

(2015) 04 KAR CK 0146
In the Karnataka High Court
Case No : C.E.A. No. 56 of 2014

The Commissioner of Central Excise

APPELLANT

Vs

PNB Metlife India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Finance Act, 1994 — Section 78
Insurance Act, 1938 — Section 101A

Citation : (2015) 51 GST 504 : (2015) 39 STR 561 : (2015) 82 VST 548

Hon'ble Judges : Vineet Saran, J;S. Sujatha, J

Bench : Division Bench

Advocate : C. Shashikantha, C.G.C., for the Appellant; G. Shivadass, Advocates for the Respondent

Judgement

Vineet Saran, J.

1. The brief facts of the case are that the respondent -PNB Metlife India Insurance Company Ltd., (for short referred to as Insurer") is engaged in, and licensed to carry on Life Insurance business. In the process of its business, the Insurer issues Insurance Policies on which Service Tax is charged from its customers (Insured). Section 101A of the Insurance Act 1938, requires every insurer to have a certain percentage of the insurance coverage given by the Insurer to be re-insured by another company.

2. In the present case, the respondent - Insurer had procured re-insurance service from over-seas Insurance companies and had availed CENVAT credit of Service Tax paid on such services received by it. The Commissioner of Central Excise (Adjudication), vide its order dated 2.12.2013, disallowed the CENVAT credit to the respondent -Insurer and held that Service Tax paid on re-insurance services received cannot be considered as Input Service since re-insurance takes place after the Insurance business is affected. Accordingly, for the period from April 2008 to March 2012 the Commissioner disallowed the availed CENVAT credit of Rs. 12,04,06,544/- on re-insurance services and confirmed the demand of

such credit and ordered recovery of the same from the insurer. An equal amount of penalty was also imposed under Section 78 of the Finance Act, 1994 r/w Rule 15 (4) of the CENVAT Rules, 1994. On such amount, interest was also levied and a further penalty of Rs. 200/- for every day of failure to pay service tax due was also imposed. Challenging the said order, the respondent - Company filed an appeal before the Customs Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore, which has been allowed by the Tribunal by order dated 7.5.2014. Aggrieved by the same this appeal has been filed by the revenue raising the following substantial question of law:--

"Whether the CENVAT credit availed and utilized by the assessee on the Service Tax paid for imported "Reinsurance Services" is an "input service" within the meaning of Rule 2(1)(i) of the CENVAT Credit Rules, 2004 for the output services, i.e., Service of insurance the assessee was providing?"

3. We have heard Sri C. Shashikantha, learned counsel for the appellant and Sri G. Shivadass, learned Counsel for the respondent - Company and we have perused the records.

4. Learned Counsel for the appellant has contended that by the definition of Input Service, the provider of taxable service should be providing an Output Service, whereas in the case of the respondent - Insurer the Input service alleged to be given is after the Insurance policy has been issued by the Insurer, and Service Tax has been collected. According to the appellant, it is only after the insurance policy is issued by the Insurer that the re-insurance is taken from another company, on which it pays Service Tax and as such it would not be entitled to CENVAT credit, as the same cannot be termed as Input Service" within the meaning of Rule 2(1)(i) of CENVAT Credit Rules, 2004. It is also contended that there is no justification for the essential or indispensable nature of input service (i.e., re-insurance service) for provision of output service (i.e., insurance service). According to the appellant the reinsurance service is in the nature of reducing the risk factor of the insurer, which provides insurance service to its clients, which is subsequent to the provision of the said service. It has also been submitted that the contractual obligations between the service provider and service recipient have no bearing on the nature of activities between the service provider and the re-insurer. It is thus contended that the respondent - Insurer would not be entitled to the benefit of CENVAT credit.

5. On the other hand, Sri G. Shivadass, learned counsel for the respondent has submitted that the business of insurance continues till the validity of the insurance policy and the process of re-insurance is an integral part of issuance of the insurance policy by the Insurer, more so, when the statute requires a particular percentage of insurance business to be mandatorily re-insured by another company. He has thus submitted that the order passed by the Tribunal in holding that the respondent would be entitled to CENVAT credit, is perfectly justified in law.

6. Having heard the learned counsel for the parties and in the fact of this case, we are of the opinion that the order of the Tribunal does not require any interference. Rule 2(1) of the CENVAT Credit Rules 2004 provides that "Input Service" means service used by a provider of taxable service for providing an "Output Service". The submission of the learned counsel for the appellant that once the Insurance Policy is issued by the Insurer, the transaction comes to an end (and would not depend on the re-insurance policy) and as such the service provided would not come within the ambit of input service, is not worthy of acceptance. The process of issuance of an Insurance Policy by the Insurer and subsequent procurement of re-insurance policy from another company (which is a statutory requirement) is an integral part of the total process. The process of insurance does not come to an end merely on the issuance of the Insurance Policy by the Insurer. In fact, it continues till the existence of the term of the policy. The re-insurance is taken by the Insurer immediately after the insurance policy is issued, as is required under Section 101A of the Insurance Act, 1938. Since re-insurance is a statutory obligation, and the same is co-terminus with the Insurance policy issued by the respondent, we are of the opinion that the stand taken by the Tribunal is correct that the transfer of a portion of the risk of the re-insurance has to be considered as having nexus with the output service, since the re-insurance is a statutory obligation and the same is co-terminus with the Insurance Policy. We only re-iterate that the issuance of insurance policy by insurer, and then taking of re-insurance by it, is a continuous process, and in the facts of the present case, it cannot be said that the same would not be an "input service" eligible for CENVAT credit within the meaning of Rule 2(1) of the CENVAT Credit Rules 2004.

7. We may further add that the Service Tax is levied for certain service rendered and the provision of giving the CENVAT credit is so that there may not be double taxation. If a person has collected service tax, no doubt the same has to be deposited, but if in the process of the same transaction he has paid some service tax, which is necessary for its business, then he is entitled to the CENVAT credit to the extent of service tax which has been paid by it. In the present case, if the entire Service Tax which is collected by the Insurer, while selling its insurance policies, has to be deposited without being given the credit of the tax which is paid by it while procuring a policy of reinsurance as (mandatorily required in law), the same would be against the ethos of CENVAT credit policy, as the same would amount to double taxation, which is not permissible in law.

8. In such view of the matter, no interference is called for with the order of the Tribunal. We are also of the opinion, that no substantial question of law arises for determination by this Court. Appeal is accordingly dismissed.