
(2024) 07 CESTAT CK 1536

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 51369 of 2017

**M/s Oriental Insurance Company Limited @APPELLANT @Hash Principal
Commissioner of Central Excise, Service Tax & CGST, Delhi (North)
@RESPONDENT**

Date of Decision : 22-07-2024

Acts Referred:

Finance Act, 1994 — Section 65(54), 65(55), 65(105)(zl), 73(1)
Insurance Act, 1938 — Section 2(10), 42
Cenvat Credit Rules, 2004 — Rule 3
Service Tax Rules, 1994 — Rule 2(1)(d)(iii)

Citation : (2024) 07 CESTAT CK 1536

Hon'ble Judges : Dilip Gupta, President (J); Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : B.L. Narasimhan, Shivam Bansal, Jaya Kumari

Final Decision : Allowed

Judgement

Dilip Gupta, J

1. M/s Oriental Insurance Company Limited, the appellant has filed this appeal to assail the order dated 15.05.2017 passed by the Commissioner, LTU (Audit), Delhi, the Commissioner confirming the demand of service tax by invoking the extended period of limitation contemplated under the proviso to section 73 (1) of the Finance Act, 1994, the Finance Act. The Commissioner has also disallowed CENVAT credit availed and utilized by the appellant. Penalties have also been imposed upon the appellant under various sections of the Finance Act.

2. The appellant is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of insurance. It entered into a Memorandum of Understanding, the Memorandum dated 08.08.2007 with Dena Bank, Mumbai, the Bank, under which the Bank agreed to provide adequate space and specific facilities such as working desk and chair in mutually selected branches of the Bank to the appellant. In consideration of the facilities provided by the Bank, the appellant agreed to pay a fixed amount of Rs. 12500/- per

month per branch for each of the 300 selected branches. The appellant was required to ensure the presence and stationing of its authorized employees in the branch of the Bank; these employees would canvass insurance business but without interfering with the banking business of the Bank; and the appellant would utilize the space provided by the Bank as an 'insurance desk' for the purposes of publicity and marketing its insurance products to the customers of the bank.

3. It has been stated that the Bank did not charge service tax on the amount payable by the appellant under the Memorandum up till March, 2009. From April 2009 onwards till June 2010, the Bank started charging service tax on the consideration payable by the appellant under the Memorandum and it was also deposited by the Bank.

4. The Bank, however, informed the appellant that the department had issued a show cause notice dated 08.12.2009 demanding service tax for the period prior to April 2009. Consequently, the Bank raised invoices on the appellant for demanding service tax payable for the period from May, 2006 to March, 2009, which amount the appellant claims that it paid.

5. The appellant, therefore, claims that the Bank charged service tax from the appellant for the period from May, 2006 to June, 2010 for the services it provided and service tax was paid by the appellant to the Bank.

6. A show cause notice dated 21.01.2011 was issued to the appellant proposing demand of service tax and reversal of CENVAT Credit and the details are summarized as below:

Period of dispute

May, 2006 to June, 2010

April, 2008 to March, 2009

April, 2008 to March, 2009

Demand

Rs. 1,67,95,997 (Service Tax)

Rs. 3,09,000 (CENVAT credit)

Rs. 1,13,043 (Service Tax)

Penalty

Rs. 1,67,95,997

Rs. 3,09,000

Rs. 1,13,043

Issues

Demand of service tax under 'insurance auxiliary service', for services received from the Bank.

Denial of CENVAT credit of Group Health Insurance policy for employees.

Demand of service tax on alleged short account of insurance premium income.

7. The appellant filed a detailed reply to the show cause notice and contested the demand on merits as well as on limitation.

8. The Commissioner, by order dated 15.05.2017, confirmed the demand proposed in the show cause notice with interest after invoking the extended period of limitation.

9. It is this order dated 15.05.2017 passed by the Commissioner that has been assailed in this appeal.

10. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Shri Shivam Bansal made the following submissions:

(i) The services rendered by the Bank are not 'insurance auxiliary services' and no service tax is payable under Reverse Charge Mechanism. In this connection, reliance has been placed on the decision of the Tribunal in the own case of the appellant in M/s Oriental Insurance Company Ltd vs. Commissioner of Central Excise and Service Tax, New Delhi, 2016-TIOL-622-CESTAT-DEL and the decision of the Tribunal in Commissioner of Service Tax, Mumbai-VI vs. Reliance Life Insurance Co. Ltd, 2019 (22) G.S.T.L. 36 (Tri.- Mumbai);

(ii) To sustain the said demand that solicitation is taking place whether it is through the Bank or through authorized representatives of the appellant, it is imperative for the Department to show that 'insurance auxiliary services' have been received by the appellant from the Bank under the said Memorandum. If the appellant receives the said services from any other person, it does not invite liability of the appellant on the amounts paid to Dena Bank;

(iii) The Bank has paid service tax under the category of 'business support services'. Since service tax already stands paid by the Bank, the same cannot be collected twice;

(iv) The appellant has received 'business support services';

(v) Service tax on the provision of service stands deposited by the Bank under forward charge. Hence, the demand proposed against the appellant under Reverse Charge Mechanism would amount to double taxation;

(vi) Denial of CENVAT credit on Group Health Insurance Services for employees, is untenable;

(vii) There is no case of short accounting of insurance premium and thus, no differential tax is payable; and

(viii) The extended period of limitation is not invocable nor penalty is imposable, interest is also not payable.

11. Ms. Jaya Kumari, learned authorized representative appearing for the department has, however, supported the impugned order and made the following submissions.

(i) The solicitation of insurance business is taking place or is intended to take place whether it is through the Bank or through the authorized representative of the appellant. The said person i.e either the Bank or the authorized representative of the appellant automatically become the agent of the appellant because they are soliciting business for the appellant;

(ii) The appellant is not entitled to take CENVAT credit of service tax paid on Group Health Insurance Policy premium for their employees as the same is not allowed under rule 3 of the CENVAT Credit Rules 2004, the 2004 Credit Rules, not being an input service for the appellant. The law does not provide credit of service tax paid on such Group Health insurance policy premium for their employees; and

(iii) Regarding difference of Rs. 9,14,590/- in the "Total premium Received " between Audited trial balance of Regional Office Delhi-I and the "consolidated statement" involving service tax liability of Rs. 1,13,043/-, the appellant has termed it as a clerical mistake without giving any plausible reason for the mistake.

12. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

13. As noticed above, there are three issues to be decided in this appeal.

INSURANCE AUXILIARY SERVICE

14. The Commissioner has confirmed the demand, holding that the Bank is providing 'insurance auxiliary services' as an 'insurance agent' to the appellant and the appellant would be liable to pay service tax under Reverse Charge Mechanism in terms of rule 2(1)(d)(iii) of the Service Tax Rules, 1994, the 1994 Rules.

15. It is seen that in terms of the Memorandum, the Bank had agreed to provide space to the appellant in the designated branches where the representatives of the appellant were to be stationed for the purpose of soliciting insurance business from the customers visiting the Bank. In lieu of the Bank providing space to the appellant, the appellant had agreed to pay fixed charges per branch to the Bank in terms of the Memorandum. It is not in dispute that the role of the Bank was limited to providing space in its branches to the appellant and its representatives as per the Memorandum. The issue that arises for consideration is whether the demand could have been confirmed under 'insurance auxiliary

services’.

16. Section 65(55) of the Finance Act, defines “insurance auxiliary service” to mean any service provided by an actuary, an inter-mediary or insurance intermediary or an insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment.

17. Section 65(54) of the Finance Act defines “an insurance agent” to have the same meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938, the Insurance Act.

18. Section 65(105)(zi) of the Finance Act provides that “taxable service” would mean any service provided or to be provided 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 general insurance business.

19. Section 2 (10) of the Insurance Act, defines an “insurance agent” in the following manner:

"insurance agent" means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance;"

20. It, therefore, follows that the services rendered by an insurance agent, who is duly licensed under section 42 of the Insurance Act to be so, to an insurance company in relation to general insurance businesses are taxable as “insurance auxiliary services”. It is not the case of the department that the Bank is a holder of a license under section 42 of the Insurance Act to act as an “insurance agent”, nor such a finding has been recorded by the Commissioner in the impugned order. In the absence of a license, a person cannot be considered as an insurance agent for treating the activities as “insurance auxiliary services”.

21. The order also observes that solicitation is taking place whether it is through the Bank or through authorized representatives of the appellant. To sustain the said demand, it is imperative for the Department to show that ‘insurance auxiliary services’ have been received by the appellant from the Bank under the said Memorandum. If the appellant receives the said services from any other person, it does not invite liability of the appellant on the amount paid to the Bank.

22. The appellant had correctly discharged service tax on “business support services” and, therefore, once this service tax stands paid on the transaction, it is not open to the department to seek its recovery again. The reason stated by the appellant for discharging service tax under “business support services” is that the Bank had provided space to the appellant alongwith ancillary facilities such as chairs and desks and these infrastructural support services provided by the

Bank are covered under "business support services" This service is not liable to tax under Reverse Charge Mechanism.

23. Thus, the demand that has been confirmed by the Commissioner under this head cannot be sustained.

HEALTH INSURANCE SERVICE

24. It is the contention of the appellant that providing group health insurance for the employees would be covered under the definition of "input service" and, therefore, the appellant was entitled to avail CENVAT Credit.

25. This issue has been decided in favour of the appellant by a Larger Bench of the Tribunal in Reliance Industries Ltd. vs. Commissioner of Central Excise and Service Tax, (LTU), Mumbai, 2022 (60) G.S.T.L. 442 (Tri.- LB). Thus, the demand confirmed under this head cannot also be sustained.

SHORT ACCOUNTING OF INSURANCE PREMIUM

26. According to the appellant, it correctly reported its premium for the purpose of calculating service tax liability and there is no short accounting. The appellant has stated that as per the audited trial balance of the Regional Office at Delhi, the total premium is Rs.253,63,68,125/- and because of an error in the Annexure, the said trial balance has been recorded as 253,72,82,715/-. The appellant has enclosed the audited trial balance from which it is clear that the total premium is Rs. 253,63,68,125/- and, therefore, there is no short accounting of premium.

CONCLUSION

27. In view of the aforesaid discussion, the impugned order confirming the demand of service tax on insurance auxiliary service and short account of insurance premium income cannot be sustained nor can the CENVAT credit of group health insurance policy for the employees be denied to the appellant.

28. It would, therefore, not be necessary to examine the contention raised by the learned counsel for the appellant on invocation of the extended period of limitation under the proviso to section 73(1) of the Finance Act.

ORDER

29. The order dated 15.05.2017 passed by the Commissioner is, accordingly, set aside and the appeal is allowed.

(Order pronounced on 22.07.2024)