

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87337 of 2018

(Arising out of Order-in-Original No. 04-05/COMMR/(Dr.KNR)/CGST&CEX/
2017 dated 27.11.2017 passed by the Commissioner of CGST & CEX,
Mumbai Central)

Future Generali India Life Insurance Co. Ltd. Appellant

India Bulls Finance Centre, 6th Floor,
Tower-III, Senapati Bapat Marg,
Elphinstone Road (W), Mumbai- 400 013.

Versus

**Commissioner of CGST and Central Excise, Respondent
Mumbai Central**

GST Bhavan, 115, Maharshi Karve Road,
Opp. Churchgate Station, Mumbai- 400 020.

APPEARANCE:

Shri Arun Jain, Advocate for the Appellant

Shri Priyesh Bheda, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86167/2025

Date of Hearing: 13.06.2025

Date of Decision: 13.06.2025

Per: S.K. MOHANTY

Heard both sides and examined the case records.

2. The appellants herein are engaged *inter alia*, in providing Life Insurance Services, defined under the Finance Act, 1994. During the course of providing of such services, the appellants receive services of 'Insurance Agents', classifiable under the category of 'Insurance Auxiliary Service', as defined under Section 65(55) of the Act of 1994. With regard to receipt of the insurance agent service, the appellants incur certain expenses on account of Training Allowance, Travel, Conveyance & Vehicle Running Expenses, Printing & Stationery, Advertisement, Publicity and Communication etc., which

were not added to the gross value for the purpose of payment of service tax under the reverse charge mechanism. Accordingly, the show cause proceedings were initiated by the department, alleging that as per the provisions of Section 67 of the Act, of 1994, service tax was required to be discharged on the gross amount including the expenses incurred towards provision of service. The Show Cause Notices (SCNs) issued by the department were adjudicated vide the impugned order dated 27.11.2017, wherein the original authority has confirmed the service tax demand amounting to Rs.3,99,53,598/- along with interest and also imposed penalties on the appellants. Feeling aggrieved with impugned order dated 27.11.2017, the appellants have preferred this appeal before the Tribunal.

3. We find that the issue arising out of the present dispute is no more *res integra*, in view of the order dated 08.07.2022 passed by this Bench of the Tribunal, in the case of *SBI Life Insurance Company Ltd Vs. Principal Commissioner of CGST, Mumbai*, reported in 2022 (66) GSTL 453 (Tri. Mum.). In the said order, it has been held that expenses incurred in 'pre-recruitment training/refresher training' of insurance agents and other cost/expenses incurred for business promotion expenses are not liable to be included in the value of taxable service prior to the period 14.05.2015. The relevant paragraphs recorded in the order dated 08.07.2022 (*supra*) of the Tribunal are extracted herein below:

"19. *Coming to the various expenses incurred by the appellant for training of the insurance agents and business promotion expenses, the appellants have submitted that these are business related expenses and have no connection with the consideration paid/payable to the insurance agents by the appellants for the services availed; Rules 5 and 6 of the Valuation Rules are not applicable as the appellants have been discharging service tax on the commission paid to the insurance agents by way of reverse charge mechanism and that without prejudice to the above Rule 5 of the Service Tax Valuation Rules has been held ultra vires by the Apex Court in the case of Intercontinental Consultants and Technocrat Pvt. Ltd. (supra). We also find that the appellants have relied upon Bajaj Alliance Life Insurance Co.; M/s. Max Life Insurance Company Ltd.; Edelweiss Tokio Life Insurance Company Ltd. all (supra) and stated that the issue is no longer res integra. We find that Tribunal in the case of Bajaj Allianz Life Insurance Co. (supra) held that -*

52. Even though while confirming the demand by including pre-recruitment training expenses as well as post-licence training expenses in the value of commission, the Learned Commissioner has not specifically referred to the relevant rule, but, we find that in the notice, the said expenditure has been proposed to be included in the value of commission paid to insurance agents in accordance with Section 67 of

Finance Act, 1994 read with Rule 5(1) and Rule 6 of Service Tax (Determination of Value) Rules, 2006. In our view, this issue has been more or less, in the context of inclusion of value of free-issue material in the value of taxable service, has been considered and settled in Bhayana Builders' case (supra) by the Hon'ble Supreme Court. Their Lordships observed as follows :-

"12. On a reading of the above definition, it is clear that both prior and after amendment, the value on which service tax is payable has to satisfy the following ingredients :

(a) Service tax is payable on the gross amount charged :- the words "gross amount" only refers to the entire contract value between the service provider and the service recipient.

The word "gross" is only meant to indicate that it is the total amount charged without deduction of any expenses. Merely by use of the word "gross" the Department does not get any jurisdiction to go beyond the contract value to arrive at the value of taxable services. Further, by the use of the word "charged", it is clear that the same refers to the amount billed by the service provider to the service receiver. Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into Bajaj Allianz & Ors.-38867114 etc. resd-30.5 the equation for determining the value on which service tax is payable.

(b) The amount charged should be for "for such service provided" : Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined"

13. A plain meaning of the expression 'the gross amount charged by the service provider for such service provided or to be provided by him' would lead to the obvious conclusion that the value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' simply, because of the reason that no price is charged by the assessee/service provider from the service recipient in respect of such goods/materials. This further gets strengthened from the words 'for such service provided or to be provided' by the service provider/assessee. Again, obviously, in respect of the goods/materials supplied by the service recipient, no service is provided by the assessee/service provider. Explanation 3 to sub-section (1) of Section 67 removes any doubt by clarifying that the gross amount charged for the taxable service shall include the amount received towards the taxable service before, during or after provision of such service, implying thereby that where no amount is charged that has not to be included in respect of such materials/goods which are supplied by the service recipient, naturally, no amount is received by the service provider/assessee. Though, sub-section (4) of Section 67 states that the value shall be determined in such manner as may be prescribed, however, it is subject to the provisions of sub-sections (1), (2) and (3). Moreover, no such manner is prescribed which includes the value of free goods/material supplied by the service recipient for determination of the gross value.

14. We may note at this stage that Explanation (c) to sub-section (4) was relied upon by the Learned Counsel for the Revenue to buttress

the stand taken by the Revenue and we again reproduce the said Explanation herein below in order to understand the contention :

"gross amount charges" includes payment by (c) cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to Bajaj Allianz & Ors.-38867114 etc. resd-30.5 any account, whether called 'suspense account' or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."

15. It was argued that payment received in 'any form' and 'any amount credited or debited, as the case may be...' is to be included for the purposes of arriving at gross amount charges and is leviable to pay service tax. On that basis, it was sought to argue that the value of goods/materials supplied free is a form of payment and, therefore, should be added. We fail to understand the logic behind the aforesaid argument. A plain reading of Explanation (c) which makes the 'gross amount charges' inclusive of certain other payments would make it clear that the purpose is to include other modes of payments, in whatever form received; be it through cheque, credit card, deduction from account etc. It is in that hue, the provisions mentions that any form of payment by issue of credit notes or debit notes and book adjustment is also to be included. Therefore, the words 'in any form of payment' are by means of issue of credit notes or debit notes and book adjustment. With the supply of free goods/materials by the service recipient, no case is made out that any credit notes or debit notes were issued or any book adjustments were made. Likewise, the words, 'any amount credited or debited, as the case may be', to any account whether called 'suspense account or by any other name, in the books of account of a person liable to pay service tax' would not include the value of the goods supplied free as no amount was credited or debited in any account. In fact, this last portion is related to the debit or credit of the account of an associate enterprise and, therefore, takes care of those amounts which are received by the associated enterprise for the services rendered by the service provider.

16. In fact, the definition of "gross amount charged" given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term "gross amount charged" to enable the Department to ignore the contract value or the amount actually charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider."

53. The Hon'ble Supreme Court, while examining the vires of Rule 5(1) of Service Tax (Determination of Value) Rules, 2006, in *Intercontinental Consultants & Technocrats Pvt. Ltd. case (supra)*, observed as follows :-

Bajaj Allianz & Ors.-38867114 etc. resd-30.5 "21. Undoubtedly, Rule 5 of the Rules, 2006 brings within its sweep the expenses which are incurred while rendering the service and are reimbursed, that is, for which the service receiver has made the payments to the assesseees. As per these Rules, these reimbursable expenses also form part of 'gross amount charged'. Therefore, the core issue is as to whether Section 67 of the Act permits the subordinate legislation to be

enacted in the said manner, as done by Rule 5. As noted above, prior to April 19, 2006, i.e., in the absence of any such Rule, the valuation was to be done as per the provisions of Section 67 of the Act.

22. Section 66 of the Act is the charging Section which reads as under:

"there shall be levy of tax (hereinafter referred to as the service tax) @ 12% of the value of taxable services referred to in sub-clauses of Section 65 and collected in such manner as may be prescribed."

23. Obviously, this Section refers to service tax, i.e., in respect of those services which are taxable and specifically referred to in various sub-clauses of Section 65. Further, it also specifically mentions that the service tax will be @ 12% of the 'value of taxable services'. Thus, service tax is reference to the value of service. As a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasized that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider."

54. Hon'ble Supreme Court in the above case, at Para 29 of the said judgment has concluded that Clause (a) of Section 67(4) of Finance Act, 1994 which deals with 'consideration' is suitably amended w.e.f. 14-5-2015 to include reimbursable expenditure or cost incurred by the service provider and charged in the course of Bajaj Allianz & Ors.-38867114 etc. resd-30.5 providing the taxable service. Thus, only w.e.f. 14-5-2015, by virtue of provision of Section 67 itself, such reimbursable expenditure or cost would also form part of the value of taxable service for charging service tax. In other words, prior to 14-5-2015, such expenditure or cost incurred by the assessee in providing taxable service cannot be included in the value of service. Thus in the value commission paid by the Appellant to insurance agents such expenses cannot be included. In other words, pre and post-training expenses, incurred by the Appellant cannot form part of the value of commission paid to the insurance agents.

20. We find that CESTAT in the case of Max Life Insurance Co. (Supra) followed the above judgment and held that -

17. Further, reliance is placed on Bajaj Allianz Life Insurance Co. Ltd. v. Commissioner of C.E. & S.T., Pune-III, Final Order No. A/86013-86023/2019 wherein Hon'ble CESTAT held that expenses incurred in pre-

recruitment training and post-license training of insurance agents by the Appellants cannot form part of the gross taxable value of commission paid to the Insurance Agents in determining the service tax liability.

21. *It was also held in Edelweiss Tokio Life Insurance Company Ltd. (Supra) that –*

9. As far as the first issue is concerned, the expenses incurred by the insurance agents are proposed to be included and under Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 which was in force during the relevant time. The said Rule 5(1) has been struck down by the Hon'ble Delhi High Court as ultra vires to Sections 66 and 67 of Finance Act, 1994 and the said judgment has been upheld by the Hon'ble Supreme Court in Intercontinental Consultants and Technocrats Pvt. Ltd. case (supra).

22. *In view of the above, we have no doubt whatsoever expenditure incurred for training/refresher training and other cost/expenses incurred by the appellants cannot be included in the value of the taxable service prior to 14-5-2015. In respect of the period post 14-5-2015, the appellants submit that the explanation inserted by the amendment vide Finance Act, 2015 in Section 67 of the Finance Act, 1994 clearly states that consideration includes any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. He submits that for this explanation to apply the insurance agents being a service provider in the present case ought to have incurred this expenses and claimed reimbursement from the appellants; in the present case the expenses have been incurred by the appellants being the service recipient on their own account and non of the cost is even getting reimbursed to the agents.*

23. *We find that the explanation inserted under Section 67 as above, with effect from 14-5-2015 reads as under :-*

"(a) Consideration includes -

- (i) any amount that is payable for the taxable services provided or to be provided;*
- (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;*
- (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.*

(b) xx xx xx

- (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise."*

24. *A perusal of the above provisions indicate that the "consideration" for the purposes of levy of service tax include any amount that is payable for the taxable services provided or to be provided and any reimbursable expenditure are cost incurred by this service provider and charged. In the instant case it is not the case of*

the Revenue that the expenses in question were incurred by the service provider i.e. the insurance agents and charged to the appellants. It is the appellants that have incurred the expenditure though, it can be argued, that the expenses on pre-recruitment training/re-furbisher training should have been born by the agents themselves in order to obtain a license from the Regulatory Authority, the explanation to Section 67 as above does not provide for inclusion of any expenditure that could have been borne by the service providers. The only condition under which such expenditure shall be includable for the purposes of levy of service tax is that the expenditure should be borne by the service provider and the same should be charged to the service recipient. Therefore, in the facts and circumstances of the case, we find that the expenses incurred by the appellants are not goes required to be included in terms of the explanation under Section 67D. Therefore, we find that demands confirmed on the various expenses incurred by the appellants are not sustainable. Accordingly, they need to be set aside. When the demands are liable to set aside various penalty imposed are also not sustainable.”

4. In view of the settled position of law as discussed hereinabove, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)