IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Service Tax Appeal No. ST/51806/2014-CU [DB]

[Arising out of Order-in-Appeal No.LTU/Appeal/48/2013 dated 17.12.2013 passed by the Commissioner (Appeals), Central Excise & Serviced Tax, New Delhi]

M/s. Oriental Insurance Co. Ltd. …Appellant

Vs.

C.C.E., New Delhi … Respondent

Present for the Appellant : Mr. Narender Singhvi, Advocate
Present for the Respondent: Mr. Ranjan Khanna, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 21/09/2017

FINAL ORDER NO. 57032/2017

PER: B.RAVICHANDRAN

The appeal is directed against impugned order dated 17.12.2013 of Commissioner (Appeals), LTU, New Delhi.

2. The appellants are engaged in providing insurance service. They were registered with the Department and they

were discharging Service Tax. They were also liable to pay Service Tax on reverse charge basis. During the period 2008-09 and 2009-10, appellants discharged Service Tax on provisional basis awaiting finalization of accounts. The said assessments were finalized by Order dated 29.03.2012 by the jurisdictional officer. It was found that the appellant short paid Service Tax of Rs.1,41,44,005/- during January, 2009 and excess paid tax of Rs.3,15,62,248/- during October, 2008. In the meantime a demand proceeding was initiated vide notice dated 19.04.2011 to demand the short paid service tax during January, 2009. The said demand proceedings were concluded by order dated 30.08.2012. The said order of Commissioner dropped the penal action and demand of interest by adjusting demanded amount with already paid excess tax. The Revenue preferred appeal against the said order on the ground that penalty and interest should not have been dropped. In the meantime the appellant filed appeal against finalization of provisional assessment, which was decided by first appellate authority vide order dated 13.12.2012. It was held that adjustment has already been approved.

3. The appellant filed a refund claim for Rs.1,74,18,244/-, which is found to be excess paid and affirmed as such in the original order dated 29.03.2012, which finalized of the assessment. The said refund claim was sanctioned by the original authority vide order dated 14.06.2013. The Revenue

preferred appeal against the sanction and the said appeal was decided by the impugned order.

4. The Commissioner (Appeals) in the impugned order held that when the appeal by the Revenue against order dated 30.08.2012 of the Commissioner is pending with the Tribunal, the original authority should not have proceeded to decide refund and to sanction it.

5. The ld. Counsel contesting the findings of the impugned order submitted that first of all, there is no bar on the original authority to decide and sanction the excess paid Service Tax, which is not at all in dispute. Secondly, even the appeal filed by the Revenue against the order of Commissioner dropping demand for interest and penalty has also been decided by the Tribunal vide Final order No.50838/2017 dated 09.02.2017. The appeal of the Department was dismissed. Hence, the impugned order is not tenable and the refund sanctioned by the original authority is legal and proper.

6. The ld. AR reiterated the findings recorded in the impugned order.

7. We have heard both sides and peruse the appeal records.

8. The fact that the appellant paid excess Service Tax of Rs.1,74,18,244/- is not in dispute. The impugned order held against the appellant only on the ground that the original authority should have awaited the outcome of appeal filed by the Revenue against order dated 30.08.2012 of the Commissioner. We note that the said appeal has no direct relevance regarding the fact of excess payment by the appellant. Even otherwise, the appeal by the Revenue was dismissed by the Tribunal, as mentioned above, on 09.02.2017. As such we find no legal justification in the finding recorded by the Commissioner (Appeals) in the impugned order. Accordingly, the same is set aside and the appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita