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IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION [CENTRAL EXCISE]  
ORIGINAL SIDE

CEXA/10/2025  
IA NO: GA/1/2025

COMMISSIONER OF SERVICE TAX KOLKATA PRESENTLY KNOWN AS  
COMMISSIONER OF CGST AND CX, KOLKATA SOUTH CO  
VS  
M/S MEDICARE SERVICE (INDIA) PVT LTD

BEFORE :  
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM  
-A N D-  
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)  
DATE : 2<sup>nd</sup> July, 2025.

*Mr. B. P. Banerjee, Adv.  
Mr. Kaustav Kanti Maity, Adv. ...for appellant.*

*Mr. J. P. Khaitan, Sr. Adv.  
Mr. Agnibesh Sengupta, Adv.  
Mr. Subhendu Halder, Adv.  
Mr. Abhirup Halder, Adv. ...for respondent.*

*Mr. Sumit Biswas, Adv. ...for resolution professional.*

The Court : We have heard Mr. J. P. Khaitan, learned senior counsel assisted by Mr. Agnibesh Sengupta, learned advocate for the appellant and Mr. B. P. Banerjee, learned advocate for the respondent.

This appeal has been filed by the department under Section 35G of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 challenging the order passed by the Customs, Central Excise & Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (the Tribunal) dated 30.7.2024 in final order no.76459 of 2024.

The revenue has raised the following substantial questions of law for consideration :

- (i) *When the said Respondent has itself registered as Insurance Auxiliary Service on 03.05.2002 and providing the said service through a club and when the services provided by the Respondent comes within the scope and ambit of Insurance Auxiliary Service, whether the non-holding of any license by the Respondent exonerates the Respondent from the taxable liability and when admittedly the said respondent was engaged in providing the said Service as Intermediary or Insurance Intermediary and the same is evident from Memorandum and Articles of Association of M/s. Medicare Service (1) Pvt. Ltd., that the activities/business they carry are 'Insurance Auxiliary Service' as defined in section 65(55) of Finance Act, 1994 and that M/S Medicare Service club has been found by the Adjudicating Authority not to possess registration from the Service Tax Authority but the said club has been found to have collected premium from the policy holders and pay to the insurance company to its front entities and further it was admitted by the Respondent by its letter dated 12.08.2008 that there was no agreement between M/s. Medicare Services (1) Pvt. Ltd. Club and M/s Medicare Service club as they are one and same organization.*
- (ii) *Whether the Respondent on the basis of invalid/improper documents and not on the basis of any Invoice/challans/ bills issued by the provider of taxable service i.e, the Insurance Companies, wherein clause (1) of sub-rule 1 of Rule 9 of the Cenvat Credit Rules, defined that Cenvat credit could be availed on the basis of invoice bill or challan containing specified particulars, can avail Cenvat Credit amounting to Rs.4,10,25,659/- during the period 2005-06 to 2007-08?*
- (iii) *When during the adjudicating process the Respondent did not submit all the necessary documents in support of their case and when the admissibility of the documents of the Respondent is in question, but during the proceedings before the Learned Tribunal the Respondent had provided new documents before the Learned Tribunal, which were not considered by the adjudicating authority namely letter dated 30.06.1999 when Order in original has been passed on 16.12.2010 and copies of the invoices issued by the insurance companies from pages 22 to 110 of the Appeal paper book before the Learned Tribunal, and as such the order of the*

*Learned Tribunal is in violation of the principles of natural justice and against the principles of law and cannot be sustained in law.*

- (iv) *Whether the respondent is eligible to avail Cenvat Credit, wherein Rule 9(1) of Cenvat Credit Rules, 2004 provides that credit can be taken by, amongst others, provider of output services on the basis of nine documents specified for the purpose, but in the present case the respondent has submitted (i) letter issued by M/s Medicare Club Service (ii) certificate of payment of service tax by an insurance company which are not at all acceptable to avail the Cenvat Credit?*
- (v) *Whether the service provided by the respondent fall under the category of "Insurance Auxiliary Services" or not when they operated through front company namely M/s Medicare Service Club, which is not a registered entity with service tax and most of the financial transactions are routed through the said company as well as on 13/09/2006 they amended registration certificate by inserting two new services under Membership of Club Services and Management Consultancy Services to divert the attention of the department from their main activity?*
- (vi) *Whether the Service Tax is leviable upon the respondent when it is evident on record that the said respondent M/s. Medicare Service (1) Pvt. Ltd. was registered for providing Insurance Auxiliary Service with effect from 2002-03(03/05/2002) but to suppress the fact and to mislead the department, though they were providing Insurance Auxiliary Service, yet willfully they were submitting ST-3 return for 'Membership of Club' Service without being registered to that effect?*

The present appeal cannot be entertained by this court for the reason that the issues involved in this matter is whether the activities of the respondent/assessee fall under the ambit of 'insurance auxiliary service' on which they alleged to have not discharged service tax liability. In terms of the provision of the Central Excise Act read with provision of the Finance Act, an appeal to the High Court is not maintainable if the matter concerns determination of any question having a relation to the 'rate of duty or the value of the goods for the purpose of assessment'. Admittedly, the issue

which falls for consideration in this appeal is the classification issue and, therefore, the appeal is not maintainable before this court. Under normal circumstances while dismissing the appeal as not maintainable, the court would be inclined to make an observation that it will be open to the department to prefer an appeal before the Hon'ble Supreme Court. Such indulgence cannot be granted in the instant case as the amount of service tax demanded in the instant case is Rs.4,72,32,433/-, which is well below the threshold limit of Rs.5 crore and, therefore, the department cannot maintain an appeal before the Hon'ble Supreme Court.

For the above reasons, the appeal stands dismissed and the substantial questions of law which have been suggested by the revenue are left open.

(T.S. SIVAGNANAM)  
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)