IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH – COURT NO.1

S. Tax Appeal No. 01846 of 2012

Arising out of Order-in-Original No. 21/2012 dated 09/04/2012 passed by Commissioner of Central Excise, Bangalore-II.

M/s. Metlife India Insurance Company Limited
Brigade Seshamahal
5 Vani Vilas Road
Basavanagudi
Bangalore-560004.

Appellant (s)

VERSUS

Commissioner of Central Excise, Bangalore-II
Commissionerate
Central Revenue Building
Bangalore-560001.

Respondent (s)

APPERANCE:
Shri Harish Bindumadhavan, Advocate for the Appellant
Shri Rama Holla, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 20467/2020

Date of Hearing : 02 March 2020
Date of Decision : 18/08/2020

PER P. K. CHOUDHARY:

The instant appeal has been filed by the assessee, M/s. Metlife India Insurance Co. Ltd., against demand of service tax, consequent to denial of CENVAT credit for the period from 1st April, 2005 to 15th May, 2008 alongwith interest under Section 75 of the Finance Act, 1994, (the Act) and penalty under Section 78 of the Act read with Rule 15(4) of the CENVAT Credit Rules, 2004 (the Credit Rules).

2. The facts of the case in brief are that the appellant is engaged in insurance business offering Life Insurance Policy (Term Insurance Policy), Endowment Policy and Unit Linked Insurance Policy (ULIP).

During the period in dispute, premium money collected for Term Life Insurance and Endowment Life policies were fully taxable. In the case of ULIP, the premium is collected for two components – risk coverage portion and investment portion, the premium payable on the portion of risk coverage was only taxable, i.e. the premium attributable to investment portion was not taxable. Necessary break-up of premium for both the components are duly mentioned in the Policy document.

3. The appellant was availing CENVAT credit of service tax paid on commission paid to agents through whom the Policies were being booked. Service tax on said commission was being paid by appellant under the category of Insurance Auxiliary Services under Reverse Charge Mechanism considering them to be eligible 'input service' used for providing output service i.e. insurance services incl. ULIP. The Revenue entertained a view that since output service tax in respect of ULIP were being paid only on the premium portion charged for risk coverage and not the investment portion, the appellant was not eligible to avail CENVAT credit of service tax paid on commission expense amount. Show Cause Notice dated 08.10.2020 was issued which was adjudicated vide Order-in-Original dated 09.04.2012 by the Ld. Commissioner, Central Excise, Bangalore whereby he confirmed the impugned demand. In the adjudication order, the Ld. Commissioner has observed that service tax was not paid on the investment portion of the ULIP, since the same was exempt / not taxable during the impugned period. Analysing the provisions of Rule 6(5) of the Credit Rules, as was applicable then, he concluded that CENVAT credit on insurance auxiliary service received by the appellant cannot be availed as the same was exclusively used in exempted services. The Ld. Commissioner justified imposition of penalty on the ground that that credit was availed wrongly with the intent to evade payment of service tax. The said adjudication order is under challenge in this appeal.

4. Shri Harish Bindumadhavan, learned Advocate appeared for the appellant and Shri Rama Holla, learned Superintendent (AR) appeared for the Revenue.

5. The learned Advocate appearing for the appellant submitted that:-

(i) they were engaged in the provision of only one service i.e. life insurance service in the course of carrying out life insurance business and therefore, no exempt service has been provided by them.

(ii) the customer has to purchase the ULIP as a whole and cannot choose to avail only the investment portion and not the insurance component and therefore, the services rendered by the insurance agents towards soliciting a ULIP can be considered as input service exclusively in relation to an exempt service.

(iii) merely for the reason that service tax was imposed on fund management charges in 2008 cannot be a ground to suggest that the life insurance companies are providing two distinct services prior to 16th May, 2008.

(iv) payment of commission cannot be exclusively attributed to the investment component of ULIP inasmuch as commission amount is paid to the agents for soliciting the entire policy and not just exclusively towards selling the investment component.

(v) the appellant has rightly availed full credit of service tax paid on commission paid to insurance agents under Rule 6(5) of the Credit Rules.

(v) the extended period of limitation cannot be invoked in absence of any fraud or suppression.

6. The Ld. DR appearing for the Revenue reiterated the findings made by the Ld. Commissioner and supported the impugned order and prayed that the appeal be rejected being devoid of any merit.

7. Heard both sides and perused the appeal records in detail.

8. The issue that needs to be decided in the instant case is whether the appellant is eligible to avail CENVAT credit of service tax paid under reverse charge mechanism for availing services of insurance agents when portion of premium amount (consideration towards output service) is not liable to service tax.

9. During the period in dispute, in terms of Rule 3 of the Credit Rules, a provider of taxable service shall be allowed to take credit of service tax leviable under Section 66 of the Act which is paid on any input service. The term 'input service' as defined in Rule 2(l) "means

any service used by a provider of taxable service for providing an output service .....". In terms of the basic provisions contained in Rule 6(1) of the Credit Rules, credit shall not be allowed on input service which is used in providing exempted service. The term 'exempted service' has been defined in Rule 2(e) which means **"taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under section 66 of the Finance Act"**.

10. In the instant case, on perusal of the finding made by the Ld. Commissioner (in para 21 of the impugned order), we find that credit has been denied solely on the premise that the insurance service (for sale of ULIP policies) is exempted service, since no service tax is paid on the premium pertaining to the investment component. In our view, the Ld. Commissioner committed a fundamental error in assuming that the sale of ULIP policy by the appellant results into provision of exempted service. We are of the considered view that the appellant is only engaged in rendering the insurance services and merely for the reason that portion of the premium amount charged in respect of ULIP policies is not liable to tax, it cannot be said that the said service is exempted output service when tax is duly paid on the portion of premium collected on risk coverage. Merely for the reason that the break-up of premium amount is shown in the policy, the fact that remains is that the policy is one and single with the feature of both risk coverage and investment opportunity simultaneously. It cannot be said that the 'insured' i.e. the subscriber to the policy has availed two separate policies. Neither there can be a question of extending the facility for subscribing to ULIP policy with only the investment portion, excluding the risk coverage and vice versa.

11. Further, while strictly perusing the definition of 'exempted service', as was applicable during the impugned period, the same will cover within its ambit the taxable service which is wholly exempted from service tax, which is not the case herein. Further, second part of the definition of 'exempted service', will cover cases where more than one service is rendered and one of the services is not subject to tax which is also not the case herein, inasmuch as only one and single

service is rendered. Moreover, in any case, merely for the reason that a portion of the total premium amount is taxable, which may be referred as assessable value for tax purpose, would not render the other portion of premium as 'exempt service' which at best can be said to have been excluded from the assessable value. In view of the above reasons, we are of the considered view that no exempt service has been rendered by the appellant so as to deny credit of service tax paid on insurance agents' services.

12. The Delhi Bench of the Tribunal in the case of Max New York Life Insurance Co Ltd vs. CCE & ST (LTU) 2018 (363) ELT 1145 (Tri-Del) has observed that when premium amount is collected for investment portion on which tax is not paid, there is no separate identifiable service attributable to the investment portion. The relevant portion of the order is extracted below:-

> *"8. Considering the appeal by the Revenue we have examined the tax liability for the services rendered by the appellant-assessee. The appellant-assessee collects ULIP Insurance premium which is essentially an insurance policy having investment as well as risk cover. The appellant assessee is discharging Service Tax on the portion of amount allocated to the risk cover under Life Insurance Service. A substantial portion of premium collected under ULIP is invested in various financial instruments. The appellant-assessee is managing such investment on the behalf of the insured. For managing such investment and also managing the policy the appellant assessee allocates some portion of the premium towards administrative expenses etc. Service Tax is paid on such administrative charges under the category of "Management of Investment Service". Admittedly, substantial portion of the premium is invested in various financial instruments. The Revenue holds that that portion of invested amount should be treated as value of exempted services. The Ld. AR referred to Rule 2(e) of Cenvat Credit Rules, 2004 to state that exempted service shall include service on which no tax is payable.* ***We note that in the present arrangement the appellant-***

assessee is providing Service of ULIP for the insured. For such service, the tax is paid. There is no separate identifiable service attributable to investment portion of the premium in the present case. In other words the premium amount received was invested substantially and for managing such investment, administration charges are collected and Service Tax paid. No other service, least of all exempted service, could be identified in such arrangement. *Hence, we are in agreement with the method of calculation adopted by the Original Authority in arriving at the portion of exempted service/taxable service. We have no reason to interfere with the said findings."*

13. In view of the above findings, since no exempt service has been provided by the appellant, there is no application of Rule 6 of the Credit Rules in the instant case to deny the credit. Moreover, since there is no dispute that the services of insurance agents have been used in providing output service, the said service constitute eligible 'input service' under Rule 2(l) and therefore, service tax paid thereon is clearly eligible for credit in the hands of the appellant.

14. The impugned demand of service tax along with interest and penalty cannot be sustained and hence, set aside in entirety. The appeal is thus allowed with consequential relief as per law.

(Pronounced in the open Court on…18/08/2020)

(P. K. Choudhary)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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