CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

SERVICE TAX APPEAL NO. 54096 OF 2014

(Arising out of Order-in-Original No. JAI-EXCUS-001-COM-014-14-15 dated 19/05/2014 passed by Commissioner of Central Excise, Jaipur-I)

M/s Shriram General Insurance Company Ltd. ..... **Appellant**
(E-8 EPIP, Sitapura Industrial Area,
Jaipur-302022, Rajasthan)

VERSUS

Commissioner of Central Excise, Jaipur-I ...... **Respondent**
(New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur-302 005)

WITH

SERVICE TAX APPEAL NO. 52874 OF 2015

(Arising out of Order-in-Original No. JAI-EXCUS-000-COM-91-14-15, dated 28/02/2015 passed by Commissioner of Central Excise, Jaipur-302005, Rajasthan)

M/s Shriram General Insurance Company Ltd. .... **Appellant**
(E-8 EPIP, Sitapura Industrial Area,
Jaipur-302022, Rajsthan)

VERSUS

Commissioner of Central Excise, Jaipur-I ...... **Respondent**
(New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur-302 005, Rajasthan)

AND

SERVICE TAX APPEAL NO. 50690 OF 2017

(Arising out of Order-in-Original No. ALW-EXCUS-O-I-O-COM-82/16-17 dated 23/01/2017 passed by Commissioner of Central Excise & Service Tax, Alwar)

M/s Shriram General Insurance Company Ltd. .... **Appellant**
(E-8 EPIP, Sitapura Industrial Area,
Jaipur-302022, Rajasthan)

VERSUS

ST/ 54096/2014
ST/52874/2015
ST/ 50690/2017

Commissioner of Central Excise, Jaipur ...... Respondent
New Central Revenue Building, Statue Circle,
C-Scheme, Jaipur-302 005, Rajasthan)

APPEARANCE:

B.L. Narsimhan and Ms. Neha, Advocate for the Appellant
Shri R.K. Majhi, Authorized Representative of the Department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO.50709-50711/2020

DATE OF HEARING/DECISION: 04 March, 2020

JUSTICE DILIP GUPTA

Identical issues arise for consideration in all the three aforesaid service tax appeals and, therefore, they are being decided by a common order.

2. The Appellant in all the three appeals is M/s Shri Ram General Insurance Company Ltd.[1] It is a registered insurer under the provisions of the Insurance Act, 1938[2] and is engaged in providing general insurance policies like motor insurance, fire insurance, marine insurance and others. The Appellant is also availing re-insurance service from Indian as well as foreign re-insurance companies in respect of these insurance policies and it has been availing CENVAT credit of service tax paid on such re-insurance services. The impugned orders passed by the

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1. The Appellant
2. The Insurance Act

Adjudicating Authority have denied the said CENVAT credit on such re-insurance services. The Appeals have been filed to assail these three orders.

3. The table below give details of each of the three service tax appeals.

Appeal No.	Date of Show Cause Notice	Date of Order	Period	CENVAT Credit denied
ST/54096/2014	26.11.2012	19.05.2014	Oct, 08 to March, 2012	115,78,81,098/-
ST/52874/015	21.05.2014	28.02.2015	April, 12 To March, 2014	42,39,38,615/-
ST/50690/2017	08.04.2016	23.01.2017	April, 2014 to March, 2015	2,27,37,344/-

4. The common reasons given in the impugned orders for denying the CENVAT credit on service tax paid on re-insurance services are as follows:-

(a) Re-insurance service is not essential for providing insurance service as the Appellant can provide insurance service without obtaining re-insurance service;

(b) Re-insurance services were obtained by the Appellant after issuance of insurance policies to the customers, i.e. after provision of 'output services' and thus, the same cannot be said to have been used for rendering 'output services';

(c) Re-insurance services pertaining to motor vehicles have been included in the definition of 'input service' only by way of an amendment of rule 2(l) of the CENVAT Credit Rules, 2004[3] w.e.f. April 01, 2012 and thus, prior to the said date, it does not qualify to be an 'input service'. Further, with the said amendment, re-insurance services pertaining to other than motor vehicles is also not eligible for credit; and

(d) The invoices issued by the pool member companies are not proper documents, as they have been issued without providing any service and without any payment of premium.

5. Learned Counsel appearing for the Appellant has made the following submissions to assail the impugned orders:-

(i) Re-insurance services are used for provision of insurance services and thus, qualify as 'input service' for the Appellant. This is for the reason that obtaining re-insurance service is not only a prudent business requirement but also a statutory requirement under the provisions of the General Insurance (Re-insurance) Regulations 2000[4] that

3. Credit Rules
4. Re-Insurance Regulations

have been framed under section 114A of the Insurance Act to provide for certain matters, including matters relating to re-insurance under sections 101A & 101B of the Insurance Act. In support of this contention reliance has been placed upon a decision of the Karnataka High Court in **Commissioner of Central Excise, Bangalore v/s PNB Metlife India Insurance Co. Ltd.**[5]**,** which decision of the Karnataka High Court was accepted by the Department in the Circular dated February 16, 2018. In fact, relying upon the aforesaid decision of the Karnataka High Court, the demand proposed by the Department against the Appellant for a subsequent period 2015 to 2016 was dropped by the Commissioner of Central Excise, Jaipur by order dated May 16, 2017, which order has also attained finality. The Department, therefore, cannot take a contrary stand in these Appeals in view of the decision of the Tribunal in **Shri Niraj Prasad v/s Commissioner of Central Excise & Service Tax, Kanpur**[6];

(ii) The amendment in rule 2 (l) of the Credit Rules does not affect the eligibility of the Appellant to avail CENVAT credit on re-insurance services. The

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5. 2015 (39) S.T.R. 561 (Kar.)
6. Service Tax Appeal No. 3834/2012 decided on July 17, 2019.

general insurance services relating to motor vehicles have been excluded from the purview of 'input service', but this exclusion clause cannot be the read to cover re-insurance services since they are not insurance services in **respect of a motor vehicle**;

(iii) The Appellant is eligible to avail CENVAT credit on re-insurance services provided by member companies under the Indian Motor Third Party Insurance Pool[7] that has been created under section 34 of the Insurance Act;

(iv) In Service Tax Appeal No. 52874 of 2015, there is a duplication of demand to the extent of CENVAT credit of Rs. 6,12,340/- and, therefore, confirmation of demand in the impugned order to that extent is liable to be set aside on this ground; and

(v) In any view of the matter, the extended period of limitation could not have been invoked nor could penalties have been imposed in the facts and circumstances of the case.

7. Insurance Pool

6. The learned Authorised Representative of the Department has, however, supported the impugned orders and has contented that they do not suffer from any illegality. Learned Authorized Representative submitted that re-insurance service is not essential for providing insurance service and, therefore, the Appellant is not entitled to avail CENVAT credit of service tax paid on re-insurance services. The learned Authorized Representative also emphasized that since re-insurance services pertaining to motor vehicles have been excluded in the definition of 'input service' only by way of amendment made in Rule 2(l) of the Credit Rules w.e.f. April 1 2012, it will not qualify to be 'input service' prior to the said date. Learned Authorized Representative also submitted that the extended period of limitation was correctly invoked in the facts and circumstances of the case.

7. The submissions advanced by the learned Counsel for the Appellant and the learned Authorized Representative of the Department have been considered.

8. As noted above, the Appellant is a registered insurer under the provisions of Insurance Act and is engaged in providing general insurance services. It issues various kinds of insurance policies like motor vehicle insurance, fire insurance and marine insurance. The insurance business in India is regulated by the Insurance Act. Section 3 deals with registration and sub-section (1) of section 3 provides that no person shall, after commencement of the Insurance Act, carry on any class of insurance business in India

and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of the Insurance Act, continue to carry on any such business, unless he has obtained from the Authority a certificate of registration for the particular class of insurance business. Section 3(4)(f) provides that the authority shall cancel the registration of an insurer, either wholly or in so far as it relates to a particular class of insurance business, if the insurer makes default in complying with, or acts in contravention of any requirement of the Insurance Act or of any rule or any regulation or order made or any direction issued thereunder. Section 101A of the Insurance Act deals with re-insurance with Indian re-insurers. It provides that every insurer shall re-insure with Indian re-insurers such percentage of the sum assured on each policy as may be specified by the Insurance Regulatory and Development Authority of India[8] that has been established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act 1999[9]**.** The Government of India has constituted IRDA with a view to protect the interest of holders of insurance policies and to regulate, promote and ensure orderly growth of the insurance industry. The Appellant claims that because of the requirement set out under section 101A of the Insurance Act and as a prudent business practice it has been availing re-insurance services from Indian as well as foreign re-insurance companies in respect of the insurance policies.

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8. IRDA
9. IRDA Act

9. Section 114A of the Insurance Act empowers the IRDA to make regulations in respect of various matters including matters relating to re-insurance under sections 101A and 101B of the Insurance Act. In due exercise of the aforesaid powers, IRDA has issued the Re-insurance Regulations for re-insurance of general insurance business.

10. Section 146 of the Motor Vehicles Act, 1988[10] mandates taking of an insurance cover against third party risks by a person using a motor vehicle in a public place. The rate for third party insurance premium is regulated by the Insurance Act. It is stated that problems were faced by companies in issuing insurance cover against these policies as very high risks arose therefrom.

11. Directions dated December 4, 2006, were issued by IRDA, in due exercise of powers conferred under section 34 of the Insurance Act, for creation of an Insurance Pool. All the general insurers, registered to carry on general insurance business (including motor insurance business) or general re-insurance business, were directed to collectively participate in a pooling arrangement to share all motor third party insurance business underwritten by any of the registered general insurers. It is in pursuance of the aforesaid directions that all general insurance companies in India entered into an agreement with GIC for creating the Insurance Pool. This Insurance Pool is a mechanism to render re-insurance services by general insurance companies to

10 . MV Act

each other as regards third party motor vehicle insurance. Under this pool arrangement, a matrix is prepared periodically to determine the amount of premium to be paid by one member to another and vice versa.

12. The Appellant claims that in pursuance of the aforesaid matrix, it raised an invoice on each member specifying the premium allocated to it under the matrix and charged service tax thereon. Likewise, invoices were raised by all pool members on each other. The service tax charged in such invoices is availed as credit by each member. The Appellant has also availed CENVAT credit of service tax paid on such re-insurance service provided by the pool member companies under the Insurance Pool.

13. In respect of re-insurance services rendered by Indian Companies, service tax is charged from the Appellant and then deposited in the Government account. In respect of re-insurance services rendered by foreign companies, the Appellant is discharging service tax under the reverse charge mechanism. The Appellant has been availing CENVAT credit of service tax paid on such re-insurance services. This CENVAT credit can broadly be categorized as under:-

(a) Re-insurance services rendered by pool member companies which charge service tax from the Appellant on their invoices;

(b) Re-insurance services rendered by other Indian re-insurers which charge service tax from the Appellant on their invoices; and

(c) Re-insurance services rendered by foreign re-insurance, on which service tax is paid by the Appellant under the reverse charge.

14. In the course of audit of the records of the Appellant for the period from April, 2010 to March 2011 that was carried out between November, 2011 to March, 2012 it was inter alia, pointed out that re-insurance is not an 'input service', as the same is not essential for providing 'output service' and is received after providing 'output service'. The Appellant was, accordingly, issued three show cause notices dated November 26, 2011, May 21, 2014 & April 8, 2016 for the period October, 2008 to March, 2012, April, 2012 to March, 2014 and April, 2014 to March, 2015 respectively. These three show cause notices resulted in three impugned orders dated May 19, 2014, February 28, 2015 and January 23, 2017. The aforesaid three appeals have, accordingly been filed to assail these impugned orders.

15. The first issue that arises for consideration in these three appeals is as to whether re-insurance services are used for provision of insurance services and, therefore, would qualify as 'input service' for the Appellant. Section 65 (58) of the Finance Act,

1994[11] defines 'insurer' to mean any person carrying on general business or life insurance business and includes a re-insurer. Under section 65(80) of the Finance Act, 'policy holder' has the meaning assigned to under section 2(2) of the Insurance Act. Under section 65(105)(d) of the Finance Act, 'taxable service' means any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on general insurance business in relation to general insurance business.

16. An insurer issues insurance policy to insure and assumes the risks arising thereunder. The insurance of such risks assumed by the insurer by another insurer is called re-insurance, which would, therefore, be insurance of insurance. Re-insurance, thus, is an insurance of insurer's risks. An insurance policy is issued for a specific term and it is for whole term of the policy that the insurer assumes the risk on the insured subject. This business of the insurer is insured by any insurer called a re-insurer and for this purpose the insurer pays a premium to the re-insurer.

17. As noticed above, both insurance and re-insurance services are covered under the scope of the general insurance service classifiable under section 65(105)(d) of the Finance Act and chargeable to service tax. The Appellant has stated that it has paid service tax on the 'output service' rendered by it. The re-insurers providing re-insurance services also pay service tax on output re-insurance service rendered by them to the Appellant and charge

11. Finance Act

service tax form the Appellant. It is, therefore, clear that such re-insurance services are used by the insurer for providing output insurance service. Without the use of such re-insurance services, it may not be commercially prudent for any insurance company to assume such high risks under the original insurance policies. It is the assumed risks of the original insurer that are insured under the re-insurance policies. It is, therefore, difficult to hold that reinsurance services are not used by the insurer for providing the 'output services'. It would also not be correct to hold that since re-insurance services are availed after the provision of insurance services, CENVAT credit of service tax paid on re-insurance services cannot be availed. The insurance policy is issued for particular term during which the risks are assumed by the insurer and the re-insurance availed by the insurer is co-terminus with the original risks assumed by the insurer.

18. In this connection it will be useful to refer to a decision of the Karnataka High Court in **PNB Met Life Insurance Co Ltd.** The issue that came up for consideration before the Karnataka High Court was whether an assessee can avail CENVAT credit of service tax paid on reinsurance services by treating the said service as an "input service". PNB Metlife India Insurance Company was carrying on life insurance business and on the insurance policy issued by it, service tax was charged from the customers. It also procured re-insurance service from overseas insurance companies and availed CENVAT credit of service tax paid on such services received by it. This CENVAT credit was denied by the Department

for the reason that re-insurance service cannot be considered as an "input service" since it takes place after the insurance policy is issued. The Karnataka High Court examined whether CENVAT credit availed and utilized by the insurance company on service tax paid for re-insurance service is an "input service" for the "output service" of insurance that the company was providing and held that the process of issuance of the policy by the insurer and subsequent procurement of re-insurance policy from another company, which is a statutory requirement, is an integral part of the entire process and the insurance process does not come to end merely on the issuance of the insurance policy since it continues till the existence of the term of the policy. The High Court noted that since re-insurance has to be taken under section 101A of the Insurance Act, it is a statutory obligation and, therefore, has to be considered as having nexus with the "output service" and, therefore, would be an "input service", for which CENVAT credit can be availed. The portion of the judgment of the High Court pertaining to this aspect is reproduced below:

> **"6.** Having heard the learned counsel for the parties and in the fact of this case, we are of the opinion that the order of the Tribunal does not require any interference. Rule 2(l) of the CENVAT Credit Rules 2004 provides that „Input Service" means service used by a provider of taxable service for providing an, Output Service". The submission of the learned counsel for the appellant that once the Insurance Policy is issued by the Insurer, the transaction comes to an end (and would not depend on the reinsurance policy) and as such the service provided would not come within the ambit of input service, is not worthy of acceptance. The process of issuance of an Insurance Policy by the Insurer and subsequent procurement of reinsurance policy from another company (which is a statutory requirement) is an integral part of the total process. The process of insurance does not come to an end merely on the issuance of the Insurance Policy by the Insurer. In fact, it continues till the existence of the term of the policy. The re-insurance is taken by the Insurer immediately after the insurance policy is issued, as is

required under Section 101A of the Insurance Act, 1938. Since re-insurance is a statutory obligation, and the same is coterminus with the Insurance policy issued by the respondent, we are of the opinion that the stand taken by the Tribunal is correct that the transfer of a portion of the risk ox the re-insurance has to be considered as having nexus with the output service, since the re-insurance is a statutory obligation and the same is coterminus with the Insurance Policy. We only reiterate that the issuance of insurance policy by insurer, and then taking of reinsurance by it, is a continuous process, and in the facts of the present case, it cannot be said that the same would not be an „input service" eligible for CENVAT credit within the meaning of Rule 2(l) of the CENVAT Credit Rules, 2004.

7. We may further add that the Service Tax is levied for certain service rendered and the provision of giving the CENVAT credit is so that there may not be double taxation. If a person has collected service tax, no doubt the same has to be deposited, but if in the process of the same transaction he has paid some service tax, which is necessary for its business, then he is entitled to the CENVAT credit to the extent of service tax which has been paid by it. In the present case, if the entire Service Tax which is collected by the Insurer, while selling its insurance policies, has to be deposited without being given the credit of the tax which is paid by it while procuring a policy of reinsurance as (mandatorily required in law), the same would be against the ethos of CENVAT credit policy, as the same would amount to double taxation, which is not permissible in law."

19. It needs to be noted that the aforesaid decision of the Karnataka High Court in **PNB Metlife India** was accepted by the Central Board of Excise and Customs in the Circular dated February 16, 2018. The relevant paragraphs 8 and 8.1 of the Circular are reproduced below:

"8. Decision of the Hon"ble High Court of Karnataka at Bangalore dated 09.04.2015 in the case of M/s PNB Metlife India Insurance Company Ltd. Bangalore [2015 (39) STR 561 (Kar.)]

8.1. Department has accepted the aforementioned order of the Hon"ble High Court of Karnataka. The issue examined in the order was, whether
Reinsurance is an input service which is used for providing output service, namely, insurance and whether CENVAT Credit taken on re-insurance service is admissible. Hon"ble High Court held that reinsurance is a statutory obligation and the same is co-terminus with the insurance policy. Issuance of insurance policy by insurer, and then taking of reinsurance by it, is a continuous process. Reinsurance is, therefore, an input service."

20. It also needs to be noticed that re-insurance service is, as noticed above, a statutory requirement since without obtaining re-insurance services, the Appellant cannot be permitted to engage in insurance business. Thus also, the re-insurance services availed by the Appellant would qualify as 'input service' and the Appellant would be justified in availing CENVAT credit of service tax paid on re-insurance services.

21. It also needs to be noticed that a demand similar to the demand that has been raised in the present Appeals against the Appellant for a subsequent period was dropped by Commissioner of Central Excise, Jaipur by order dated May 17, 2017. The relevant portion of the order passed by the Commissioner is reproduced below:-

> " This order-in-original is being issued to dispose of the Show Cause Notice C. No. V(H)ADJ/ST/115/2016/4400-4402 dated 28.12.2016 (hereinafter referred to as 'SCN' also), issued to M/s Shriram General Insurance Company Ltd. E-8 EPIP, Sitapura Industrial Area, Jaipur (hereinafter referred to as "the assessee" also) holder of the Service Tax Registration No. AAKCS2509KST001 who are engaged in providing General Insurance Service and Insurance Auxiliary Service. The assessee appeared to have wrongly availed CENVAT Credit of Service Tax amounting to Rs. 2,90,19,682/- during the period April, 2015 to March, 2016 as per details given in Annexure- 'A' to the impugned show cause notice by contravening the provisions of Rule 2&3 of the CENVAT Credit Rules, 2004 as per facts stated below:
>
> 2. Whereas, during the course of audit of the records of the assessee, it was noticed that the assessee had availed CENVAT Credit of service tax paid on re-insurance services pertaining to other than Motor Vehicle. Whereas re-insurance services pertaining to other than Motor Vehicles did not appear to be covered under the ambit of 'input service' as defined under Rule 2(l) of CENVAT Credit Rules, 2004.
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> xxxxxxxxxxxxxxxx
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> 29. The discussion up to this stage can be summarized to conclude that reinsurance is a statutory obligation and the

> reinsurance is integrated with the insurance policy and therefore has nexus with the output service of insurance. This aspect has also been clarified by CBEC New Delhi in its Circular No. 120(a)/2/2010-S.T. dated 16.04.2010. Further in the said circular it is also clarified that, it is the re-insurer which provides insurance service to the insurance company. Thus there is no doubt that re-insurance service is an input service for providing in insurance services. Further, these aspects have also been discussed by the Hon'ble CESTAT in case of PNB MetLife India Insurance Co. Ltd. Vs CCE, ST& CUS. Bangalore-2014(36)STR891(Tri-Bang.) xxxxxxxx."

22. In such circumstances, the Department cannot take a contrary stand in these Appeals as was held by the Tribunal in **Shri Niraj Prasad**.

23. The second issue that arises for consideration is whether the amendment to the definition of 'input service' in rule 2(l) w.e.f. April 1, 2012 would affect the eligibility of the Appellant to CENVAT credit on reinsurance services during the relevant period. It needs to be noted that motor vehicles have been excluded from the definition of 'capital goods'. For this reason, the general insurance services relating to such motor vehicles have also been excluded from the purview of 'input service'. The purpose of this amendment , thus, is to restrict the credit on insurance services availed in respect of motor vehicles to only two class of persons, i.e. (a) manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; and (b) an insurance company in respect of a motor vehicle insured or re-insured by such person. This exclusion clause cannot be read to cover re-insurance 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'.

24. The Commissioner, in the order dated May 17, 2017 that pertained to the Appellant for a subsequent period, also did not accept the contention of the Department that re-insurance service pertaining to motor vehicles has been included in the definition of 'input service' only by way of amendment in rule 2(l) of the Credit Rules with effect from April 1, 2012. The Commissioner held that the amendment to the definition of 'input service' in rule 2(l) of the Credit Rules w.e.f. April 1, 2012 does not affect the eligibility of the Appellant to avail the CENVAT credit on re-insurance service. The relevant portion of the order of the Commissioner is reproduced below:-

> " 21. The closer and deeper scrutiny of said exclusion clause reveals that within the said exclusion clause which among others restrict the CENVAT credit of general insurance business relating to motor vehicle (which is not a capital goods), exception has been made to the general insurance services, if used by an insurance company, in respect of a motor vehicle insured or reinsured by such person. Thus, the main exclusion is related to general insurance services related to the Motor vehicle and within this exclusion exception has been granted to an insurance company in respect of motor vehicle insured or reinsured by them. Meaning thereby that this exclusion and its exception are not in any way restricting the CENVAT credit of general insurance services pertaining to "Other than Motor vehicle' which in real terms is not a subject matter of said exclusion and its exception clause. It may further be added that the exclusion to the definition of 'input service' has been introduced and are related to only those general insurance services which are in respect of a motor vehicle, not being in the nature of a capital goods. Thus, the

> applicability of this exclusion in Clause-B A is limited only to services received in respect of motor vehicles and does not extend to services received in respect of 'Other than Motor vehicle'. Therefore, this amendment, in no way, deals with insurance or reinsurance services received in respect of 'other than motor vehicles'. Therefore, the allegation of the show cause notice that on the basis of such an exclusion clause, contained in Clause (BA) (supra), the services of insurance or re-insurance relted to 'Other than Motor vehicle' would be excluded from the definition of the input service is not sustainable and so as the allegation of the show cause notice in this regard as far as this ground for denial of CENVAT Credit is concerned. Situation being so (ie the service in question being not covered under the exclusion clause). The eligibility of the CENVAT credit on re-insurance services pertaining to 'Other than Motor Vehicle' is therefore required to be analyzed in terms of the main and inclusive clause of the definition of 'input service' which has only one requirement, i.e. use of a service for provision of output service."

25. Even in regard to this issue, the Department cannot take a contrary stand in these Appeals.

26. It now remains to be examined whether the Appellant is eligible to avail CENVAT credit of re-insurance service provided by pool member companies under the Insurance Pool. In the first instance, the finding in the impugned order that the Appellant is not eligible for CENVAT credit of service tax paid under the Insurance Pool since the Appellant has not actually paid any amount to the member companies is beyond the scope of the show cause notice. Even otherwise, the factual position has not been correctly appreciated by the Commissioner. As noticed above, under the pool arrangement, the Appellant deposits the whole premium collected by it in the pool account and based on the prescribed formulae, the GIC determines the amount of re-insurance premium due to each member as against the other members. Thus, in effect, each company pays the re-insurance premium after deducting the

amount due from the other member companies. The service tax liability stands discharged on the whole re-insurance premium paid to the other members. It cannot be, therefore, be urged by the Department that the invoices that are issued by the pool member companies are not for any provision of service or without any payment. The re-insurance services are provided by the pool member companies and it is for this reason that the Insurance Pool was formed by IRDA. Clause 3 of the direction dated December 4, 2012 are relevant and are reproduced below:-

> "3. Pooling Mechanism: The pooling of business among all insurers will be achieved through a multi-lateral reinsurance arrangement between the underwriting insurer and all the other registered insurers carrying on general insurance business (including motor insurance business) and general insurance reinsurers."

27. This position is also clear of the from the observation made in the paragraph 38 of the impugned order which are as follows:-

> "38. …. It is observed that such participation in the pool is also sharing of risk and is also a kind re-insurance among the pool members. Therefore, whether it is re-insurance got done by an insurance company with another insurance company or participation in the pool for motor third party insurance, in both the cases it is re-insurance and have to examined and dealt in similar manner."

28. Thus, it cannot be doubted that re-insurance services are rendered by pool member companies to each other and payment of premium takes place with the pooling of the original premium into the pool. The Appellant would, therefore, be eligible to avail the CENVAT credit of service tax paid thereon. The

impugned orders denying such CENVAT credit cannot, therefore, cannot be sustained.

29. Thus, when the impugned orders are being set aside for the aforesaid reasons, it would not be necessary to examine whether the extended period of limitation could have been invoked in the facts and circumstances of the case.

30. The impugned orders, for all the reasons stated above, therefore, deserve to be set aside and are set aside. The Appeals are, accordingly, allowed.

(Order pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.L. MAHAR)
MEMBER (TECHNICAL)

Rekha