CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 86068 of 2014

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-034-13-14 dated 28.12.2013 passed by the Commissioner of Central excise & Service tax, Pune III)

M/s. Bajaj Allianz Life Insurance Co. Ltd. …..**Appellant**
GE Plaza, Gr.floor, Airport Road
Pune

Vs.

Commissioner of Central Excise & Service tax, …..**Respondent**
Pune III
41-A. ICE House, Sasoon Road,
Pune

APPEARANCE:

Shri Vinay Jain, Advocate with Shri Aditya Jain, CA for the appellant
Shri M. Suresh, Jt. Comm (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/86972 / 2019

DATE OF HEARING : 15.10.2019
DATE OF DECISION : 31.10.2019

PER: C J MATHEW

This appeal of M/s Bajaj Allianz Life Insurance Co Ltd lies against order-in-original no. PUN-EXCUS-003-COM-034-13-14 dated 28th December 2013 of Commissioner of Central Excise and

Service Tax, Pune III which has confirmed demand of tax of ₹4,35,62,943/- under section 73 of Finance Act, 1994, along with interest thereon under section 75 of Finance Act, 1994, besides imposing penalty of like amount under section 78 of Finance Act, 1994.

2. The issue in dispute pertains to the non-inclusion of ‘policy administration charge’ collected from recipients of ‘life insurance’ service in the assessable value for discharging liability under Finance Act, 1994. In confirming the demand, Rule 5(1) of Service Tax (Determination of Value) Rules, 2006 has been relied upon.

3. Learned Counsel for appellant made elaborate submissions on the scope of taxability under section 65 of Finance Act, 1994 by pointing out that the taxable service, though incorporated in section 65(105)(zx) of Finance Act, 1994 since 1st August 2002, was exempted by notification till 10th September 2004 when limited exigibility on the consideration for the risk coverage offered to policy holders by an insurer was restored. Further expansion of taxability was effected subsequently until the transition to negative list of services through different insertions in section 65(105) of Finance Act, 1994. Various decisions clarifying the effective date of leviability of ‘policy administration charge’ to tax in *Sahara India Life Insurance Company Ltd v. Commissioner of Central Excise &*

Service tax and Anr [2019-TIOL-27-CESTAT-ALL] and *HDFC Standard Life Insurance Co Ltd v. Commissioner of Service tax, Mumbai I [2013-TIOL-1296-CESTAT-MUM]* were brought to our attention. According to Learned Authorised Representative, the legislative intent of the entry, kept in suspended animation initially for a time, was to tax the entirety of consideration received by appellant from policy holders and the subsequent changes would have to be interpreted in the context of exemption specifically articulated.

4. However, from the facts and circumstances of this dispute, we deem it unnecessary for us to render our findings on the extent of taxability. It is seen from the records that the appellant, having been served with one show cause notice on 23rd August 2007, proposing to recover tax liability on the consideration as provider of 'banking and other financial services', taxable under section 65(105)(zm) of Finance Act, 1994, for the period from 1st April 2004 to 31st March 2007, was given relief, *vide* order-in-original no. 6-8/STC/COMMR/2009-10 dated 7th December 2009 of Commissioner, Central Excise, Pune III, which dropped proceedings.

5. The impugned order covering the period from 2007 to 2008, consequent upon show cause notice dated 16th April 2013, by invoking the extended period, confirmed the demand and justified the inapplicability of bar of limitation thus

> *'14. The noticee has also stated that in the past they were issued with three show cause notices proposing to demand Service Tax on fund management service/policy administration charges under the taxable category of Banking and other Financial Services, and that these show cause notices were dropped by the Commissioner vide Order-in-Original dated 07.12.2009. On this point, it is observed that the noticee had mis-classified these policy administration charges under the head "other income", and hence at material time it must have escaped attention of the adjudicating authority. I am therefore of the view that the noticee had misclassified the policy administration charges under the head* ***"other Income"*** *in their books of accounts, the same amounts to suppression, and that therefore invoking the extended period for recovery of Service Tax short levied under proviso to section 73(1) of the Act is correct, without prejudice to the fact that the said demand was dropped by the Commissioner in the past. The incorrect classification on the part of the noticee makes them liable for payment of Service Tax short paid under proviso to section 73(1) ibid.'*

6. Palpably, the period for which recovery has been confirmed would be within the sanction of law only if extended period was so invoked. In the light of the transactions of the appellant having been subject to scrutiny and proceedings initiated on the earlier occasion, the notice was precluded from seeking recovery beyond the normal period prescribed in section 73 of Finance Act, 1994. As the period covered in the present show cause notice is 2007-08 and the notice

was issued in 2013, the demand fails to overcome the bar of limitation as held by the Hon'ble Supreme Court in *Nizam Sugar Factory v. Commissioner of Central Excise [2006 (197) ELT 465 (SC)]*.

7. We also cannot overlook the impropriety on the part of the adjudicating authority in making observation on the presumption of deficiency in the earlier proceedings in an attempt to justify the invoking of the extended period. That, appropriately, falls within the competence of the designated Committee of Chief Commissioners and not of a successor in office. Such erroneous, and improper, presumption cannot also overcome the bar of limitation in section 73 of Finance Act, 1994.

8. For the above reason, the impugned order is set aside and appeal is allowed without dilating on the submissions pertaining to scope of the taxing entry.

(Order pronounced in open court on 31.10.2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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