Service Tax Appeal No.806/2012 (DB)

IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:21.04.2017

Service Tax Appeal No.806/2012 (DB)

[Arising out of Order-in-Original No.38/Commissioner /2011-12 dated 14.03.2012 passed by the Commissioner, Central Excise and Service Tax, New Delhi]

CCE, New Delhi Appellants

Vs.

Max New York Life Insurance Co. Ltd. Respondent

Appearance:

Rep. by Ms. Neha Garg, DR for the appellant.
Rep. by Shri Sanjeev Sachdeva, Advocate and Ms.Neha Gulati, Advocate for the respondent.

Coram: Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.53085/2017

Per B. Ravichandran:

The Revenue is in appeal against order-in-original dated 14.3.2012 of Commissioner, LTU, New Delhi.

2. The respondents are engaged in the business of life insurance and annuity products. They were registered with the Department for discharging service tax under various taxable categories. They were also availing credit on various services in terms of Cenvat Credit Rules, 2004. The respondent is providing life insurance service, which included annuity based insurance service. The dispute in the present appeal relates to the respondent's liability in terms of Rule 6(3) of the Cenvat Credit Rules, 2004, as the respondent have provided taxable as well as exempted/non-taxable output services. As they have not maintained separate

accounts for availing credit on various input services and were providing annuity services, which is not subjected to service tax during the material time, proceedings were initiated against the respondent to demand and recover Rs.10,80,543/- as amount payable @ 6% of the value of the exempted services in terms of Rule 6(3A) of the Cenvat Credit Rules, 2004. The case was adjudicated. The Commissioner vide the impugned order held that the respondent were providing both taxable and exempted services. He held that the respondent is liable to pay either an amount equal to 6 % of the value of exempted service or reverse the proportionate cenvat credit attributable to the value of exempted services in terms of Section 6(3A) of the CCR, 2004.

3. Ld. AR elaborating the grounds of appeal, submitted that the impugned order did not give proper conclusion to the proceedings initiated against the respondent. The order only repeated the legal provisions without calculating on the demand proposed in the show cause notice. The show cause notice proposed recovery of 6% of the value of exempted service. The respondent did not opt to follow the second option of reversing the proportionate credit. As such, the original order should not have given such option to the respondent. As such, it is contended that the respondent is liable to pay Rs.10,80,543/- and also is liable for penalty under Section 76 and also Rule 15 of the Cenvat Credit Rules, 2004.

4. Ld. Advocate appearing for the respondent submitted that during the material time, the status of annuity based insurance service was subject matter of dispute. There were decisions by the jurisdictional Service Tax Authorities holding that the said service is not an exempted service as it is not falling within the statutory scope of Finance Act, 1994. Ld. Counsel referred to one such decision

passed by the Commissioner (Adj.), Central Excise, Mumbai on 18.01.2008 with reference to SBI Insurance Co. Ltd. on the same issue. The case of the respondent is that when the annuity service is held to be an exempted service by the impugned order, it necessarily follows that they have to follow the procedure in terms of Rule 6(3A). The impugned order also upheld their eligibility to follow one of the options, with reference to credit attributable to the exempted services. The respondent, on receipt of the impugned order, followed the procedure of reversal of proportionate credit and calculated the amount to be reversed. They have reversed the said amount along with interest (by cash) and intimated the jurisdictional officer. The objection by the Revenue to the effect that the said option sould have been exercised at the time of availing the credit itself is not enforceable, as during the material time, the status of annuity service itself was not clear.

5. We have heard both the sides and perused the appeal records.

6. The proceedings against the respondent is to recover an amount equivalent to 6% of the value of the exempted service. The Original Authority held that the respondent is liable to follow one of the two options in terms of Rule 6(3) of CCR, 2004. The respondent followed second option and reversed the proportionate credit attributable to the exempted service, along with interest for delayed reversal of such credit. We find that the only objection of the Revenue is to the effect that the respondent failed to exercise the option for reversal at the time of availing credit. We note that the annuity products are considered as exempted service as held by the impugned order. It is also held that the appellant has to follow the consequences of such finding. We note that upon the direction of the impugned order, the respondent did exercise the second option and reversed the credit along

with interest. In such factual background, we find that there is no reason to insist that the respondent should necessarily follow the first option of paying 6% of the value of exempted service. We find no merit in the appeal by Revenue. Accordingly, we dismiss the same.

[Order dictated and pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.