

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 08.02.2018

Appeal No. ST/1300/2011- [DB]

[Arising out of the Order-in-Original No. 30/COMMR/2011 dated 31/03/2011 passed by the Commissioner of Central Excise and Service Tax-NEW DELHI]

Max New York Life Insurance Co. Ltd.

...Appellant

Vs.

CCE & ST (LTU)

...Respondent

Appearance:

Present Shri Sanjeev Sachdeva, Advocate for the appellant

Present Shri Amresh Jain, AR for the respondent

Appeal No. ST/1519/2011- [DB]

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...Appellant

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Max New York Life Insurance Co. Ltd

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Appearance:

Present Shri Amresh Jain, AR for the appellant

Present Shri Shri Sanjeev Sachdeva, Advocate for the respondent

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

FINAL ORDER No. 50608-50609/2018

Per B.Ravichandran

1. Both revenue and assessee are aggrieved by the order dated 31/03/2011 of Commissioner of Central Excise, New Delhi. The appellant assessee is engaged in providing 'Life Insurance and Management of investment under ULIP and other related services. They were registered with the department and discharging service tax under various categories. Certain proceedings were initiated against the

appellant assessee for not following the provisions of Rule 6(3) of Cenvat Credit Rules 2004. The appellant assessee provided taxable as well as exempted services which calls for maintenance of separate accounts on credit availed on input services. Failing which option is to be exercised in terms of Rule 6 (3) to pay the percentage of value of exempted service or reverse the credit proportionate to the value of exempted service. Contending that the appellant assessee did not follow the procedure properly under the said rule, the Revenue initiated action for reversal of credit and for imposing penalty. The proceedings concluded by the impugned order. The original authority held that the appellant assessee have to reverse 8 per cent of value of exempted services, which was determined as Rs. 51,31,604/-. He also ordered payment of appropriate interest and imposed penalty under Section 76 of the Finance Act, 1994 with the further penalty of Rs.5000/- under Section 77 of the Finance Act, 1994. No penalty was imposed under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 78 of the Act.

2. The appellant assessee is aggrieved by the penalty imposed under Section 76. The Ld. Counsel appearing for the assessee submitted that there is no application of Section 76 to the present dispute. The issue involved is application of Rule 6(3) of CCR, 2004. The Original Authority held that the appellant did provide exempted services and after quantifying the value of such exempted services and also noting the fact that the appellant assessee did not maintain separate accounts and did not reverse proportionate credit, he proceeded to order recovery of 8 per cent of value of such exempted service. The Ld. Counsel submitted that the whole issue is with reference to maintenance of

separate records and procedure to be followed in case of common input services utilized for providing taxable as well as exempted services. There is no dispute with reference to any short payment or non-payment of Service Tax at all, which can attract the provisions of Section 76.

3. The Ld. AR elaborating the grounds of appeal by the revenue submitted that the original authority erred in not considering the non-taxable portion of premium as consideration for exempted service while arriving at the 8 per cent classification for reversal under Rule 6(3). It is his submission that the appellant assessee is liable to pay Service Tax on the administrative charges for managing the ULIP investment, risk cover charges. These are part of premium amount. However, the investment part of the premium amount should be considered as a consideration for exempted services and the quantification of reversal of amount in terms of Rule 6(3) should have been accordingly arrived at. He submitted that the Original Authority's order in not considering such calculation is required to be set aside.
4. Countering the submissions of the revenue on their appeal the Ld. Counsel for the assessee appellant submitted that there is no service separately identified as exempted service for the investment portion of the premium. In fact the investment is managed by them for which a consideration in the form of administration charges were collected by them out of such premium. This charge has been subjected to service tax. The investment amount is managed and for which service is provided and service tax is paid. In the whole arrangement there is no exempted service and the services provided by the appellant assessee were fully taxed under two separate provisions. Tax was paid by the

appellant-assessee for the risk cover of the insurance and for management of investment and on administrative charges.

5. We have heard both the sides and perused the appeal records.
6. On the appeal by the appellant-assessee we note the Original Authority imposed penalty under Section 76. The provisions of Section 76 are as below:-

76. Penalty for failure to pay service tax:

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than ²[one hundred rupees] for every day during which such failure continues or at the rate of ³[one per cent] of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:

Provided that the total amount of the penalty payable in terms of this section shall not exceed ⁴[fifty per cent of] the service tax payable.

7. The said section is with reference to payment of service tax in accordance to provision of Section 68 or the Rules made under Chapter V of the Finance Act, 1994. Failure to pay such Service Tax shall attract a penalty which is quantified in the said section. The amount which is ordered to be paid by the appellant assessee in terms of Rule 6 (3) cannot be considered as a Service Tax. This position has been settled by various rulings of this Tribunal with reference to Rule 6 (3) of the CCR, 2004. Further, it is also to be noted that payment of the said 8 per cent of value of exempted service is to be made by reversing the credit available in the books of the assessee. In case such reversal is not possible then the amount to be paid can be recovered in terms of Rule 14 of the CCR, 2004. This makes it clear that the amount so calculated under Rule 6 (3) is not a Service Tax and failure to pay such will not

attracts the penalty under Section 76. Accordingly, we set aside that portion of the impugned order with reference to imposition of penalty under Section 76.

8. Considering the appeal by the Revenue we have examined the tax liability for the services rendered by the appellant-assessee. The appellant-assessee collects ULIP Insurance premium which is essentially an insurance policy having investment as well as risk cover. The appellant assessee is discharging Service Tax on the portion of amount allocated to the risk cover under Life Insurance Service. A substantial portion of premium collected under ULIP is invested in various financial instruments. The Appellant-assessee is managing such investment on the behalf of the insured. For managing such investment and also managing the policy the appellant assessee allocates some portion of the premium towards administrative expenses etc. Service Tax is paid on such administrative charges under the category of "Management of Investment Service". Admittedly, substantial portion of the premium is invested in various financial instruments. The revenue holds that that portion of invested amount should be treated as value of exempted services. The Ld. AR referred to Rule 2(e) of Cenvat Credit Rules, 2004 to state that exempted service shall include service on which no tax is payable. We note that in the present arrangement the appellant assessee is providing Service of ULIP for the insured. For such service, the tax is paid. There is no separate identifiable service attributable to investment portion of the premium in the present case. In other words the premium amount received was invested substantially and for managing such investment, administration charges are collected and Service Tax paid. No other service, least of all exempted service, could

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be identified in such arrangement. Hence, we are in agreement with the method of calculation adopted by the Original Authority in arriving at the portion of exempted service/ taxable service. We have no reason to interfere with the said findings.

9. In view of the above discussions and analysis the appeal filed by the assessee-appellant is allowed and the appeal filed the Revenue is dismissed.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

(B.Ravichandran)
Member (Technical)

Rekha