CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Service Tax Appeal No. 87944 of 2018

(Arising out of Order-in-Original No. 52/COMMR/Dr KNR/CGST&CEx/MC/2018 dated 09.03.2018 passed by Commissioner of GST & Central Excise, Mumbai Central)

Commissioner of CGST, Mumbai Central **Appellant**
4th floor, C.Ex. Building,
Churchgate, Mumbai 400 020.

Vs.

M/s. Future Generali India Life Insurance Co. Ltd. **Respondent**
India Bulls Finance Center,
Tower-3, 6th floor, Senapati Bapat Marg,
Elphinstone (W), Mumbai 400 013.

Appearance:

Shri Suresh Merugu, Joint Commissioner, Authorised Representative, for the Appellant
Shri Mihir Gupte, Advocate, for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/85575/2020**

Date of Hearing: 11.02.2020
Date of Decision: 11.02.2020

PER: SANJIV SRIVASTAVA

This appeal filed by revenue is directed against order in original No 52/COMMR/Dr KNR/CGST&CEx/MC/2018 dated 09.03.2018 of the Commissioner CGST & Central Excise, Mumbai Central. By the impugned order Commissioner held as follows:

"I hereby drop the proceedings initiated under Show Cause Notice No 1479/COMMR/ST=1/2014-15 dated 20/10/2014 issued to M/s Future General India Life Insurance Co Limited, with consequential relief"

2.1 Proceedings were initiated against the respondents vide Show Cause Notice dated 20/10/2014 alleging as follows:

"*7. Accordingly whereas it appears that*

(i) The "life insurance services" as defined under Section 105(65)(zx) of the Finance Act, 1994, would not only include the services provided by the insurer to its existing policy holders, but also the services provided by them to any other person (not being a policy holder till date) in connection with life insurance business i.e. the business of effecting contract of insurance upon human life.

(ii) Prior to 01.04.2011, the insurance companies were required to pay service tax on the proposed advance received towards proposed life insurance services, in a month following the calendar month in which such advance payments were received by them.

(iii) Post 01.04.2011, as per the provisions made under Section 67, Rule 5B and Rule 6 ibid, in a situation where service tax is chargeable on any taxable service with reference to its value, such value would be the gross amount charged by the service provider not only for the "service provided" but also for "services to be provided" by him and the rate of tax in both such cases i.e. services provided, or to be provided shall be the rate prevailing at the time when the services are deemed to have been provided under POT Rules, 2011.

(iv) As per the provisions of Rule 6 of Service Tax Rules the service tax was required to be paid in the month following the month in which the services are deemed to have been provided as per the POT Rules, 2011.

(v) In the instant case wherein the insurer has not issued an invoice, as required under second proviso to Rule 4A of Service Tax Rules, 1994, but has received an advance known by name "proposal deposits" towards the provisions of taxable service namely "Life Insurance

Service" and therefore considering the services to be continuous service (or even otherwise as non continuous service), the proper point of taxation or the deemed date of provision of insurance service in this case, would be the actual date of receipt of such advance and not the date of conversion of proposal into the policy document, and the service tax would be required to be paid at the rate and time based on such demand date of provision of service.

(vi) The assessee avails cenvat credit on Insurance Auxiliary service provided by the distribution channel. The services provided by the agents are before issue of the policy and remuneration for the services is a significant part of the first premium. Thus it appears that if the services provided by the distribution channels, before the issue of policy is an input service, the services, the services provided or to be provided by the insurance company to the proposer is a taxable output service.

(vii) The advance amount collected along with the proposal was inclusive of service tax and whereas under Section 73A of the Act, service tax collected from any person is to be deposited with the central government.

(viii) During the period from 01.04.2009 to 31.03.2014, M/s Future General India Life Insurance Co Limited, has received an amount of Rs 607,34,79,812/- towards proposal deposits and the same was not considered for payment of service tax in the month of its receipt. Therefore, the proposal money so collected by the assessee towards services to be provided and on which the service tax remained to be paid on due dates for the reasons that the policy was not issued, would be liable to service tax totally amounting to Rs 67,20,02,118/- for the period from April, 2009 to March 2014 as detailed in Annexure A to this notice.

(ix) *M/s Future General India Life Insurance Co Limited also appear to be liable for payment of interest totally* *amounting to Rs 88,69,165/- as detailed in Annexure A to this notice."*

2.2 Accordingly Show Cause Notice asked the respondents to show cause as to why:

(i) *"the extended period of limitation envisaged under the proviso to sub section (1) of the Section 73 of the Finance Act, 1994 should not be invoked, to demand the Service Tax evaded by them for the reasons discussed above;*

(ii) *the Service Tax of Rs 67,20,02,188/- (Rupees Sixty Seven Crore Twenty Lakhs Two Thousand One Hundred and Eighty Eight only) as detailed above, on the proposal deposits collected towards service "to be provided", and which was not paid by them on the due dates, and which escaped correct assessment during the period April 2009 to March 2014, should not be demanded and recovered from them under the proviso to sub section (1) of the Section 73 of the Finance Act, 1994 read with Section 66, Section 68(1) of the Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994;*

(iii) *Service Tax already paid by them on such proposal deposits in the succeeding month should not be appropriated against service tax demand at para (ii) above;*

(iv) *Interest of Rs 88,69,165/- (Rupees Eighty Eight Lakhs Sixty Nine Thousand One Hundred and Sixty Five Only), as detailed in Annexure A to this notice should not be demanded and recovered from them for delayed payment of service tax detailed at (ii) above under Section 75 of the Finance Act, 1994;*

(v) *Penalty should not be imposed on them, under, Section 77 of the Finance Act, 1994 for failure to correctly assess the value of taxable service and furnish the same in their ST-3 Returns as required under Section 70 ibid;*

(vi) *Penalty should not be imposed on them, under, Section 77 of the Finance Act, 1994 for failure to pay service tax within the prescribed time limit as required under Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994;*

(vii) *Penalty should not be imposed on them, under, Section 77 of the Finance Act, 1994 for suppressing the correct facts regarding services provided and amounts received for the services to be provided with a malafide intention to evade payment of service tax on due dates."*

2.3 Show Cause Notice was adjudicated by the Commissioner as per the impugned order referred in para 1, supra.

2.4 Committee of Chief Commissioner in review did not find the order to be legal and proper and directed for filing of the this Appeal. The prayer made in the appeal is:

(A) Whether after taking into consideration, the facts and circumstances as stated above, read with the show cause notice, the OIO No 52/COMMR/Dr KNR/CGST&CEx/MC/2018 dated 01.03.2018 decision of the Commissioner, CGST & CEx, Mumbai Central in

> *1) dropping the demand in respect of "proposal deposits/ 'unallocated premium" collected during the period from April 2009 to 30.03.2011 (i.e. prior to 01.04.2011) towards service to be provided, under the category of "Life Insurance Services", was legal and proper and deserves to be set aside?*

(B) Whether by an order passed under Section 86 of Chapter V of Finance Act, 1994, the CESTAT should remand the case back to the Original adjudicating authority to pass such reasoned speaking order?

(C) Whether the CESTAT should pass any other order as appropriate?

(D) It is also requested to condone the delay in filing the appeal."

3.1 Revenue had filed an application for early hearing in the matter which was allowed vide Miscellaneous Order N M/85630/2019 dated 30.07.2019

3.2 We have heard Shri Suresh Merugu, Joint Commissioner, Authorized Representative for the appellant revenue and Shri Mihir Gupte, Advocate for the respondent.

3.3 Arguing for the revenue learned authorized representative submitted that the issue involved in this appeal is no longer res-integra and squarely covered by the decision of CESTAT in case of ICICI Prudential Life Insurance Company Ltd [2019-TIOL-1075-CESTAT-MUM] . Accordingly he submitted that the appeal filed needs to be allowed.

3.4 Arguing for the respondents learned advocate reiterated the findings recorded by the Commissioner while dropping the proceedings.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Commissioner has in para 12.6 and 12.7 of the impugned order, for the period prior to 01.07.2011 Commissioner has observed as follows:

"12.6 Regarding the period prior to 01.07.2011 SCN has relied upon the provisions of Section (1) of Section 67 of the Finance Act, 1994 and Rule 6 of Service Tax Rules, 1994 which states as follows:

Section 67 (1). Valuation of taxable services for charging service tax. — *(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —*

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money,

be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

Rule 6 of the Service Tax Rules, 1994

"Rule 6. Payment of Service Tax: [(1) The service tax shall be paid to the credit of the Central Govt..-

(i) by the 6th day of the month, if the duty is deposited electronically through internet banking and:

(ii) by the 5th day of the month, in any other case,

immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard]:"

12.7 As can be seen, the said section speaks about the value of the taxable service which shall be the gross amount charged by the service provider for service provided or to be provided to the service recipient when service is provided for consideration in money. Rule 6 of Service Tax Rules, 1994 stipulates only the dates on which the tax is required to be remitted to exchequer. The significance of Point of Taxation Rules, 2011 is that it specifies the exact point at which the activity would stand liable for levy of Service Tax. In the absence of Point of Taxation Rules for the period prior to 01.07.2011 there did not exist any provision specifying the point at which the tax could be levied. This I would tend to agree with the submission of the assessee that for the period prior to 01.07.2011 there did not exist any provision in statue for collection of Service Tax on advances received by them."

4.3 The above observations are contrary to the observations made by the CESTAT in the decision referred to by the learned authorized representative. Mumbai Bench of CESTAT has in case of ICICI Prudential Life Insurance Company Ltd [2019-TIOL-1075-CESTAT-MUM] referred to by the held as follows:

6. A dispute on the point of taxation has been camouflaged by the adjudicating authority as evasion of taxes that stood discharged in due compliance of the law imposing the tax and of the law governing the determination of assessable value. The outcome of the dispute will merely resolve whether the tax was paid on time or was delayed with consequential interest liability. And thereby hangs the tale.

7. It is also clear from the extent of recovery ordered and appropriation effected that, notwithstanding the determination of the point of taxation in the impugned order, all amounts received as first premium by the appellant were encashed as consideration for the service rendered. Had it been otherwise, a yet to be recovered amount would have been pinpointed in the impugned order. The significance of that will become apparent once we turn to the issue to be determined; before doing so, we set aside the proceedings under section 73 of Finance Act, 1994 as superfluous and the imposition of penalty in the impugned order as not tenable. We do that most emphatically at this stage on the basis of the discussion supra.

8. The appellant, as provider of life insurance, or assurance as the industry prefers to denominate it, and, before undertaking coverage of an individual, undertakes a detailed exercise for ascertainment of risk factor. During this period, the insured is not yet a policy holder but is a proposer. Nevertheless, as an earnest of the interest in such coverage, the first premium is submitted along with the 'proposal' (again an expression used in the industry). According to Learned Chartered Accountant, this amount could not to be retained if the proposer failed to meet the qualification prescribed for conversion from proposer to insured. In the circumstances of the present dispute, such a contingency does not appear to have occurred and all receipts with proposals have been duly absorbed as premium income of the appellant. Hence, the only issue for determination is the point at which liability to tax arises and on that will hinge the promptitude that can escape consequential interest.

9. According to Learned Chartered Accountant, the appellant is an insurer rendering such service that would commence only with acceptance of the proposal for insurance leading to acknowledgement of first premium as the first of the income stream for rendering of the service.

10. Learned Authorized Representative contends that the description in section 65 (105) of Finance Act covers not only services provided but also those agreed to be provided in future and that the pre-requisites for acceptance of the proposal of the proposer is also a part and parcel of rendering of services. We can, ex facie, agree with that proposition. Even if the appellant were to claim that this is not related to insurance service, the disaggregation of the consideration attributable to such processing cannot be made by them and the whole of the consideration becomes taxable.

11. Turning to the claim of the appellant that the tax becomes liable only upon acceptance of the proposal and not when the proposal for a life insurance policy is made, we observe that the adjudicating authority has placed reliance on the taxing authority

'"taxable service" means any service provided or to be provided,- (zx) to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business in relation to the risk cover in life insurance;'

in section 65(105) Finance Act, 1994 with emphasis placed on the expression 'to be provided.' Further, according to him the process of 'underwriting' which is the precursor of coverage by the policy is, admittedly, within the scope of the taxable service.

12. In our opinion, section 65 (105) describes the taxable event but does not provide any clue as to the point at tax liability arises. For the first time, in 2011, rules for determining the point of taxation in various circumstances was notified and would therefore apply to only a portion of present disputed amount. The adjudicating authority has taken note of rule 3 and rule 6 of Point of Taxation Rules, 2011 as originally notified and prior to amendment of 17th March 2012 and, according to him, the *receipt of payment is sufficient to determine the point of taxation. We have perused the statement which has been extracted in the show-cause notice as well as in the impugned order and take note that the average turnover time can vary from three to twelve days between the receipt of the proposal and the issue of the policy. It is only at that stage that the acceptance of the contract occurs and policy is issued. Prior to the notification of Point of Taxation Rules, 2011, tax liability crystallized on the receipt of consideration.*

13. There is no doubt that applicant makes a payment along with proposal whether that first premium is encashed immediately, or otherwise, it is placed at the disposal of the appellant and is, indisputably, consideration for the admitted service. Learned Chartered Accountant placed reliance on the number of decisions arising disputes between Life Insurance Corporation and individuals to demonstrate the point at which coverage of risk commences. Among these are Life Insurance Corporation of India v. Raja Vashireddy Komalavalli Kamba & Others [1984 (071) AIR 1040 SC] which, according to learned Chartered Accountant, delineates the point at which the coverage commences. Likewise, he relies on the decision of the Hon'ble High Court of Kerala in Insurance Corporation of India v. Mrs. Prasanna Devaraj [AIR 2995 Ker 88] which has placed emphasis on the expression 'agreement' as circumstances being such as to admit of a reasonable inference that the parties arrived at a tacit agreement. He places reliance on the various circulars issued in connection with imposition of tax on life insurance. According to him, section 65 (105)(zx) of Finance Act, 1994, which underwent change on 1st May 2011, and that circular no. B1/06/05-TRU dated 27th July 2005 has made clear that

'27. Amendments have been made in section 65(105), section 67 and rule 6 of Service Tax Rules, 1994 to link payment of service tax with the receipt of payment for the taxable services provided or advance payment received towards taxable services to be provided in future. When payments relatable to taxable

services are received during the course of provision of service, service tax is liable to be paid to the extent of receipt of payment. In other words, a person is liable to pay the tax as soon as the consideration towards the taxable services is received.'

14. He also placed reliance on the decision of the Hon'ble High Court of Delhi in Kwality Ice-cream Company & Anr. v. Union of India & Ors. [2012-TIOL-252-HC-DEL-CX] to submit that the curbs of limitation imposed on recovery of duty extends to interest to. The facts, as mapped out in the judgment of the Hon'ble High Court, differs substantially from the present dispute; in that matter the issue for consideration was the recovery of interest which was sought by a letter without placing the assessee on notice after tax dues had been deposited by them after failing to persuade the first appellate of their entitlement. In the present dispute the appellant has admittedly paid duty according to their own interpretation of the point at which the tax liability arises. The claim of the appellant is that the service commences with the acceptance of the proposal. While that may be so, the tax liability is required to be computed from the moment the consideration is received even if the contract of insurance specified the commencement of risk from a different date. ***Both before and after the notification of the Point of Taxation Rules, 2011, it is the date of payment that determines the performance of the service for discharge of tax liability.*** *In view of this, the appellant has discharged his duty liability belatedly; consequently the appellant is required to pay interest for the said delay. The provision of section 75 of Finance Act, 1994 are unambiguous that the assessee is obliged to remit interest on delayed payment of tax. This is independent of the provision of Section 73 for recovery of tax. Accordingly, the interest liability of the appellant stands confirmed."*

4.4 Since we find that the issue is squarely covered by the decision of CESTAT as referred above we are not in position to uphold the order of Commissioner. Accordingly the appeal filed by the revenue is allowed and the matter remanded back to original adjudicating authority as prayed by the revenue.

5.1 Appeal filed by the revenue is allowed and the matter remanded back to original adjudicating authority for de novo consideration.

(Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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