

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 1

Service Tax Appeal No. 50468 of 2017

(Arising out of Order-in-Original No. Commissioner/LTU(Audit)/04/2016 dated 29.11.2016 passed by the Commissioner, LTU (Audit), New Delhi)

M/s Max Life Insurance Company Limited

Appellant

90A, Sector-18, Udyog Vihar,
Gurgaon-122015 (Haryana)

VERSUS

**Commissioner of Central Excise &
Service Tax, New Delhi**

Respondent

Large Tax Payer Unit
NBCC Plaza, Pushp Vihar,
Saket, New Delhi-110017.

Appearance

Shri Sanjeev Sachdeva, Shri Nikhil Kapoor & Ms. Diksha Ranjan,
Advocates – for the Appellant.

Shri Rajeev Kapoor, Authorized Representative – for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Date of Hearing/Decision : 30/05/2023

Final Order No. 50767/2023

Rajeev Tandon

The appellants M/s Max Life Insurance Company Limited vide the present appeal have assailed the order No. Commissioner/LTU(Audit)/04/2016 dated 29.11.2016 passed by the learned Commissioner, LTU (Audit), New Delhi.

2. The appellants are engaged in life insurance business providing life insurance products to their policy holders (the customers). The appellants are also registered with Insurance Regulations and Development Authority¹ for carrying of their business. In order to conduct its business, the appellants engage both individual agents and corporate agents (commonly known as insurance agents) to solicit and sell their insurance products and pays them commission in terms of Section 40A of the Insurance Act, 1938². Apart from commission and incentive appellants also incur expenses towards inland and overseas training of the agents in certain cases. The department vide show cause notice No. LTU/ST/MAX/02/2014-15 dated 14.10.2014, for the period April 01, 2013 to March 31, 2014 raised the following three issues:

- (i) Demand of Service tax amounting to Rs. 77,67,147/- in respect of expenditure of Rs. 6,28,40,993/- incurred by the appellants on foreign training of insurance agents;
- (ii) Demand of Service tax amounting to Rs. 47,70,218/- on the expenditure of Rs. 3,85,94,000/- incurred by the appellants by way of reimbursement of certain expenses related to the training of insurance agents;
- (iii) Demand of Service tax amounting to Rs. 5,22,45,987/- on account of 4% debit adjustment from the insurance commission paid by the appellant to their Insurance/Corporate Agents.

3. At the outset, it may be worthwhile to point out that identical issues were also raised and adjudicated upon by the

1 IRDA

2 IA

department (this being a follow up show cause notice for subsequent period), and came to be decided by the decision of this Tribunal in the case of **M/s Max Life Insurance Company Ltd. Vs. Commissioner of Central Excise & Service Tax** vide order dated 15.11.2019.

4. We have heard the rival submissions on both sides. Shri Sanjeev Sachdeva, learned Advocate for the appellant and Shri Rajeev Kapoor, learned authorised representative for the Department have essentially reiterated their submissions as made at the time of the earlier order referred to supra and Shri Kapoor justifying and reiterating the Commissioner's order.

5. However, briefly the arguments made are being dwelt upon herein below:

A. Expenses incurred towards overseas & inland training: Para 2(i) & 2(ii)

5.1 In respect of the demand of amount of Rs. 77,67,147/- for an expenditure incurred towards foreign training of the insurance agents, the learned counsel submitted that they reimbursed the expenses incurred for the overseas training of their insurance agents and which expense was not liable to service tax under the reverse charge mechanism as training was provided to their insurance agents as per the statutory mandate in terms of the Regulation 5 of the IRDA Regulations and was not in connection with solicitation and provisioning of any service and thus not in consideration for service. The regulations mandate upon the insurer to provide training and the said cost incurred is reimbursed only to avoid any financial hardship to the insurance agents. Also

as far as levy of service tax amounting to Rs. 47,70,218/- on the expenses incurred by M/s Max Life Insurance Company by way of reimbursement of certain expenses related to the training of insurance agents there being common grounds in the arguments, the same are also being dealt along with. In view of the aforesaid proposition, expenses incurred being towards discharge of a statutory mandate, it was pointed out by the learned advocate that there is no merit in the demand of service tax on this count and it needs to be set aside.

5.2 As stated aforesaid, the payment of expenses to the insurance agents for attending training is not in relation to the service of soliciting or procuring business provided by the insurance agents. The taxable event is rendition of the taxable service and in the present circumstances no taxable service is rendered by the insurance agents to the appellants for which the said expenses are reimbursed by the appellants. The appellants have also placed reliance in support of their proposition on the decision of this Tribunal in the case of **Intercontinental Consultants & technocrats Pvt. Ltd. Vs. Union of India**³ as affirmed in **Union of India Vs. Intercontinental Consultants & Technocrats Pvt. Ltd.**⁴ and has also placed reliance in the case of **M/s Bajaj Allianz Life Insurance Co. Vs. Commissioner of Central Excise & Service Tax, Pune-III**⁵ as also their own case and referred to in para 3 above.

3 2013 (29) STR 9 (Del.)

4 2018 (10) GSTL 401 (SC)

5 Final Order No. 86013-86023/2019

5.3(i) Reference is also invited to Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 whereby it could be argued that it does provide for inclusion of certain expenses towards the value for charging of service tax, however, it is to be noted that the rule itself uses the words "*in the cause of providing of taxable service*" and no such taxable service is rendered while undergoing and providing training to the agents. For greater clarity, Rule 5(1) *ibid* is reiterated hereunder.

Rule 5. Inclusion in or exclusion from value of certain expenditure or costs –

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

5.3(ii) Further, though Rule 6 (1) (ix) of the said Valuation Rules lays down that commission, fee or other sum paid to the insurance agent in relation to insurance of auxiliary service rendered by the insurer appointing, shall be included in the value of the taxable service, however, the gross value of the taxable service in terms of section 67 *ibid* vis-à-vis the payment of commission, fee or any other sum as envisaged in Rule 6 (1) (ix) has to be in relation to the procurement and solicitation of the insurance business. It is very categorical from the words in the statute that such sum paid to the insurance agent in relation to **Insurance Auxiliary Services** by the appointing insurer only is includible in the value of taxable service. Rule 6(1) is reproduced below:

"6. Cases in which the commission, costs, etc., will be included or excluded.- (1) Subject to the provisions of section 67, the value of the taxable services shall include,-

- (i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;
- (ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
- (iii) the amount of premium charged by the insurer from the policy holder;
- (iv) the commission received by the air travel agent from the airline;
- (v) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- (vi) the reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
- (vii) the commission or any amount received by the rail travel agent from the Railways or the customer;
- (viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner;
- (ix) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an [insurance agent; and]
- (x) the amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service."

5.4 As also stated aforesaid that the training for insurance agents, is mandatory and imperative and is not only statutorily prescribed but is also a must for knowledge enhancement and to imparting the necessary skills beside the development and acquisition of work habits and product knowledge for the insurance agents. Section 42 of the Insurance Act mandates that individual insurance agents must possess the requisite qualification and/or practical training and are required to pass the examination as may be specified by the IRDA. A mandatory 50 hours of training to

agents prior to issuance of the license is provided for. Without a doubt, training per se is not a part of appellants service – it only seeks to make agents better at performance of their jobs – it nonetheless is not a part of Soliciting providing insurance business. Thus, for the reasons the levy of demand as stated in para 2 (i) and (ii) aforesaid does not survive.

B. In respect of issue as contained in para 2(iii)

6. In so far as the demand for service tax amounting to Rs. 5,22,45,987/- on account of 4% debit adjustment from the insurance commission paid by the appellants to its insurance/corporate agent is concerned, it is to point out that the said issue is no more res-integra and has been settled by the decision of this Tribunal in appellant's own case⁶. While adopting the arguments taken by the learned counsel in the said case, it is a fact that service tax being a consumption based tax is imposable on the gross value of consideration for service. The insurance agents did not owe any amount to the appellants which was required to be set off against the commission paid to the insurance agents. The said 4% debit adjustment from the commission required to be paid/paid to the insurance agents is akin to the discount as per the agreed terms with such agents and, therefore, Rule 3 of the Valuation Rules shall not be applicable to the said proposition. As per clause (c) of Explanation to section 67 all debit adjustment and book-adjustment are within its ambit for the purpose of service tax levy. Section 67 of Finance Act, 94 and Rule 3 ibid are reproduced hereunder:

⁶ 2019 (12) TMI 121 - CESTAT

“67. Valuation of taxable services for charging service tax

(1) Subject to the provisions of this Chapter, service tax is chargeable on any taxable service with reference to its value shall,-

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed

Explanation.-For the purposes of this section,-

(a) “consideration” includes-

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) “money” includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;.

(c) “gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.”

“Rule 3. Manner of determination of value.

Subject to the provisions of section 67, the value of taxable service, where such value is not ascertainable, shall be determined by the service provider in the following manner :-

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.”

6.1 For want of any evidence to propose that the insurance agents were required to pay back to the appellant any amount to the appellant the 4% debit adjustment thereof from the commission paid to the insurance agent is undoubtedly the discount as also evident from the terms and conditions agreed upon with the agents. Any reference to Rule 3 of the Valuation Rules, therefore, is misplaced. Even in the appellant’s own case, cited in paragraph 3, the said issue has been considered and decided in the appellants favour. It is clear from records that the appellants have discharged their service tax liability on the gross value of the consideration paid to their agents and the said reduction of the gross commission cannot be construed to be a part of the consideration. Service tax is liable to be paid on the actual commission paid to the agents and no service tax would be payable on the 4% debit adjustment made by the appellant.

6.2 Further, in terms of Section 68(2) of Finance Act, 1994 read with Rule 2(1)(d)(i)(A) of the Service Tax Rules, the liability to pay service tax in respect of insurance auxiliary service is upon the appellants. However, the value at which such tax is leviable has to be considered in terms of Section 67(1)(i) of the Act. Thus, where the provisioning of service is for a consideration in monetary terms, the service tax is leviable on the “gross amount charged.” This, i.e.

the gross amount charged is defined in clause (c) of Explanation to Section 67 as under:

“Gross amount charges” includes payment by (c) cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called ‘suspense account’ or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprises.”

Thus, any payment by whatever mode paid viz. cheque, credit card, direct debit to account or in any other form including issuance of credit or debit notes is a component of the value for purpose of determination of the tax liability. It has been contended that the agents do not owe any amount(s) to the appellant requiring a set off against commission paid to the said agents. Thus, the 4% debit adjustment from commission payable to the agents is no more than a discount as per agreed contractual terms. The service tax shall be payable and is to be paid on the actual commission paid to the said insurance agents. To similar proposition of law is the ratio of this Tribunal’s decision in the case of **Mccann Erickson (India) Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi**⁷, **Euro RSCG Advertising Ltd. Vs. Commissioner of CST, Bangalore**⁸

7. For the reasons aforesaid, we do not find any merit in the order passed by the learned Commissioner, LTU (Audit) upholding the confirmation of the demand of the service tax collectively for an amount of Rs. 1,25,37,365/-. Such being the position and in view thereof as the issue in its entirety has been considered on merits, any other question ancillary raised by the appellants need not be

7 2008 (10) STR 365 (Tri.-Del.)

8 2007 (7) STR 277 (Tri.-Bang.)

considered and commented upon. As the order-in-original assailed is not found to be sustainable in law, it is, therefore, set aside and the appeal allowed.

8. The appeal filed is allowed with consequential relief, if any.

(Pronounced in open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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