IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/85458/2015

Arising out of:	Order-in-Original No. 01/ST-VI/RS/2014 dated 30.10.2014
Passed by:	Commissioner, Service Tax, Mumbai-VI.

	Appellants – Represented by:
Commissioner of Service Tax, Mumbai-VI	Shri Rishi Goyal, Additional Commissioner (AR) & Shri M K Sarangi, Joint Commissioner (AR)
versus	
	Respondent – Represented by:
M/s Reliance Life Insurance Co. Ltd	Shri Gajendra Jain, Advocate

Date of hearing: 17/12/2018
Date of pronouncement: 21/12/2018

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Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO. A/88166/2018

Per: Ajay Sharma

The instant appeal has been filed by Revenue challenging order-in-original no. 01/ST-VI/RS/2014 dated 30.10.2014 passed by Commissioner, Service Tax, Mumbai-VI for dropping the proceedings initiated against the respondent, i.e. M/s. Reliance Nippon Life Insurance Co. Ltd. (RNLICL) in show cause notice dated 24.04.2014.

2. The remuneration paid to channel partners as brokerage, commission, etc., was admitted to being liable to tax under section 65(105)(zy) of Finance Act, 1994 and tax was being paid by respondent as 'person liable to pay tax' in terms of rule 2(1)(D)(iii) of Service Tax Rules, 1994. However, the commission paid to the '*Lead generators'* was excluded from the assessable value determined by the respondent and the notice demanded recovery of Rs.28,17,70,415/- paid to these allegedly unlicensed 'insurance agents' for the period from October 2008 to March 2011 under section 73(1) of Finance Act, 1994, along with interest thereon, and proposed appropriate penalties. The impugned order held that the tax liability would arise only on services rendered by such persons as were 'licensed' in accordance with section 42 of Insurance Act, 1938 which the *'Lead generators'* were not. Hence this appeal of Revenue.

3. We have heard Learned Authorised Representative and Learned Counsel for the respondent and perused the record.

4. According to Learned Authorised Representative '*lead generators'* are nothing but insurance agents and they were imparted with the training and technical knowledge in the field of life insurance distribution by the respondent; he submits that they were actually canvassing and soliciting the insurance business from prospective customers and short-listing, for the attention of the respondent, such persons as showed interest in the products of the respondent. He

further submitted that the provisions of Finance Act, 1994 pertaining to insurance business has been aligned with the Insurance Act, 1938 on the premise that this would ensure that all entities in the insurance sector would be covered and that the legislative intent not to exclude coverage merely by claiming designation other than that used in the taxing provision is, thereby, apparent. According to him, the respondent had adopted this *modus operandi* with intention to evade payment of service tax on some of the commission paid. He further submitted that the penal provisions under section 42(7) of the Insurance Act enable regularizing of policies, sourced through unofficial agents, and, to the extent that such policies are regularized, the sourcing of these policies cannot be attributed to persons outside the definition of agent under the Insurance Act, 1938. Asserting that the expression "Insurance Auxiliary Service", defined in section 65 of the Finance Act, 1994 is broad enough to cover any service provided to a policy holder or insurer, including re-insurer by an actuary or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business by an intermediary or insurance and that intermediary is defined in an inclusive, not exhaustive, enumeration, he argued that there is no escapement from tax liability irrespective of nomenclature or designation. He contends that the adjudicating authority had erred in ignoring the general doctrine that an assesee cannot be permitted to take advantage of a law to contravene any other law; in the present case, the respondent has deliberately attempted escape from coverage

under the Insurance Act, 1938 and, by such contravention, cannot claim benefits under the provisions of Finance Act, 1994 thus offering justification for invoking of the extended period in section 73 of Finance Act, 1994.

5. Learned Counsel for the respondent supported the findings recorded by the Commissioner in the impugned order. He submitted that the provision of service by "Insurance Agents" alone is liable to be discharged, under the 'reverse charge mechanism' and that services rendered by any person, even if otherwise taxable, is not the responsibility of the recipient of the service. He further submitted that though the tax is levied on services rendered by other entities like actuary, intermediary and insurance intermediary, the legislature was specific in prescribing 'reverse charge mechanism' for services rendered by insurance agent alone which should illuminate the stand of the respondent. He stated that the '*lead generators*' were appointed by the respondent under Clause (vi) of Sub Regulation (1) of Regulation 10 of Insurance Regulatory and Development Authority (Insurance Advertisement and Disclosure) Regulation 2000 which was in effect during the period in dispute, but stood amended *vide* order dated 12.08.2012 of IRDA, which led to discontinuance of resort to such a channel from July 2012. Learned Counsel also submitted that they had paid service tax amounting to Rs.51,95,73,793/- in cash during the investigation and claimed the beneficial effect of revenue neutrality. He further submitted that mere

failure to declare does not suffice to establish willful mis-declaration or willful suppression in the absence of some deliberate act of omission or commission with such intent and that they were under the *bonafide* belief that service tax is not payable by them on reverse charge since the '*lead generators'* are not 'insurance agents'. He further submitted that as per proviso to Section 73(1) the demand for extended period can be raised for a period of five years from the relevant date, but in their case the show cause notice was received by them on 24.04.2014 i.e. after the expiry of five years from the relevant date. According to him, since the show cause notice has been issued subsequent to 23.04.2014 and with even part of the demand of Rs.13,90,64,526/- for the period from October 2008 to March 2009 being beyond the extended period, the same was liable to be set aside.

6. We find that the tax liability in the show cause notice was proposed to be fastened on the recipient of service i.e. Reliance Nippon Life Insurance Co. Ltd. Section 68 of the Finance Act, 1994 enables the Central Government to notify the taxable service, and also for tax to be paid by such person and in the manner prescribed in deviation from the normal scheme of discharge of tax liability by the provider of service. Rule 2(d) of Service Tax Rules, 1994 places burden, *inter alia*, on the recipient of the service in relation to service provided, or agreed to be provided, by an insurance agent to any person carrying on insurance business. It would, therefore, appear that Revenue was intent on bringing all activities pertaining to life

insurance, in which the recipient had made over consideration to any other person, within the scope of section 65(105)(zy) of Finance Act, 1994 *i.e.*

> *'"taxable service" means any service provided or to be provided*
> *(zy) to a policy holder or any person or insurer, including re-insurer by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business;'*

7. The provider of the service covered by the reverse charge mechanism is 'insurance agent' which, in turn, has been defined along with 'intermediary or insurance intermediary' under section 65(54) and section 65(56) of Finance Act, 1994 to have the meaning assigned under section 2(10) of Insurance Act, 1938 and section 2(1)(j) of Insurance Regulatory and Development Authority Act, 1999. Insurance Act, 1938 is very clear as to the scope of coverage in the definition of 'insurance agent'; such 'insurance agents' are indeed deployed by the respondent in the present dispute. It must be borne in mind that the Act of 1938 was enacted to regulate the insurance business as it subsisted in those days, which continue to be so for decades. With the opening up of the insurance sector to non-governmental promoters, the business model altered substantially and certain other links in the channel of distribution was brought into existence. The contentions of Revenue in their oral submission is that all these are 'insurance agents' and hence the sovereign legislature adopted that definition with intent to bring in all of these within the

ambit of section 65(105)(zy) of Finance Act, 1994. We are unable to agree with this perception as the definition of 'agent' need not have adopted an existing definition, pertaining to an era of limited entities in a distribution channel but could have provided a more comprehensive description. We are not convinced by the suggestion that the regularization of a policy serviced by a person who was not licenced under the Insurance Act, 1938 through levy of penalty would permit us to apply the logic backwardly to bring canvassers, not designated as agents, of regular policies within the meaning of 'agent'. A simpler, and less doubtful, definition would be sufficed if that was indeed the legislative intent.

8. The extract of a sample agreement entered into between the respondent and the 'lead generator' makes it amply clear that their function is limited to marketing of the product whereas an 'insurance agent' acts in place of the insurance company in so far as the policyholder is concerned. This is not to disclaim the scope of coverage of the service provided by 'lead generator' under any other head of taxable service. To the extent that the burden to discharge the tax liability is not specifically transferred to the present respondent as recipient under any other taxable services, the show cause notice would fail as rightly held in the impugned order.

9. The transfer of burden of discharge to the service recipient within section 68 of Finance Act, 1994 is specific and limited without

scope for extending beyond the few transactions listed in rule 2(d)(i) of Service Tax Rules, 1994. The Central Board of Excise and Customs, *vide* instruction no. 137/21/2011-ST dated 15th April 2013, has clarified, in the context of certain levies under Finance Act, 1994, which had a reference to some other laws for the purpose of definition that the scope of such indirect definitions would not extend beyond the specific content of those definitions. It is, therefore, reasonable to surmise that the claim of the Learned Authorised Representative that the Finance Act, 1994 has been aligned entirely with the Insurance Act, 1938 is too farfetched for us to place reliance upon.

10. For the above reasons, we find that the service rendered by 'lead generator' is not that of an 'insurance agent' and, consequently, the commission paid by respondent to such entities are not liable to be included in the assessable value of the respondent for discharge of tax liability under Finance Act, 1994.

11. The appeal is, therefore, dismissed.

(Pronounced in Court on 21/12/2018)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (*Judicial*)

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