**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH AT CHENNAI**
**[COURT III : Division Bench B1]**

**Appeal No.: ST/54/2011**

[Arising out of Order-in-Original No. LTUC/328/2010-(C) dated 27.10.2010 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai.]

**M/s. United India Insurance Co. Ltd.,** **: Appellant**
No. 24, Whites Road,
Chennai – 600 014

**Versus**

**The Commissioner of C.Ex. & Service Tax,** **: Respondent**
Large Taxpayer Unit, Chennai

Appearance:-
Shri. M. N. Bharathi, Advocate
for the Appellant

Shri. K. Veerabhadra Reddy, ADC (AR)
for the Respondent

**CORAM:**
**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**
**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**

Date of Hearing/Decision: **26.02.2019**

**Final Order No. 40391 / 2019**

**Per Bench :**

The appellants were issued a Show Cause Notice by the Office of the Central Excise Commissionerate, Chandigarh-II dated 21.04.2009 *inter alia* on the grounds that they provided services under the category of "Insurance Auxiliary Service". That they received an amount of Rs. 7,15,90,051/- during the period from

October 2003 to June 2008 from M/s. PACL, Naya Nangal involving total service tax liability of Rs. 77,85,009/- which was allegedly not discharged by the appellant.

2.1 The Show Cause Notice was adjudicated by the Commissioner, Central Excise & Service Tax, Large Taxpayer Unit, Chennai vide impugned Order dated 27.10.2010 *inter alia* confirming the tax liability proposed in the Show Cause Notice with interest thereon and also for imposing penalties under Sections 76 and 78 of the Finance Act, 1994. Hence, this appeal.

3. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri. M.N. Bharathi made oral and written submissions which are broadly summarized as under :

(i) For the periods in question, assessments were provisional and the said provisional assessments were also finalized. The appellant submits that subject taxable value on which the demand has been made, have been taken into consideration while finalizing the provisional assessment. It is not the case as mentioned by the Commissioner, that while finalizing such provisional assessment, the subject transactions were suppressed from the Department. The order of finalization of provisional assessment has not been taken up for review. On this ground, the impugned Order is not sustainable;

(ii) The appellant had repeatedly taken a stand in the proceedings that the figures obtained from M/s. PACL did not represent the correct taxable value as it included even the value of claims settled and tax had been discharged by the appellant on the correct taxable value at Chennai, where they had taken centralized registration. The factual position on the taxable value has also been confirmed by M/s. PACL;

(iii) At paragraph 8 of the impugned Order, the Commissioner acknowledges the receipt of the above ground and documents related to the same, but he disregards the said ground in absence of confirmation of the same from M/s. PACL, for which he had not granted any time top the appellant to produce the same and he had not conducted any inquiry in this regard from M/s. PACL. In this context, the appellant submits that they had written a letter on 14.06.2010 to M/s. PACL, Chandigarh requesting them to check up their records and confirm that the figures given by M/s. PACL to the Department included even the claim amounts/premium/refund, etc. In fact, the appellant's

Chandigarh Office, in their note dated 16.06.2010 confirmed that the figures shown by the Chandigarh Commissionerate Office were the total credit amount shown in PACL books which concluded figures such as premium/claims which should have been excluded for computing the taxable value related to M/s. PACL. The Commissioner in paragraph 9 of the impugned Order, states that he had gone on the basis of M/.s PACL's figures given to the Chandigarh Commissionerate;

(iv) Therefore, it is quite clear that non-taxable amounts were included in the subject notice and appellant had paid the tax correctly on the correct taxable value, which factual position has not been taken into consideration and which has also not been verified inspite of appellant's consistent stand on this aspect;

(v) At paragraph 10 of the impugned Order, the Commissioner gives a finding that the taxpayer (appellant) had not substantiated their contention on the taxable value. But the issue being factual, on this point he should have given sufficient time to substantiate the appellant's claim. Principles of natural justice have not been followed in this regard, though the amount in question was part of provisional assessment, which was finalized by the Department at Chennai;

(vi) The assessments during the period in question were provisional. Under Service Tax Rule 6(5) in case of provisional assessment, the appellant was required to file a statement in ST-3A, which the appellant had filed. Under Service Tax Rule 6(6), where a memorandum in ST-3A is filed, the Asst. Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, can complete the assessment and wherever he deems fit, he can call for necessary documents or records as he may consider necessary before completing the provisional assessment. It is not the case as mentioned by the Commissioner in the impugned Order that the appellant had not filed the memorandum in ST-3A form and had not given details as required therein and the appellant had not produced records and documents called for by the proper officer finalizing provisional assessment;

(vii) The appellant being a public sector undertaking, had no intention to suppress any fact or document called for with a view to evade tax in any manner.

4. On the other hand, Ld. AR Shri. K. Veerabhadra Reddy appearing on behalf of the respondent supports the adjudication and opposes the appeal.

6. Heard both sides and have gone through the facts.

We find that the appellants had joined the Large Taxpayer Unit with effect from 24.01.2008 as evident from the letter of the appellant to the Commissioner, Chandigarh dated 24.08.2009 in response to the Show Cause Notice at page 52 of the Appeal Paper Book. We find that the letter of LTU dated 07.05.2010 at page 51 makes a reference to a corrigendum dated 30.09.2009 making the Show Cause Notice answerable to the Commissioner, LTU, Chennai.

7. Be that as it may, the main planks of the argument of the Ld. Advocate are two. One, that the assessment was provisional with the Large Taxpayer Unit, Chennai, which they had joined as a taxpayer client with effect from 24.01.2008. Second, that the Show Cause Notice's premises that the services provided by them were under "Insurance Auxiliary Service" whereas the appellants were providing only "General Insurance Service".

8. The second contention regarding provision of services only under General Insurance Service has been contended by the appellant right from the reply to the Show Cause Notice and also in

the personal hearing and has also been taken note of by the adjudicating authority in paragraph 7 of his Order. However, there is no further discussion, analysis or finding on this aspect. In our view, if the appellants are only engaged in providing General Insurance Service, the Show Cause Notice issued to them demanding tax under Insurance Auxiliary Services cannot sustain.

9. However, we are of the considered opinion that this would be best ascertained by the adjudicating authority in *de novo* adjudication. Accordingly, for the limited purpose of ascertaining the fact that the appellants had indeed provided only General Insurance Service and not Insurance Auxiliary Service, the matter is remanded to the adjudicating authority. In such re-adjudication, the adjudicating authority will also take into account the submissions made by the appellant as summarized at paragraph 3 above including the plea that the assessments were provisional.

10. The appeal is allowed by way of remand, as per the above directions.

*(Dictated and pronounced in open court)*

**(Madhu Mohan Damodhar)**
Member (Technical)

**(Sulekha Beevi C.S.)**
Member (Judicial)

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