

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

REGIONAL BENCH

**Service Tax Appeal No. 87091 of 2016**

(Arising out of Order-in-Original No. 15/ST-V/SKD/2016-17 dated 31.05.2016 passed by the Commissioner of Service Tax-V, Mumbai.)

**M/s. HDFC ERGO General Insurance Co. Ltd.** .....Appellant  
**6<sup>th</sup> Floor, Leela Business Park,  
Andheri-Kurla Road, Andheri East,  
Mumbai – 400 059**

*VERSUS*

**Commissioner of Service Tax-V, Mumbai** .....Respondent  
**3<sup>rd</sup> Floor, Utpad Shulk Building,  
Bandra-Kurla Complex,  
Bandra, Mumbai – 400 051**

**APPEARANCE:**

Shri Thirumalai Sompath, Advocate for the Appellant

Shri Pramod Kumar Maurya, Addl. Commissioner, Authorised  
Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)  
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 85623/2024**

Date of Hearing: 01.05.2024  
Date of Decision: 25.06.2024

**PER: DR. SUVENDU KUMAR PATI**

Denial of CENVAT Credit taken by the Appellant against duty paid on re-insuring motor vehicle while providing General Insurance Service for the period from April, 2011 to March, 2012 for an amount of ₹21,68,91,007/- and direction for its recovery alongwith interest under Section 75 and equal penalty under Section 78 of the Finance Act, 1994 is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is engaged in providing insurance service on motor vehicles and there was no restriction on availing CENVAT Credit on input services prior to 01.04.2011 and after 01.04.2012 when exception was carved out towards general insurance services for such availment but due to change introduced in the definition of input service w.e.f. April, 2011 with introduction of exclusion clause through which certain inputs were kept outside the purview of availment of CENVAT Credit, Appellant was asked to pay the above noted amount for the period from April, 2011 to March, 2012 by issue of one show-cause-cum-demand notice that was adjudicated by the Commissioner in the above referred appeal which resulted in confirmation of duty, interest and penalties which is assailed before us in this appeal.

3. During course of hearing of the appeal learned Counsel for the Appellant Mr. Thirumalai Sompath submitted that re-insurance of the insurance done to motor vehicles has become a statutory obligation in view of express provision contained in Section 34 & Section 101 of the Insurance Act, 1938 and every general insurance company has been strictly adhering the same in compliance to Circular No. 035/IRDA/Motor-TP/Dec-06 issued by the Insurance Regulatory and Development Authority of India (IRDA) on December 6, 2006 and it is a settled principle of law that payment made in compliance to statutory obligation, so as to make the output service feasible, CENVAT Credit is admissible against tax component of such payment. In citing judgments on the issue consistently passed by this Tribunal

as well as by several High Courts that is affirmed by the Hon'ble Apex Court, including in the case of *Oriental Insurance Company Ltd. Vs. Commissioner, Large Tax Payer Unit Saket [2021 (1) TMI 1039 – CESTAT New Delhi]*, *Commissioner of Central Excise and Service Tax Delhi – South Vs. Oriental Insurance Company Ltd. [2023 (3) TMI 1276 – Delhi High Court]*, *M/s. Shriram General Insurance Company Ltd. Vs. Commissioner of Central Excise, Jaipur-I, [2021-TIOL-505-CESTAT-DEL]*, *Commissioner of Central Goods and Service Tax, Commissionerate Jaipur Vs. Shriram General Insurance Company Ltd. vide Central Excise Appeal No. 4/2021 Order dated January 19, 2022, High Court of Rajasthan, Commissioner of Central Goods and Service Tax, Commissionerate Jaipur Vs. Shriram General Insurance Company Ltd. vide Central Excise Appeal No. 5/2021 Order dated May 24, 2022, High Court of Rajasthan, Commissioner of Central Goods and Service Tax, Vs. Shriram General Insurance Company Ltd., Special Leave Petition (CIVIL) Diary No. 4928/2023 dated February 27, 2023, Supreme Court*, he further submitted that issue is no more *res integra* that CENVAT Credit shall be admissible towards re-insurance services and are not excluded from the definition of input services under Rule 2(I) of CENVAT Credit Rules, 2004 from 01.04.2011, for which the order passed by the Commissioner is unsustainable both in law and facts.

4. Learned Authorised Representative Mr. Pramod Kumar Maurya argued in support of the reasoning and rationality of the order passed by the Commissioner and stated that exclusion clause under

Rule 2A(BA) clearly excludes such insurance or re-insurance taken, from the purview of availment of credit, unless the motor vehicle is a capital goods and therefore, Appellant being a General Insurance Company, which is insuring vehicles of other people, can't take CENVAT Credit on such re-insurance for which interference of the Tribunal in the order passed by the Commissioner is uncalled for.

5. We have perused the case record, relevant provision of law, the order passed by the Commissioner and precedent decisions on the issue. At the outset, it is required to be pointed out that learned Commissioner has reproduced the relevant provision that was existing before 01.07.2012 in his Order-in-Original at para 3.1 but wrongly mentioned the same was effective after 01.04.2012 whereas in actuality, it was in effect since 01.04.2011. It would bring more clarity, if we re-produce the relevant Sub-Clause (BA) of Rule 2(I) of the CENVAT Credit Rules, 2004 that was existing during the relevant period of dispute. It reads:

*"(I) 'Input service' means any service*

*(i) ...*

*(ii) ... [but **excludes**]-,*

*(A) ...*

*(B) ...*

*(BA) specified in sub-clause (d) and (zo)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, **except** when used by –*

*(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured 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; ..."*

6. From the Bare reading of the above provision, it can be said that Sub-Clause (BA) would apply to the Appellant's case and presence of two negatives namely 'but excludes' in Clause 1 and 'except when used by' in Sub-Clause (BA) would bring a positive meaning to the fact that the said input service is available to the provider of output service who are specified in Sub-Clause (D) of Clause 105 of Section 65 of the Finance Act, 1994 who is by definition the insurer carrying on general insurance business in relation to General Insurance and providing service to a policy holder or to any other person. It has to be interpreted and understood in the manner two negatively worded statutes are to be understood. For example when Article 21 of the Constitution states 'no one shall be deprived of his life ...', it would actually mean 'everyone would be granted a right to life'. Therefore, by definition itself General Insurance Company has been exclusively granted the right to use CENVAT Credit in relation to motor vehicles insured by them or re-insured by them but the learned Commissioner had committed a blunder in reproducing the section wrongly in his order and replacing "provider of output service" with "provider of input service" to reach at his findings that credit are not admissible. Therefore, by definition available in the CENVAT Credit Rules, 2004 under Rule 2(l) and to meet the statutory requirement in making itself eligible to provide insurance service as General Insurance Company, Appellant is entitled to avail CENVAT Credit on re-insurance of motor vehicles and the credit availed by it during the relevant period from April, 2011 to

March, 2012 on this score were all admissible credit. Hence the order.

THE ORDER

7. The appeal is allowed and the order passed by the Commissioner of Service Tax-V, Mumbai *vide* Order-in-Original No. 15/ST-V/SKD/2016-17 dated 31.05.2016 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 25.06.2024)

**(Dr. Suwendu Kumar Pati)**  
**Member (Judicial)**

**(Anil G. Shakkwar)**  
**Member (Technical)**

*Prasad*