(2021) 01 CESTAT CK 0032

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 51676 Of 2016

M/s Oriental Insurance Company Ltd. @Hash Commissioner, Large Tax Payer Unit

Date of Decision : 28-01-2021

Acts Referred:

Provisions Of Insurance Act, 1938 — Section 2(2), 3, 3(1), 3(4)(f), 34, 101A, 101B, 114A
Insurance Regulatory and Development Authority Act, 1999 — Section 3(1)
Motor Vehicles Act, 1988 — Section 146
Finance Act, 1994 — Section 65(58), 65(80), 65(105), 65(105)(d), 65(105)(o), 65(105)(zo), 65(105)(d), 65(105)(zzzzj), 73(1), 73(4), 75, 78
Cenvat Credit Rules, 2004 — Rule 2(1), 14, 15(3), 15(4)

Citation : (2021) 01 CESTAT CK 0032

Hon'ble Judges : Delip Gupta, J;P.V. Subba Rao, Technical Member

Bench : Division Bench

Advocate : B.L. Narasimhan, Narender Singhvi, R.K. Majhi

Final Decision : Allowed

Judgement

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1. The Commissioner of Central Excise & Service Tax, New Delhi [The Commissioner] has confirmed the demand of CENVAT credit of",,,

Rs.196,46,97,360/- with interest and penalty and dropped the demand of CENVAT credit of Rs.430,70,99,163/- by order dated February 19, 2016.",,,

This part of the order confirming the demand of CENVAT credit with penalty and interest has been assailed in the present appeal.,,,

2. The Appellant is a registered insurer under the provisions of Insurance Act 1938, [The Insurance Act] and is engaged in providing general",,,

insurance services. It issues various kinds of insurance policies like motor vehicle insurance, fire insurance and marine insurance. The insurance",,,

business in India is regulated by the Insurance Act. Section 3 deals with registration and sub-section (1) of section 3 provides that no person shall,",,,

after commencement of the Insurance Act, carry on any class of insurance business in India and no insurer carrying on any class of insurance",,,

business in India shall, after the expiry of three months from the commencement of the Insurance Act, continue to carry on any such business, unless",,,

he has obtained from the Authority a certificate of registration for the particular class of insurance business. Section 3(4)(f) provides that the authority,,,

shall cancel the registration of an insurer, either wholly or in so far as it relates to a particular class of insurance business, if the insurer makes default",,,

in complying with, or acts in contravention of any requirement of the Insurance Act or of any rule or any regulation or order made or any direction",,,

issued thereunder. Section 101A of the Insurance Act deals with reinsurance with Indian re-insurers. It provides that every insurer shall re-insure with,,,

Indian reinsurers such percentage of the sum assured on each policy as may be specified by the Insurance Regulatory and Development Authority of,,,

India, IRDA that has been established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act 1999, IRDA",,,

Act. The Government of India has constituted IRDA with a view to protect the interest of holders of insurance policies and to regulate, promote and",,,

ensure orderly growth of the insurance industry. The Appellant claims that because of the requirement set out under section 101A of the Insurance,,,

Act and as a prudent business practice it has been availing re-insurance services from Indian as well as foreign reinsurance companies in respect of,,,

the insurance policies.,,,

3. Section 114A of the Insurance Act empowers the IRDA to make regulations in respect of various matters including matters relating to re-insurance,,,

under sections 101A and 101B of the Insurance Act. In due exercise of the aforesaid powers, IRDA has issued the Re-insurance Regulations for re-",,,

insurance of general insurance business.,,,

4. Section 146 of the Motor Vehicles Act, 1988, MV Act mandates taking of an insurance cover against third party risks by a person using a motor",,,

vehicle in a public place. The rate for third party insurance premium is regulated by the Insurance Act. It is stated that problems were faced by,,,

companies in issuing insurance cover against these policies as very high risks arose therefrom.,,,

5. Directions dated December 4, 2006, were issued by IRDA, in due exercise of powers conferred under section 34 of the Insurance Act, for creation",,,

of an Insurance Pool. All the general insurers, registered to carry on general insurance business (including motor insurance business) or general re-",,,

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. It is in pursuance of the aforesaid directions that all general insurance companies in India entered into an,,,

agreement with GIC for creating the Insurance Pool. This Insurance Pool is a mechanism to render re-insurance services by general insurance,,,

companies to each other as regards third party motor vehicle insurance. Under this pool arrangement, a matrix is prepared periodically to determine",,,

the amount of premium to be paid by one member to another and vice versa.,,,

6. The Appellant claims that in pursuance of the aforesaid matrix, it raised an invoice on each member specifying the premium allocated to it under the",,,

matrix and charged service tax thereon. Likewise, invoices were raised by all pool members on each other. The service tax charged in such invoices",,,

is availed as credit by each member. The Appellant has also availed CENVAT credit of service tax paid on such re-insurance service provided by the,,,

pool member companies under the Insurance Pool.,,,

7. In respect of re-insurance services rendered by Indian Companies, service tax is charged from the Appellant and then deposited in the Government",,,

account. In respect of re-insurance services rendered by foreign companies, the Appellant is discharging service tax under the reverse charge",,,

mechanism. The Appellant has been availing CENVAT credit of service tax paid on such re-insurance services. This CENVAT credit can broadly be,,,

categorized as under:-,,,

(a) Re-insurance services rendered by pool member companies which charge service tax from the Appellant on their invoices;,,,

(b) Re-insurance services rendered by other Indian reinsurers which charge service tax from the Appellant on their invoices; and,,,

(c) Re-insurance services rendered by foreign reinsurance, on which service tax is paid by the Appellant under the reverse charge.",,,

8. The following three questions were framed by the Commissioner for determination.,,,

i. â??Whether CENVAT Credit of Rs.627,17,96,523/- (Six Hundred Twenty seven Crores Seventeen Lakh Ninety Six Thousand Five Hundred",,,

Twenty Three Only) should be disallowed and recovered from the Noticee under Rule 14 of the CENVAT Credit Rules, 2004 read with proviso to",,,

Section 73(1) and Section 73(4) of the Finance Act, 1994;",,,

ii. Whether interest as applicable should be charged and recovered from them under Section 75 of the Finance Act, 1994;",,,

iii. Whether penalty should be imposed under rule 15(4) effective up to 26.02.2010 or 15(3) effective from 27.02.2010 of the CENVAT Credit Rules,",,,

2004 read with section 78 of the Finance Act, 1994.â??",,,

9. CENVAT Credit of Rs.627,17,96,523 proposed to be disallowed for the period 2008-09 and 2011-12 in the show cause notice comprises following",,,

components:,,,

a. Reinsurance services obtained directly from the Indian reinsurers.,,,

b. Reinsurance services obtained directly from the foreign reinsurers.,,,

c. Reinsurance service obtained under Indian Motor Third Party Insurance Pool.,,,

10. The Commissioner drew a distinction between the aforesaid services rendered prior to April 01, 2011 and w.e.f. April 01, 2011 for the reason that",,,

an amendment had been made in the definition of â??input serviceâ? in the CENVAT Credit Rules 2004, CENVAT Rules w.e.f. April 01, 2011.",,,

According to the Commissioner, the definition of â??input serviceâ?? in rule 2 (l) of the CENVAT Rules included within its ambit all such services",,,

which can reasonably be used for providing any output service. Thus, before April 01, 2011, the issue of nexus of input service viz-a-viz output service",,,

Year,"Input Credit for service

tax paid on reinsurance

Indian business (Rs.)","Input Credit for reinsurance

business paid under reverse

charge (Rs.)","Input Credit on Service tax

paid to Indian Motor Third

Party Pool Members (Rs.)

2008-09,628766032,358929311,0

2009-10,696772459,368066377,0

2010-11,621662417,471976774,1160925793

Total,1947200908/-,1198972462/-,1160925793/-

Grand Total,4307099163/-,,

Year,"Input Credit for

service tax paid on

reinsurance Indian

Business (Rs.)","Input Credit for

reinsurance business paid

under reverse charge

(Rs.)","Input Credit on service tax

paid to Indian Motor

Third Party Pool Members

(Rs.)

2011-12,706065972,427172874,831458514

Grand Total,1964697360/-,,

23. The submission made by the learned Counsel for the appellant, therefore, deserves to be accepted. The contention also finds support from of the",,,

decision of Tribunal in Shriram General Insurance Company. The Bench examined whether the amendment made in the definition of â??input,,,

serviceâ? w.e.f. April 01, 2011 in rule 2 (l) of the CENVAT Rules would affect the eligibility of the Appellant to CENVAT credit on reinsurance",,,

services. The observations are as follows:,,,

â??23. It needs to be noted that motor vehicles have been excluded from the definition of â??capital goodsâ??. For this reason, the",,,

general insurance services relating to such motor vehicles have also been excluded from the purview of â??input serviceâ??. The purpose,,,

of this amendment , thus, is to restrict the credit on insurance services availed in respect of motor vehicles to only two class of persons, i.e.",,,

(a) manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; and (b) an insurance company in respect of,,,

a motor vehicle insured or re-insured by such person. This exclusion clause cannot be read to cover reinsurance services, which are not",,, insurance services in respect of a motor vehicle. What is excluded under the said exclusion clause is general insurance services in respect,,,

of a motor vehicle. Insurance services received by an owner of motor vehicle for insurance of such vehicle stands excluded from the,,,

definition of â??input serviceâ??. However, a re-insurance service is not in respect of a motor vehicle, but is in respect of the assumed risks",,,

of an original insurer and thus, the aforesaid exclusion clause has no application to qualification of re-insurance services as â??input",,,

serviceâ??.,,,

(emphasis supplied),,,

20. The Division Bench of this Tribunal in Shriram General Insurance Company also examined whether the appellant would be eligible to avail,,,

CENVAT Credit of reinsurance provided by pool member companies under the insurance pool after the amendment of the definition of â??input,,,

serviceâ?? in rule 2(l) w.e.f. April 01, 2011 and observed that the appellant would be eligible to avail CENVAT credit of service tax paid thereon.",,,

The relevant portion of decision is reproduced below:,,,

26. It now remains to be examined whether the Appellant is eligible to avail CENVAT credit of re-insurance service provided by pool member,,,

companies under the Insurance Pool. In the first instance, the finding in the impugned order that the Appellant is not eligible for CENVAT credit of",,,

service tax paid under the Insurance Pool since the Appellant has not actually paid any amount to the member companies is beyond the scope of the,,,

show cause notice. Even otherwise, the factual position has not been correctly appreciated by the Commissioner. As noticed above, under the pool",,,

arrangement, the Appellant deposits the whole premium collected by it in the pool account and based on the prescribed formulae, the GIC determines",,,

the amount of re-insurance premium due to each member as against the other members. Thus, in effect, each company pays the re-insurance",,,

premium after deducting the amount due from the other member companies. The service tax liability stands discharged on the whole re-insurance,,,

premium paid to the other members. It cannot be, therefore, be urged by the Department that the invoices that are issued by the pool member",,,

companies are not for any provision of service or without any payment. The re-insurance services are provided by the pool member companies and it,,, is for this reason that the Insurance Pool was formed by IRDA. Clause 3 of the direction dated December 4, 2012 (should be 2011) are relevant and",,,

are reproduced below:-,,,

â??3. Pooling Mechanism: The pooling of business among all insurers will be achieved through a multi-lateral reinsurance arrangement between the,,,

underwriting insurer and all the other registered insurers carrying on general insurance business (including motor insurance business) and general,,,

insurance reinsurers.â??,,,

xxxxxxxxxx,,,

28. Thus, it cannot be doubted that re-insurance services are rendered by pool member companies to each other and payment of premium takes place",,,

with the pooling of the original premium into the pool. The Appellant would, therefore, be eligible to avail the CENVAT credit of service tax paid",,,

thereon. The impugned orders denying such CENVAT credit cannot, therefore, cannot be sustained.â??",,,

21. Thus, even after the amendment of the definition of â??input serviceâ?? in rule 2(l) of the CENVAT Rule w.e.f. April 01, 2011, the appellant",,,

would be eligible to avail CENVAT credit on both the aforesaid reinsurance services.,,,

22. It would, therefore, not be necessary to examine the contentions raised by the learned counsel for the appellant that by confirming the demand for",,,

the period w.e.f. April 01, 2011, the order has gone beyond the scope of the allegation made in the show cause notice or that extended period of",,,

limitation could not have been invoked in the facts and circumstances of the case.,,,

23. Thus, for all the reasons stated above, it is not possible to sustain that part of the order of the Commissioner that confirms the demand of",,,

CENVAT Credit of Rs.196,46,97,360/- with interest and penalty. It is accordingly, set aside and the appeal is, allowed.",,,

(Order pronounced in the open Court on January 28, 2021)",,,

