CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO.-1

Service Tax Appeal No. 51140 of 2017

(Arising out of Order-in-Original No. DLI-LTUNT-000-COM-050-2016-17 dated 28.02.2017 passed by the Commissioner, Central Excise and Service Tax, New Delhi)

M/s Max Life Insurance Company Limited **...Appellant**
90A, Sector-18, Udyog Vihar,
Gurgaon-122015, Haryana.

versus

Commissioner, Central Excise and Service Tax, **...Respondent**
LTU Commissionerate, NBCC Plaza,
Pushp Vihar, Sector-111, Saket,
New Delhi – 110017.

Appearance

Shri Sanjeev Sachdeva & Shri Nikhil Kapur, Advocate for the Appellant

Shri Ravi Kapoor, Authroised Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 21.11.2022
Date of Decision: 12.04.2023

FINAL ORDER NO. _50457/2023

Justice Dilip Gupta:

The order dated 28.02.2017 passed by the Commissioner Central Excise and Service Tax, New Delhi[1] confirming the demand of service tax with interest and penalty by invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act 1994[2] has been assailed by M/s. Max Life Insurance Company Ltd[3].

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1. **the Commissioner**
2. **the Finance Act**
3. **the appellant**

2. The issue that arises for consideration in this appeal relates to leviability of service tax on re-instatement interest collected by the appellant on delayed payment of premium by the policy holder to reinstate a lapsed policy. The appellant considers this to be interest on delayed payment of premium by the policy holder, and hence, not exigible to service tax in view of the provisions of rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006[4]. The department, however, believes that the appellant camouflaged the amount received towards processing/administrative charges as re-instatement interest collected on delayed payment of premium.

3. The Commissioner, by the order dated 28.02.2017, confirmed the demand of service tax for the following reasons:

> **(i)** Re-instatement interest is charged by the appellant for reviving lapsed policies and in any case no interest can be charged by the appellant since the policies are terminated;
>
> **(ii)** Interest must necessarily be charged at a uniform rate, and be recovered periodically. As the amount recovered by the appellant for revival of the lapsed policies was neither charged at a uniform rate nor recovered periodically, it is not 'interest'; and
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> **(iii)** Re-instatement interest charged is in the nature of 'administrative charged/ processing fee'.

4. In order to appreciate the controversy involved in this appeal it would be useful to first examine some of the basic concepts of life

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4. the 2006 Rules

insurance policy and the contracts that govern the relationship between an insurer and a policy holder. Life Insurance service means any service provided to a policy holder by any person carrying on life insurance business. Life Insurance business means the business of effecting contracts of insurance on human life. An insurer provides these services against a consideration paid by the policy holder in the form of a premium. The policy may be offered against a single premium paid at the time of taking out the policy but generally premiums are paid periodically over a length of time as life insurance contracts are generally long-time contracts. As in any other contract, non-payment of consideration has implications in terms of the continuity of the contract and so a contract for life insurance also provides for late payment of premium, though this would entail payment of interest. According to the appellant, as life insurance is long-term and is intended to provide risk cover and savings avenue for the policy holder, future obligations under the contract would inter alia depend on the nature of the policy and the time for which the premiums had been paid by the policy holder before the default.

5. In this connection, the following concepts would be relevant;

A. **Active Policy.** A policy in respect of which all premiums have been paid is an active policy. It assures the policy holder of all benefits available under the policy.

B. **Grace Period.** This is defined in every policy document and is usually a period of 15 to 30 days after the due date of the premium. Even though the premium is overdue, the benefits under the policy continue to be available to the policy holder during the grace period. Thus, if the policy holder dies during the grace period her nominee would still get the insured amount reduced by the amount of the last premium due but not paid. Bonus and other accruals on the policy would also be paid. Premium due can be paid during the grace period without any interest thereon.

C. **Lapsed policy.** In case the policy holder does not pay the premium within the grace period, the policy lapses. In case the policy had acquired a surrender value at the time of lapse, the policy holder would be eligible for recalibrated benefits under the policy. In case the policy had not acquired the surrender value, then no benefits would be available to the policy holder of a lapsed policy.

D. **Revival of a policy.** The Insurance Regulatory and Development Authority (Treatment of discontinued linked insurance) defines **"revival of a policy"** to mean:

> "restoration of the policy by the insurer, which was discontinued due to the non-payment of premium, with all benefits, with or without rider benefits if any, mentioned in the policy document, upon the receipt of all the premiums due and other charges if any, as per the terms and conditions of the policy, upon being satisfied as to the continued insurability of the policyholder on the basis of the information, documents and reports furnished by the policyholder.

6. Therefore, regardless of whether a policy has acquired a surrender value or not, the policy contract allows the policy holder to revive a lapsed policy within a specified period from non-payment of the last premium. Normally this is a period of 2-3 years. Such revival is possible if the policy holder pays all the overdue premiums along with charges as per terms and conditions specified in the policy itself.

7. In the instant case, the policy specifies inter-alia levy of interest along with payment of overdue premiums. It would be useful to refer to the relevant portion of the Key Feature Document and it is as follow:

> "What happens if I delay my Premium payment?
>
> You have a grace period of 30 days (15 days in case of monthly Premium payment mode) from the Premium due date, during which you can pay the Premiums without any Interest. During the grace period, the Insurance cover continues. If the Life Insured dies during this period, we will pay the death benefit after deducting due Premium.
>
> If you do not pay the Premium within the grace period, and your Policy has acquired a Surrender Value, then your insurance cover will be reduced proportionately in the ratio of the Premiums received by us to the Premiums payable. However, if your Policy has not acquired a Surrender Value, the insurance and rider (if any) cover shall lapse and no benefit will be available on the expiry of the grace period.
>
> **We may restore the benefits of the lapsed Policy if you pay all due Premiums within two years from the due date of the first unpaid Premium with late fee and/or Interest.** You will be required to produce evidence of Insurability of Life Insured at your own cost. However, if a Policy, under Reduced Paid Up Mode, is not revived within the period as mentioned above, then, the same cannot be revived and will continue to be under Reduced Paid Up Mode."
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> **(emphasis supplied)**

8. It would also be useful to refer to the policy document and the relevant portions are reproduced below:

> **"4. PREMIUMS**
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> 4.1 This is a limited premium paying policy and Premiums as specified in the Schedule are payable on due dates during the Premium Payment Term.

4.2 The Premium payment mode can be monthly, quarterly, semi-annual or annual mode and can be changed by giving a written request to the Company. A change in mode shall be effective only on the Policy Anniversary following the receipt of request for change in Premium payment mode. A change in Premium payment mode will lead to a revision in the modal Premium amount.

4.3 All Premiums are subject to applicable taxes including service tax, which shall be borne by the Policyholder and recovered accordingly.

5. GUARANTEED SURRENDER VALUE

The Policy shall acquire a Guaranteed Surrender Value from the end of 3rd (Third) Policy Year, equal to 30% of all Premiums received by the Company excluding the first year's Premium as specified in Schedule, if any, provided all due Premiums have been paid for at least 3 (Three) consecutive Policy Years.

6. SURRENDER

6.1 Once Policy has acquired a Guaranteed Surrender Value, the Policyholder may request in writing to surrender the Policy at any time. On receipt of the request for surrender, the Policy shall terminate and surrender value prevailing on the date of surrender shall be paid. No benefit under this Policy shall be payable thereafter.

6.2 The Company may, at Es discretion, pay a special surrender value which shall be higher than the Guaranteed Surrender Value. The surrender value payable will be subject to the condition that the Policy is in full force and that there are no statutory or other restrictions to the contrary.

7. GRACE PERIOD

The Company shall allow a grace period of 30 (Thirty) days from the due date for payment of Premium. However, In policies where the Premium payment mode is monthly, the Company shall allow 15 (Fifteen) days from the due date for payment of

Premium ("Grace Period"). During the Grace Period the Company, will accept Premium without interest and the insurance coverage will continue. However, the Company will be entitled to deduct from the benefits payable under the Policy, the Premium due but not received from the Policyholder during the Grace Period.

8. LAPSE

Subject to Section 10 of this Policy, if Premium Is not received within the Grace Period, the Policy shall lapse.

9. REVIVAL OF POLICY

9.1 You can request the Company to revive a lapsed provided:

i) You give Us a written request within 3 (Three) years from the due date of payment of Premium ("Revival”)

ii) You produce evidence of insurability, at Your cost. which is acceptable to the Company, and,

iii) You pay all overdue Premiums together with an interest on the Premiums at such rates as may be determined by Us.

9.2 Revival of a lapsed Policy is at the absolute discretion of the Company.

9.3 The revival of the Policy shall take effect only after it is approved by the Company and communicated to the Policyholder in writing. Upon revival, the Company shall pay all the benefits that become due and payable under the Policy.

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11. TERMINATION OF POLICY

This Policy shall terminate upon the happening of any of the following events:

i) On the Death of Life Insured.

ii) If the Policy has not acquired a Surrender Value, on the expiry of the Revival Period.

iii) On the Maturity Date.

iv) The date on which we receive Your surrender request"

9. Thus, a policy does not terminate on non-payment of premium due. It only terminates upon the happening of any of the events enumerated in clause 11 of the policy contract. The contention of the appellant is that all the rights and obligations of the parties under a contract come to an end only on termination of the contract and not on lapse of the policy.

10. Shri Sanjeev Sachdeva, learned counsel for the appellant assisted by Shri Nikhil Kapur made the following submissions:

(i) Interest is charged on lapsed policy as opposed to a terminated policy;

(ii) Respondent grossly erred in holding that as interest is not uniform, reinstatement interest charged by the appellant cannot be considered as interest;

(iii) Interest component is not exigible to service tax in terms of rule 6(2)(iv) of the 2006 Rules;

(iv) The interest charged is not in nature of processing/administrative charges;

(v) The extended period of limitation could not have been invoked in the present case; and

(vi) Neither interest nor penalty could have been levied.

11. Shri Ravi Kapoor, learned authorised representative appearing for the department, however, supported the impugned order and submitted that:

(i) The amount received by the appellant towards processing/administrative charges has been camouflaged as re-instatement interest collected on delayed payment of premium and, therefore, service tax is leviable on this amount;

(ii) Since the rate of interest on late payment is not uniform, the amount charged has to be treated as being towards processing/administrative charges as the same is levied for reviving or activating a lapsed policy. This amount would not partake the nature of interest; and

(iii) Interest can be charged only if the policy is surviving and so the amount with the interest cannot be charged on a policy that has lapsed.

12. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

13. From the facts stated above, it is more than apparent that it is only in a case where the policy has lapsed that it can be revived and a policy which stands terminated cannot be revived. The rights and obligation of the parties under the contract do not come to an end on lapse of the policy as the policy holder has an option to revive the policy on payment of premium with interest. This requirement of payment of interest for revival of a lapsed policy flows from the policy contract. A policy holder is under an obligation to make timely payments of the premium and if such payments are not made in time, the policy may lapse and to revive this policy interest has to be paid under the terms of the contract. The overdue premium interest is, therefore, linked to the obligation of timely payment of premium. The Commissioner committed an error in concluding that the

relationship stands terminated upon lapse of a policy and, therefore, no interest can be charged for reviving it. The Commissioner also committed an error in concluding that since the rate of interest is not uniform, it cannot be considered as 'interest'. Section 65B(30) of the Finance Act 1994, which defines interest, does not impose any condition that the interest that has to be charged has to be at a uniform rate.

14. The basis of calculation on re-instatement interest is as follows:

Delay in payment	Late Payment interest
Delay between 31-60 days of due date	Rs. 100
Delay between 61-180 days of due date	Rs. 250
Delay after 180 days of due date	Rs. 250+8% p.a.

15. The manner in which interest has to be paid is governed by the terms of contract agreed between the parties. The department cannot, therefore, urge that since uniform rate of interest has not been levied, the amount collected would not partake the character of 'interest' but would be in the nature of administrative/processing fee.

16. It needs to be noted that the department itself charges simple interest for delayed payment of service tax at different rates as would be clear from the Notification dated 11.07.2014, which is reproduced below:

"New Delhi, the 11th July, 2014

Notification

No. 12/2014-Service Tax

G.S.R. (E).- In exercise of the powers conferred by section 75 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification No.26/2004-Service Tax, dated 10th September, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.601 (E),dated the 10th

September,2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby, for the purpose of the said section, fixes the following rates of simple interest per annum for delayed payment of service tax, as given in table below:-

Table

SI. No.	Period of delay	Rate of simple interest
(1)	(2)	(3)
1.	Up to six months	18 per cent.
2.	More than six months and up to one year	18 per cent. for the first six months of delay and 24 per cent. For the delay beyond six months.
3.	More than one year	18 per cent. for the first six months of delay; 24 per cent. for the period beyond six months up to one year and 30 per cent. for any delay beyond one year.

17. Learned authorised representative appearing for the department has placed reliance upon the decision of the Tribunal in **ICICI Prudential Life Insurance Co. Ltd.** vs. **Commissioner of Central Excise, Thane II**[5]. This decision would not help the department as that was based on its own facts. The issue of liability of service tax on policy re-instatement charges was in issue. It was not the contention of the appellant therein that the amount was collected towards interest and, therefore, not exigible to service tax. In the present case the contract provides for levy of interest and not for processing or administrative charges.

18. In this view of the matter it would not be necessary to examine the contention advanced by the learned counsel for the appellant that the extended period of limitation could not have been invoked in the facts and circumstances of the case.

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5. Service Tax Appeal No. 85705 of 2014 decided on 16.09.2022

19. The order dated 28.02.2017 passed by the Commissioner, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **12.04.2023**)

JUSTICE DILIP GUPTA
(PRESIDENT)

P.V. SUBBA RAO
MEMBER (TECHNICAL)

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