CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87332 of 2019

(Arising out of Order-in-Original No. MUM/CGST-MW/COMMR/SP/05/2019-20 dated 30.04.2019 passed by the Commissioner of CGST, Mumbai West.)

Reliance General Insurance Company Ltd. **.... Appellant**
4th Floor, Reliance Centre,
Off Western Express Highway,
Santacruz (East), Mumbai- 400 055.

Versus

Commissioner of Central Excise & Service Tax, Mumbai West **.... Respondent**
Mahavir Jain Vidyalaya, C.D. Burfiwala Road,
Juhu Lane, Andheri (West), Mumbai- 400 058.

APPEARANCE:

Shri Jay Chheda a/w Aniket Barve, Advocates 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/86168/2025

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. Briefly stated, the facts of the case are that the appellants are engaged *inter alia*, in providing the General Insurance Services including Motor Third Party Insurance Policy through their branches located all over India. The Insurance Regulatory and Development Authority (IRDA) in their letter dated 04.12.2006 has framed the guidelines that all insurers registered to carry out general insurance business are required to participate in a 'pooling arrangement' to share all motor third party insurance business undertaken in respect of commercial vehicles. Such an requirement has been framed by IRDA in the interest of regulating the affairs of the insurance business, by providing that any of the registered general insurers, should provide for re-insurance arrangements for ceding the risks with other insurance

companies. As per the guidelines framed by IRDA, the appellants had entered into the Indian Motor Third Party Insurance Pool agreement with the 'General Insurance Corporation of India' (GIC). For providing the third party insurance services, the other insurance companies within the pool have raised the invoices, mentioning the amount of service tax paid by them. On the basis of those invoices, the appellants had availed the CENVAT credit, considering such service as "input service", defined under Rule 2(l) of the CENVAT Credit Rules, 2004. However, taking of CENVAT credit on the insurance service provided by the other insurance companies from among the pool arrangement was objected to by the department on the ground that the 'general insurance' covered under Section 65(105)(d) of the Finance Act, 1994 was specifically excluded from the purview of the definition of "input service" and as such, availment of CENVAT Credit on such service by the appellants was not in conformity with the CENVAT statute. Show Cause Notice (SCN) dated 21.07.2014 issued in this regard by the department was adjudicated vide the impugned order dated 30.04.2019, wherein the original authority has confirmed service tax demand of Rs.46,28,36,678/- along with interest and also imposed penalty under Section 78 of the Act of 1994. Being dis-satisfied with the impugned order dated 30.04.2019, the appellants have preferred this appeal before the Tribunal.

3. On reading of the definition of 'input service' contained in Rule 2(l) *ibid*, we find that the exclusion clause provided thereunder is limited to the general insurance service relating to a particular vehicle and not for re-insurance service provided by the other insurance company as per the pooling arrangement. Since, the appellants had availed CENVAT Credit in respect of the re-insurance service provided by the other insurers, availment of CENVAT Credit based on the invoices issued by those insurers should be considered as 'input service', for the purpose of availment of CENVAT Credit thereon.

4. We find that the issue arising out of the present dispute is no more *res integra*, in view of the judgment of Hon'ble Delhi High Court delivered in the case of *Commissioner of Central Excise and Service Tax, Delhi-South Vs. Oriental Insurance Company Ltd.,* reported in 2023 (73) G.S.T.L. 593 (Del.). The relevant paragraphs recorded in the said judgment are extracted herein below:

"31. There is no dispute that the respondent was entitled to avail Cenvat credit in respect of premium paid for re-insurance prior to April, 2011. There is also no dispute that re-insurance services were not excluded from input services after 30-6-2012. The Revenue contends that by virtue of the amendment in Rule 2(l) of the CCR, as introduced with effect from 1-4-2011, input service in relation to the services specified in clause (d) of sub-section (105) of Section 65 of the Act, insofar as it relates to motor vehicles, was excluded from the scope of input service. The only exception being when the services were used for provision of taxable services for which credit on motor vehicles was available as capital goods.

………….

41. OIC's contention that the Adjudicating Authority had travelled outside the show cause notice is also not insubstantial. The show cause notice had proceeded on basis that the re-insurance services are not input services for the reasons that they are received by OIC after the insurance services have been rendered; re-insurance services are not essential for providing insurance services; and re-insurance services are not directly or indirectly used for providing output services. This is evident from paragraph No. 10 of the show cause notice, which has been reproduced hereinbefore. The allegation that re-insurance services were specifically excluded from the scope of input services by virtue of an amendment to Rule 2(l) of the CCR introduced with effect from 1-4-2011- that is, by virtue of the exclusion contained in clause (B) of Rule 2(l) of the CCR - is not one of the grounds clearly stated in the show cause notice.

42. Having stated the above, we do not consider it apposite to examine the questions whether the show cause notice was issued within the stipulated period as specified under Section 73(1) of the Act or that the Order-in-Original dated 19-2-2016 was beyond the scope of the show cause notice in further detail, because the Learned CESTAT had not considered the same. The impugned order allowing OIC's appeal is founded solely on the conclusion that re-insurance services were not excluded from the definition of 'input services' under Rule 2(l) of the CCR during the period in question (Financial Year 2011-12).

43. In view of the above, the question projected by the Revenue in this appeal are answered against the Revenue and in favour of OIC."

…………. Emphasis supplied.

5. We also find that an identical issue has also been dealt with by the Hon'ble Rajasthan High Court, in the case of *CCE Vs. Shriram General Insurance Company Ltd.* - 2022 (2) TMI 11 Rajasthan High Court. While dismissing the appeal filed by Revenue, the Hon'ble High Court have recorded the following observations:

"…………………However, we notice that the tribunal in the impugned judgment has also dealt with this issue by referring to the provisions of the Insurance Act, 1938 and noted that Section 114A

of the Insurance Act empowers the IRDA to make regulations in respect of various matters including matter relating to reinsurance under Sections 101A and 101B of the Insurance Act. In exercise of the such powers IRDA has issued the reinsurance regulation for re-insurance of general insurance business. One of the directions issued by the IRDA in exercise of powers conferred under Section 34 of the Insurance Act was for creation of an insurance pool. All general insurers registered to carry on general insurance business were directed to collectively participate in a pooling arrangement to share all motor third party insurance business underwritten by any of the registered general insurers. In pursuance of the said directions all general insurance companies in India entered into an agreement for creating the insurance pool.
……………………………. In the present case, we are concerned with such re-insurance being pooled through a mechanism provided by IRDA. These directives had statutory force and the act of the insurance companies to create such a pool was not a voluntary act. The tribunal correctly therefore was of the opinion that this pooling system is nothing but a form of re-insurance. We may notice that the term reinsurance has been defined under Section 2(16B) of the Insurance Act, 1938 as to mean the insurance of portion of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium. Section 101A of the Act makes it compulsory for every insurer to re-insure such percentage of the sum insured on each policy as may be specified by the authority with a previous approval of the Central Government.

Under the circumstances we do not see any scope for deviating from the ratio in the case of PNB Metlife (supra). Incidentally we may record that the tribunal has also seen the entire situation as revenue neutral. Be that as it may, no question of law arises.
Appeal is accordingly dismissed."

6. In view of the settled position of law as discussed hereinabove, we do not find any merits in the impugned order, insofar far it has confirmed the adjudged demands on the appellants. Therefore, the impugned order dated 30.04.2019 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)

SM