

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**Division Bench  
Court - I

| Appeal No.    | Appellant                              | Respondent                             | Impugned Order No. & Date                                                        |
|---------------|----------------------------------------|----------------------------------------|----------------------------------------------------------------------------------|
| ST/30594/2017 | Shriram Life Insurance Company Limited | CCCE&ST, Hyderabad-IV                  | O-I-O No. HYD-EXCUS-004-COM-06, dated 30.12.2016 passed by CCCE&ST, Hyderabad-IV |
| ST/30716/2017 | CCCE&ST, Hyderabad-IV                  | Shriram Life Insurance Company Limited | .do.                                                                             |

**Appearance**

S/Shri Vipin Kumar Jain &amp; Vishal Agarwal, Advocates for the appellant

Shri V.R. Pawan Kumar, Superintendent/AR for the Respondent.

**Coram:**

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 18.12.2018  
Date of Decision: 07.02.2019**FINAL ORDER No. A/30168 - 30169/2019****[Order per: Mr. M.V. Ravindran)**

1. These two appeals are filed by the appellant assessee and Revenue against Order-in-Original No. HYD-EXCUS-004-COM-06, dated 30.12.2016. Appellant assessee is aggrieved by the confirmed demand while Revenue is aggrieved against the impugned order for the manner of

determination of reversal of amount as adopted by the adjudicating authority.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that appellant assessee is an Indian Insurance Company providing life insurance services; during the course of rendering such services it is statutorily required that they invest premiums collected in the approved securities. Appellant undisputedly did so, the issue that arises in these proceedings is whether such investment in securities can be considered as an exempt service covered under "Trading of Goods" (Securities) warranting reversal of CENVAT Credit under Rule 6 of CENVAT Credit Rules for the period October 2010 to March 2015. Another issue that arises for consideration is if reversal under Rule 6 is warranted, whether such a reversal ought to be on the presumptive value of 6% or 8% in terms of Rule 6(3)(i) or ought to be on proportionate basis as indicated in terms of Rule 6(3)(ii) read with Rule 6(3A) of CENVAT Credit Rules 2004.

4. Ld. Counsel appearing for the appellant assessee draws our attention to entire case records and to the provisions of the Insurance Act 1938 and submits that as an Indian Insurance Company, the appellant assessee could only have conducted the life insurance business and that under the

Insurance Act, it was mandatory on its part to invest the funds in their hands, in approved securities of a value which is not less than the sum of its current and expected future liabilities towards its policy holders. It was also submitted that under the Insurance law, all the funds available with the insurer which are nomenclated as “Controlled Funds” have to be necessarily invested in specified investment instruments including securities, was also submitted that w.e.f. 01.05.2011, the premiums attributable to risk cover as also the fees for managing investment of the policy holder was being subjected to tax. It is his further submission that the investment activity besides being mandatory and an integral part of the insurance business, was also a service on which service tax being paid by the assessee as a part of life insurance services. It is his submission that since the entirety of service was being subjected to tax, by any stretch of imagination it could be said that exempted services was being rendered.

5. Ld. DR appearing for the Revenue reiterated the findings of the adjudicating authority. He submits that the activity undertaken by the appellant of investing in securities would amount to trading and is covered under the “exempted services”, hence appellant assessee is ineligible to avail any CENVAT Credit on such trading activity as held by Hon’ble High Court of Madras in the case of Ruchika Global Interlinks [2017 (5) G.S.T.L. 225 (Mad.)] wherein Hon’ble High Court has stated that exempted services includes trading services on which service tax is not payable. It is his submission that CENVAT Credit can be availed only on the input services

which are used for provision of output services on which service tax is paid. He would submit that as per provisions of Section 65 B(25) of the Finance Act, 1994, goods will include every kind of movable property and includes securities, hence purchase and sale of securities by any person amounts to trading and does not amount to rendering of output services, hence appellant assessee is not eligible to avail CENVAT Credit on input services used for trading activity. He would submit that insurance companies have two sources of income - underwriting income and in the form of return on investment made which is regulated by IRDAI and is mandated with the insurance companies who place the amounts in particular type of securities to safeguard the public interest. It is his submission that the activity as undertaken by the appellant would amount to trading even if carried out due to statutory regulations and for the purposes of CENVAT Credit Rules, it is enough if an activity amounts to trading, when regulations imposed by IRDAI cannot take away or change the nature of character of activities of investing and selling of securities. It is his further submission that in the department's appeal, the demand is the show cause notice has been worked out on the basis of an amount equivalent to 5% or 6% of the value of exempted services while the adjudicating authority as ordered for reversal of the CENVAT Credit availed on input services used in trading proportionately, hence the impugned order needs to be modified to that extent and not to the extent confirmed by the adjudicating authority.

6. On careful consideration of the submissions made by both sides, we find that undisputedly, the appellant assessee is an Indian Insurance Company licensed by Insurance Regulatory Development Authority of India (IRDAI) to carry only on life insurance policies. The definition of "Life Insurance Business" in Section 2 (11) of the Insurance Act, 1938 along with its explanation is reproduced:

*"life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—*

*(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;*

*(b) the granting of annuities upon human life; and*

*(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;]*

*[ Explanation. —For the removal of doubts, it is hereby declared that "life insurance business" shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.]"*

7. It can be seen from the above reproduced provisions, the activity undertaken by the appellant assessee of issuing any unit linked insurance policy or scrips or any instrument is covered under life insurance business. The Insurance Act, 1938, in Section 27 thereof also mandates that it is obligatory on the part of the insurance company to have investments which are not less than the sum of its current and expected future liabilities towards policy holders. The Act also stipulates that not less than 25% of the sum should be in Government securities and the balance in approved investments, as specified in IRDA (Investment) Regulations 2000. On perusal of the Insurance Act, 1938, it also places statutory obligation on every insurer to maintain at all times assets which are atleast 1.5 times the amount of liabilities. As per Section 64 VA of Insurance Act, 1938 and in terms of Section 27A of the Insurance Act, it is obligatory on the part of the insurer to invest all his funds according to the Act as controlled funds in approved investments as per IRDAI Investment Regulations. We find that the term "Controlled Fund" is well defined qua an insurer carrying out life insurance business in the explanation to Section 27A to mean "all his funds".

8. It is not in dispute that w.e.f. 01.05.2011, not only the risk cover in the life insurance but also the amounts attributable to managing the investment of the policy holder are liable to be taxed under taxable head in the life insurance services, as specified in Section 65(105)(zx) of the Finance Act,

1994. This position is also acknowledged by CBEC in para No. 2.1 of Annexure B to the circular No. 334/3/2011-TRU, dated 28.02.2011, the relevant para reads as under:

“2.1 Life Insurance Companies provide services relating to risk cover and managing investment for the policy holders. The former is already subjected to service tax. The latter is now being brought into the tax net. Similar services rendered by way of ULIP are already subject to service tax net since 2008.”

9. In pursuance of the provisions, appellant assessee has accordingly been, undisputedly, discharging the tax liability on the premiums collected by them towards different life insurance policies issued by it, details are as under:

- (a) Traditional Policies, power risk insurance policies on which service tax liability is discharged at the applicable rate on the entire premium collected.
- (b) Participating/non-participating policies (endowment policies) on which appellant discharged service tax @ 1.5% of the gross premium charged in terms of Rule 6 (7A) of Service Tax Rules, 1944.
- (c) Appellant discharged service tax on the gross premium charged from an Unit Linked Insurance Policy holder, reduce by the amount allocated for investment or savings on behalf of the policy holder as

per provisions of Rule 6 (7A) of Service Tax Rules at the applicable rate. The above position is not disputed in the entire impugned order.

10. It can be seen from the provisions of Insurance Act, as has been referred herein above, Indian Insurance Company like the assessee could only be undertaking life insurance business, it is also clear that investment in securities is an obligation that the insurer has to fulfil in order to render the life insurance services. Any insurance company which does not comply the requirements under the Insurance Act to undertake specified investments, could be disqualified from undertaking right insurance business. It is also clear from the amendment to the definition of taxable service under the head "Life Insurance Service" under the Finance Act, 1994, w.e.f. 01.05.2011, the premium attributable to the risk in life as also managing to investment was taxable.

11. In view of the above, we are of the view that the investment activity undertaken by the appellant assessee is an integral part of life insurance service and cannot be divested from the same. As the service being rendered by the appellant is that of life insurance, which is a taxable service, it cannot be said that appellant is rendering any exempted service. In our view, even otherwise Rule 6 of CENVAT Credit Rules 2004, applies in a case where credit on inputs and input services i.e. common to rendition on taxable and exempted services has been availed of, in the instant case

the only service that the appellant is rendering is life insurance service, which is taxable entirely. Thus, it cannot be said that appellant has availed any credit on input and input services which is common or attributable to rendition of any exempted services. Even otherwise, since tax was paid on the entire premium recovered towards the service of managing investment in approved securities, appellant cannot be said to be rendering any exempted services. The term “Exempted Services” has been defined in Rule 2(E) of CENVAT Credit Rules, 2004, which reads as under:

*“exempted services” means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act (and taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.*

**Explanation** - *For the removal of doubts, it is hereby clarified that “exempted services” includes trading)*

12. It can be seen from the above definition that in order to be termed as “Exempted Services”, the following is required:

- (i) Taxable service which is exempted from whole of service tax leviable thereon or
- (ii) Service, on which no service tax is leviable under section 66(B) of Finance Act; or

- (iii) Taxable service whose part is exempted on the condition that no credit on input and input services used for providing such taxable services shall be taken but shall not include the service which is exported.

13. The definitive meaning attributable to the above would mean that an exempted service means no tax should have been leviable on the same and a person undertaking trading of securities on his own account does not discharge any tax qua other activity. However, under the Finance Act, 1994, insurer is not only liable to service tax of that portion of the premium which is attributable to risk in life covered by the insurer but also towards the charges attributable to investment activity; this position is acknowledged by CBEC vide circular No. 334/3/2011-TRU, dated 28.02.2011. In the case in hand, as the activity of managing investments suffers service tax liability under life insurance services, the same cannot be said to be an exempted service, warranting reversal of CENVAT Credit under Rule 6 of CENVAT Credit Rules 2004.

14. The judgment of Hon'ble High Court of Madras in the case of Ruchika Global Interlinks (supra) as relied upon by Ld. DR does not take their case further, as in the facts of the present case investments in securities has been undertaken as a statutory obligation/part of rendition of life insurance services and when such investment be undertaken, the appellant could not have been in the business of life insurance business; also the premium

recovered by the appellant towards life insurance services includes premium towards management of investment on which appropriate tax is being discharged. This would mean that investment in securities as being undertaken is a part of taxable service on which tax is discharged while the facts of the case of Ruchika Global Interlinks is being completely different from those of the present case, the ratio laid down thereon would apply to the facts of that case. The appeal filed by Revenue being questioning the correctness of the manner determined by the adjudicating authority for arriving at reversal to be made under Rule 6 is only being contested, we find that the issue is of academic nature in this case, nothing survives in their appeal as on merits we hold that the appellant assessee's appeal merits acceptance and there is no need for reversal under Rule 6 is warranted as the appellant assessee was only rendering the taxable service of life insurance.

15. Accordingly, the appeal filed by appellant assessee is allowed and the appeal filed by the Revenue is rejected.

*(Pronounced in open court on 07.02.2019)*

(P.VENKATA SUBBA RAO)  
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)  
MEMBER (JUDICIAL)

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