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28.03.2023

\+ **SERTA 6/2021**

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX DELHI-SOUTH..... Appellant

versus

ORIENTAL INSURANCE COMPANY LTD ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Harpreet Singh, Senior Standing Counsel with Ms Suhani Mathur and Mr Jatin Gaur, Advocates.

For the Respondent : Ms Charanya Lakshmi Kumaran, Mr Yogendra Aldak, Mr Karan Sachdev and Mr Kunal Kapoor, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the above-captioned appeal under Section 35G of the Central Excise Act, 1944 (hereafter '**the Central Excise Act**') read with Section 83 of the Finance Act, 1994 (hereafter '**the Act**') impugning a final-order dated 28.01.2021 (hereafter '**the impugned order**') passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (hereafter '**CESTAT**'). By the

impugned order, the learned CESTAT had held that the Oriental Insurance Company Ltd. (hereafter '**OIC**') is entitled to avail Central Value Added Tax (hereafter '**CENVAT**') credit on re-insurance services (Indian as well as Foreign Insurance).

2. According to the Revenue (appellant), the learned CESTAT's conclusion is erroneous because by virtue of Rule 2(l) of the CENVAT Credit Rules, 2004 (hereafter '**CCR**') as applicable during the period 01.04.2011 to 20.07.2012, CENVAT Credit was unavailable for insurance in respect of a motor vehicle.

Demand cum Show Cause Notice dated 05.12.2014

3. OIC is engaged in the business of providing general insurance service and re-insurance service, being a registered insurer under the provisions of the Insurance Act, 1938 (hereafter '**the Insurance Act**').

4. The Commissioner, Central Excise Service Tax (hereafter '**the Commissioner**') issued a Demand-*cum*-Show Cause Notice dated 05.12.2014. The show cause notice was issued on the basis of a *Modus Operandi*, Circular No. 29/2013-14 dated 18.03.2014 issued by the Additional Director General, Directorate of Service Tax Mumbai. The said Circular was in respect of wrongful availment of CENVAT Credit in respect of service tax paid on re-insurance premium. It was alleged that insurance companies were wrongfully availing credit in respect of service tax paid on re-insurance premium for discharge of service tax payable on insurance services. According to the Revenue, the service tax on re-insurance premium was not covered within the definition of

'input service'. It was alleged that insurance companies engaged in providing general insurance services were parties to the Indian Motor Third Party Insurance Pool and were availing input credit on the basis of invoices issued by re-insurers as well as invoices issued by members of the Indian Motor Third Party Insurance Pool, which was constituted to share the risks of motor third party insurance.

5. OIC had availed input credit in respect of re-insurance premium as well as on payments made to pool members of the Indian Motor Third Party Insurance Pool. The Commissioner classified the same under three heads: (i) input credit for service tax paid on re-insurance of Indian business; (ii) input credit for re-insurance business paid under reverse charge mechanism; and (iii) input credit on service tax paid to the Indian Motor Third Party Insurance Pool members. The tabular statement of the input credit availed by the respondent as set out in the show cause notice is reproduced below:

Input Credit availed on Reinsurance Business

Year	Input Credit for service tax paid on reinsurance Indian business (Rs.)	Input Credit for reinsurance business paid under reserve charge (Rs.)	Input credit on service tax paid to Indian Motor Third Party Pool Members (Rs.)
2008-09	628766032	358929311	0
2009-10	696772459	368066377	0
2010-11	621662417	471976774	1160925793
2011-12	706065972	427172874	831458514
Total	2653266880/-	1626145336/-	1992384307/-
Grand Total	6271796523/-		

6. The show cause notice projected that re-insurance in relation to a motor vehicle, which is not a capital good, was included as input services under Rule 2(l) of the CCR by Notification no. 21/2012 dated 27.03.2012 as amended by the Notification no. 28/2012 dated 20.06.2012 with effect from 01.07.2012; therefore, the same could not be treated as an input service for the period prior to 01.04.2012. Further, the show cause notice set out, essentially, four reasons for the same. First, that the re-insurance services were received after the output services were performed; second, that the re-insurance services were not essential for providing the insurance service; third, that re-insurance services were not directly or indirectly used for providing output services; and fourth that the invoices issued by the insurance companies did not appear to be proper documents for availing CENVAT Credit. The relevant extract of the show cause notice is set out below:

> "10. From the foregoing it is cleared that reinsurance service in relation to a motor vehicle, which is not a capital goods has been included as an input service defined under Rule 2(l) of CCR, 2004 vice Notification No. 21/2012-CE (NT) dated 27.03.2012 as amended by Notification No.28/2012-CE (NT) dated 20.06 2012 from 01.04.2012 only and therefore the same cannot be treated as an input service for the period prior to 01.04.2012 for the following reasons:-
>
> (i) The reinsurance service is received by the service provider after rendering the output service namely insurance service to reduce risk /liabilities.
>
> (ii) Reinsurance service is not essential for providing of the insurance service which can be provided without receiving these services.
>
> (iii) The reinsurance services are not used directly or indirectly for providing output service namely insurance.

> (iv) The invoices issued by the insurance companies to the Noticee do not appear proper documents to avail CENVAT Credit
>
> CENVAT Credit of service tax paid on reinsurance service in relation to a motor vehicle, which is not capital goods, therefore, does not appear admissible to the insurance service providers for the period prior to 01.04.2012 under Rule 3(1) of the CCR, 2004.
>
> 11. Thus from the above it can be concluded that CENVAT Credit of service tax-paid on reinsurance service in relation to a motor vehicle, which is not a capital goods does not appear admissible for the period prior to 01.04.2012 under Rule 3(1) of the CCR-2004 to the assesse. providing insurance service.
>
> Thus the Noticee has availed CENVAT Credit of Rs.265,32,66,830/-, Rs.162,61,45,336/- and Rs. 199,23,84,307/- totaling to Rs. 627,17,96,523/- (Six Hundred Twenty Seven Crores Seventeen Lakh Ninety Six Thousand Five Hundred Twenty Three Only) for the period prior to 01.04.2012 which does not appears admissible to the Noticee under rule of the CCR,2004 and appears recoverable along with interest as applicable under rule 14 of the CCR,2004 read with section 75 and 73 of the Act."

7. OIC was called upon to show cause why CENVAT Credit of ₹627,17,96,523/- (Rupees six hundred twenty seven crores seventeen lacs ninety six thousand five hundred twenty three only) should not be disallowed and recovered under Rule 14 of the CCR read with Section 73(1) and Section 73(4) of the Act and further, why interest and penalty had not been imposed.

Order-in-Original dated 19.02.2016

8. OIC responded to the show cause notice dated 05.12.2014 contesting the allegations made therein. The Commissioner considered OIC's response and passed the Order-in-Original dated 19.02.2016. The Commissioner found that there was no difference between the re-

insurance services obtained directly from Indian re-insurers, re-insurance services obtained directly from foreign re-insurers – that is, cases where the tax on re-insurance services is paid on a Reverse Charge Mechanism – and the services from members of the Indian Motor Third Party Insurance Pool under the pooling arrangement for the purposes of considering the availability of input credit. The Commissioner accepted that all three categories were in the nature of re-insurance services availed by OIC.

9. The Commissioner noted that Rule 2(l) of the CCR, as in force prior to 01.04.2011, defined 'input service' to mean any service used for providing an output service or used by the manufacturer in relation to the manufacture of the final product. The case set up in the show cause notice for denial of CENVAT Credit in respect of tax paid on re-insurance services was founded on, essentially, two propositions. First, that re-insurance services were obtained after OIC had performed the output services, that is, after it had issued the insurance policy; therefore, the same could not be considered as an input service, which was essential for providing output services. Second, that re- insurance services had no relationship with the output services provided by the service provider.

10. The Commissioner noted that the issue whether there was any nexus between re-insurance services and the insurance services provided by OIC was settled by the decision of the learned CESTAT in the case of ***PNB Metlife India Insurance Co. Limited v. Commissioner of Central Excise Service Tax and Customs,***

Bangalore[1], which was upheld by the High Court of Karnataka in ***Commissioner of Central Excise, Bangalore v. PNB Metlife India Insurance Co. Limited***[2]. The Commissioner concluded that, thus, in respect of the period prior to 01.04.2011, re-insurance services would fall within the definition of 'input service' under Rule 2(l) of the CCR as the same were availed by OIC for the purposes of rendering output services (general insurance services). The Commissioner accepted that for the period prior to 01.04.2011, OIC had correctly availed of CENVAT Credit in respect of service tax paid on re-insurance services, which was quantified at ₹430,70,99,163/-.

11. Insofar as the period from April, 2011 till 30.06.2012 is concerned, the Commissioner held that insurance services, which were covered under Section 65(105)(d) of Chapter V of the Act, were excluded from the scope of input services. The Commissioner held that by virtue of exclusion of insurance services from the scope of input services under Section 2(l) of the CCR, OIC was not entitled to avail CENVAT Credit in respect of re-insurance services for the said period. The Commissioner concluded that OIC had wrongfully availed CENVAT Credit of ₹196,46,97,360/- for the Financial Year 2011-12.

12. The contention that the extended period of limitation under the proviso to Section 73(1) of the Act was not available as there was no suppression or misstatement was rejected.

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[1] ***2014 (36) STR 891***
[2] ***2015 (39 STR 561 (Kar.)***

Impugned Order

13. OIC appealed against the Order-in-Original dated 19.02.2016 before the learned CESTAT. OIC did so on, essentially, four grounds. First, it claimed that the re-insurance services were not excluded from the ambit of input services by virtue of the amendment to Rule 2(l) of the CCR, which came into effect from 01.04.2011. Second, it contended that the Commissioner had exceeded its jurisdiction by rendering a finding on a matter, which was not the subject matter of the show cause notice. Third, it contended that the extension of period of limitation under the proviso to Section 73(1) of the Act could not be invoked as there was no fraud, willful mis-statement or suppression of facts for the purposes of evading service tax. Fourth, it contended that OIC was also eligible to avail CENVAT Credit on re-insurance services provided by member companies under Indian Motor Third Party Insurance Pool, which was created under Section 34 of the Insurance Act.

14. The learned CESTAT confined its examination to the question whether OIC was dis-entitled to avail CENVAT Credit for re-insurance services by virtue of the exclusionary clause introduced in Rule 2(l) of the CCR. As stated above, the Commissioner had held that re-insurance services were not included in the definition of 'input service' under Rule 2(l) of the CCR with effect from 01.04.2011. The learned CESTAT found the said view to be erroneous. The CESTAT held that such insurance services, which were in relation to 'a motor vehicle', were the only services excluded from the definition of 'input

services' and the same did not cover re-insurance services availed by OIC. The learned CESTAT referred to the decision in ***Shriram General Insurance Company Ltd. v. Commissioner of Central Excise, Jaipur-I***[3], whereby the Tribunal had explained that motor vehicles had been excluded from the definition of 'capital goods' and therefore, general insurance services relating to such motor vehicles was also excluded from the definition of 'input service'.

15. The learned CESTAT accepted that re-insurance services were not excluded from the ambit of input services under Rule 2(l) of the CCR with effect from 01.04.2011 as the re-insurance services could not be construed as relating to 'a motor vehicle'. The learned CESTAT reasoned that the use of article 'a' before 'motor vehicle' was of some significance. Thus, only those general insurance services, which relate to a motor vehicle, were excluded. The learned CESTAT accepted that re-insurance services availed by OIC did not cover the risks relating to a motor vehicle but to the OIC's business and the risks covered by it.

16. In view of the aforesaid finding, the learned CESTAT did not consider it apposite to examine the question whether the Commissioner had gone beyond the show cause notice or that the extended period of limitation for issuing a show cause notice was not under the proviso to Section 73(1) of the Act, was not applicable.

[3]Service Tax Appeal No. 54096 of 2014, decided on 04.03.2020.

Reasons and conclusion

17. Section 114A of the Insurance Act empowers Insurance Regulatory and Development Authority (hereafter '**IRDA**') to make regulations consistent with the Insurance Act and the Rules made thereunder to carry out the purposes of the Insurance Act. Clause (zb) of Section 114A(2) of the Insurance Act specifically empowers IRDA to make regulations providing for matters relating to re-insurance under Section 101A and 101B of the Insurance Act.

18. Section 101A(l) of the Insurance Act mandates every insurer to re-insure with Indian re-insurers, such a sum as assured on each policy, as may be specified by IRDA, with the previous approval of the Central Government.

19. IRDA had in exercise of its statutory powers, issued a direction for the creation of an Insurance Pool. All insurers engaged in the general insurance business or re-insurance business were directed to participate in a pooling arrangement as a part of the Motor Third Party Insurance business. Pursuant to the said direction, general insurance companies have jointly constituted a pool of funds, being the Indian Motor Third Party Insurance Pool for sharing risks of motor third party insurance, to pay for the third party losses of motor vehicle owners. The mechanism provides for third party insurance premium to be contributed to the pool for re-insurance of the third party risk covered.

20. Before proceeding further to address the subject controversy, it is necessary to observe that there is no controversy that the Indian Motor Third Party Insurance Pool is essentially a mechanism of re-insurance. The premium paid to members of the pool is in the nature of premium for re-insurance. As stated above, the Commissioner had accepted that there was no qualitative difference between input tax credit in respect of service tax paid on re-insurance premium to Indian re-insurer; input credit in respect of re-insurance business paid under Reverse Charge Mechanism (to insurance companies located overseas); and input credit on service tax paid to the members of the Indian Motor Third Party Insurance Pool.

21. The Adjudicating Authority had also accepted that re-insurance services would be covered under the definition of input services under Rule 2(l) of the CCR for the period prior to 01.04.2011. There is also no cavil that re-insurance services would be covered under the definition of input services for the period after 30.06.2012.

22. The questions whether re-insurance services cannot be considered as input services for the reason that the same are rendered after the output services; whether the same are essential for rendering output services; and whether the same have a nexus with the output services, are no longer *res integra*. These questions are covered by the decision of the Karnataka High Court in ***PNB Metlife India Insurance Co. Limited***[2] and the said decision has been accepted by the Revenue. Although the aforesaid grounds were proposed in the show cause notice as reasons for disallowing credit on account of service tax

paid on reinsurance services, the same were dropped by the Commissioner in the Order-in-Original dated 19.02.2016.

23. Essentially, the Revenue challenges the impugned order passed by the learned CESTAT to the extent that it holds re-insurance services availed by entities engaged in providing general insurance are not excluded from the scope of input services for the period 01.04.2011 to 30.06.2012. The demand raised by the Revenue is for the Financial Year 2011-12 and the same is set aside by virtue of the impugned order.

24. In the aforesaid context, the Revenue has projected the following questions for consideration of this Court:

> "(I) WHETHER the Learned Tribunal did not err in holding that the respondent was entitled to avail CENVAT Credit on re-insurance services (Indian Business as well as Foreign Insurance) after the amendment in the definition of "Input Service" defined in Rule 2 (1) of the CENVAT Credit Rules w.e.f. 01.04.2011?
>
> (II) WHETHER the CENVAT Credit of Rs. 196,46,97,360/- availed by the respondent is liable to be dis-allowed and recovered under Rule 14 of the CENVAT Credit Rules read with proviso to Section 73 (1) and Section 73 (4) of the Finance Act?
>
> (III) WHETHER the respondent is liable to be charge with interests under section 75 of the Finance Act and imposed with penalty under Rule 15 of the CENVAT Credit Rules read with Section 78 of Finance Act?"

25. The second and third questions, as projected by the Revenue, are contingent on whether the respondent was entitled to avail

CENVAT Credit on re-insurance premium in respect of insurance policies issued in respect of motor vehicles including motor third party insurance.

26. It is the Revenue's case that re-insurance premium would not fall within the definition of 'input services' by virtue of Rule 2(l) of the CCR as was in force for the period April, 2011 to 30.06.2012.

27. It is relevant to refer to Rule 2(l) of the CCR as in force prior to 01.04.2011; as applicable from, 01.04.2011 to 30.06.2012; and as in force thereafter. Rule 2(l) of the CCR, as applicable prior to 01.04.2011, reads as under:

> "2(l) input service means any service, -
>
> (i) used by a provider of taxable 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 modernisation, 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 quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

28. The definition of 'input services' under Rule 2(l) of the CCR was amended *vide* Notification no. 3/2011 -CE (NT) dated 01.04.2011 to specifically exclude certain services under Clause

(B). The relevant extract of Rule 2(l) of the CCR, as it read post April 2011, is set out below:

> "2(l) input service means any service,-
> (i) used by a provider of taxable 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 modernisation, 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, procurements of inputs, accounting auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, businessexhibition, legalservices, inward transportation of inputs or capital goods and outwards transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-
> (A)..... ;
> (B) specified in sub-clauses(d), (o), (zo) and (zzzzj) of clause(105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or.."

29. Rule 2(l) of the CCR was amended by a Notification no. 21/2012 CE(NT) dated 27.03.2012 from 01.04.2012 with certain conditions by inserting a sub clause (BA) to Rule 2(l) of the CCR. The relevant extract of the said Rule reads as under:

> "2(l) input service means,-
> (i) services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods; or

(ii) any service used by a provider of output service for providing an output service; or

(iii) any service 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 modernisation, 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, 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 goods and outward transportation upto the place of removal but excludes,-

(A) ….

(B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) specified in sub-clause (d) and (zo) of Section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not capital goods, except when used by

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufacture by him, or

(b) a provider of output service as specified in sub clause (d) of clause (105) of Section 65 of the Finance Act, in respect of a motor vehicle insured or reinsured by him;"

30. Rule 2(l) of the CCR was further amended by a Notification no. 28/2012 CE(NT) dated 20.06.2012 with effect from 01.07.2012. The relevant extract of the said Rule as substituted reads as under:

"2(l) input service means,-

(i) services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance

in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods; or

(ii) any service used by a provider of output service for providing an output service; or

(iii) any service 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 modernisation, 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, 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 goods and outward transportation upto the place of removal but excludes,-

(A) ….

(B) specified in sub-clauses (o) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, insofar as they relate to a motor vehicle which is not a capital goods, except when used by –

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or"

31. There is no dispute that the respondent was entitled to avail CENVAT Credit in respect of premium paid for re-insurance prior to April, 2011. There is also no dispute that re-insurance services were not excluded from input services after 30.06.2012. The Revenue

contends that by virtue of the amendment in Rule 2(l) of the CCR, as introduced with effect from 01.04.2011, input service in relation to the services specified in Clause (d) of Sub-section (105) of Section 65 of the Act[4], insofar as it relates to motor vehicles, was excluded from the scope of input service. The only exception being when the services were used for provision of taxable services for which credit on motor vehicles was available as capital goods.

32. According to OIC, the re-insurance services availed by it could not be stated to be in relation to 'a motor vehicle'. The re-insurance premium was paid by the respondent for re-insurance to mitigate its risks. The quintessential difference being that whereas the respondent had issued policies relating to a motor vehicle, the re-insurance premium was paid for re-insurance to cover or mitigate its risks.

33. Section 2(16B) of the Insurance Act, 1938 defines 're-insurance' as under:

> "2(16B) "re-insurance" means the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium;"

34. It is clear from the definition that the re-insurance is insurance of part of the insurer's risks by another insurer. Thus, what the re-insurer, in effect, does is to insure the risks of another insurer. This is qualitatively different from the risks of the policy holder covered by

[4]Section 65(105)(d)-

to a policy holder or any person, by an insurer, including re-insurer carrying on general insurance business in relation to general insurance business;

the insurance policy issued by the insurer. The insurer, in fact, covers the risks of the policy holder.

35. Re-insurance is a matter between one insurance company and another, where the former insurer company indemnifies the latter against part of the loss that the latter insurance company may sustain under policy or policies issued by it. Re-insurance is, essentially, to distribute the risks assumed by an insurance company. Thus, ensuring stability to the business of the insurance company that is covered by re-insurance.

36. There is merit in the contention that the insurance company that reinsures another insurance company covers the business risks of that insurance company; it does not cover the risk to the asset or other risks, covered by that insurance company.

37. In ***Shriram General Insurance Company Ltd. v. Commissioner of Central Excise, Jaipur-I***[3], the learned CESTAT had considered the question whether amendment to Rule 2(l) of the CCR with effect from 01.04.2012 would affect the eligibility of the appellant insurance company to avail CENVAT Credit in respect of re-insurance services availed during the relevant period. In this context, the Tribunal had observed:

> "….This exclusion clause cannot be read to cover reinsurance services, which are not insurance services in respect of a motor vehicle. What is excluded under the said exclusion clause is general insurance services in respect of a motor vehicle. Insurance services received by an owner of motor vehicle for insurance of such vehicle stands excluded from the definition of

> "input service". However, a re-insurance service is not in respect of a motor vehicle, but is in respect of the assumed risks of an original insurer and thus, the aforesaid exclusion clause has no application to qualification of re-insurance services as "input service".

38. The aforesaid decision was upheld by the Division Bench of the Rajasthan High Court in ***Commissioner of Central Goods and Service Tax Commissionerate Jaipur v. Shriram General Insurance Company Limited***[5].

39. In view of the above, we find no infirmity with the decision of the learned CESTAT that re-insurance services were not excluded from the definition of 'input service' as defined under Section 2(l) of the CCR with effect from 01.04.2011.

40. As noted above, OIC had challenged the Order-in-Original dated 19.02.2016 before the CESTAT on other grounds as well. *Prima facie*, we find substance in the contention that the extended period of limitation under Section 73(1) of the Act was not available in this case. There was no concealment or suppression of any fact. It is OIC's assertion that re-insurance services were not excluded from the scope of input services and therefore, there is no reason for OIC to not avail CENVAT Credit in relation to re-insurance services. There is no allegation that OIC had not maintained records of such input services or had otherwise not disclosed it in its accounts. It is well settled that the proviso to Section 73(1) is attracted only if material facts have

[5](DB) Central Excise Appeal No. 4/2021, decided on 19.01.2022.

been mis-stated or have been deliberately suppressed with an intent to evade taxes.[6]

41. OIC's contention that the Adjudicating Authority had travelled outside the show cause notice is also not insubstantial. The show cause notice had proceeded on basis that the re-insurance services are not input services for the reasons that they are received by OIC after the insurance services have been rendered; re-insurance services are not essential for providing insurance services; and re-insurance services are not directly or indirectly used for providing output services. This is evident from paragraph no.10 of the show cause notice, which has been reproduced hereinbefore. The allegation that re-insurance services were specifically excluded from the scope of input services by virtue of an amendment to Rule 2(l) of the CCR introduced with effect from 01.04.2011 – that is, by virtue of the exclusion contained in Clause (B) of Rule 2(l) of the CCR –is not one of the grounds clearly stated in the show cause notice.

42. Having stated the above, we do not consider it apposite to examine the questions whether the show cause notice was issued within the stipulated period as specified under Section 73(1) of the Act or that the Order-in-Original dated 19.02.2016 was beyond the scope of the show cause notice in further detail, because the learned CESTAT had not considered the same. The impugned order allowing

[6]See:***Bharat Hotels Limited v.Commissioner of Central Excise (Adjudication): 2018 (12) GSTL 368(Del.);Continental Foundation Joint Venture Holding, Nathpa H.P. v. Commissioner of Central Excise, Chandigarh : (2007) 216 ELT 177 (SC); Pushpam Pharmaceutical Company v. Collector of CentralExcise, Bombay: 1995 Supp (3) SCC 462***

OIC's appeal is founded solely on the conclusion that re-insurance services were not excluded from the definition of 'input services' under Rule 2(l) of the CCR during the period in question (Financial Year 2011-2012)

43. In view of the above, the question projected by the Revenue in this appeal are answered against the Revenue and in favour of OIC.

44. The appeal is dismissed.

45. The parties are left to bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 28, 2023
RK