CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Service Tax Appeal No. 25848 of 2013

(Arising out of Order-in-Original No.35/2012-(ST) Commr dated 17.12.2012 passed by Commissioner of Customs, Central Excise & Service Tax Hyderabad-I)

M/s Shriram Life Insurance Co. Ltd **...Appellant**
D.No. 3-6-478, Anand Estate,
Liberty Road,
Himayath Nagar,
Hyderabad-29

Verses

Commissioner of Customs Central Excise & Service Tax
Hyderabad-I
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbag,
Hyderabad-500004 **...Respondent**

APPEARANCE:
Mr Aqeel Sheerji, Adv. for the appellant
Mr A. Rangadham, A.R. for the Respondent

CORAM:
HON'BLE MR ANIL CHOUDHARY MEMBER(JUDICIAL)
HON'BLE MR A.K. JYOTISHI, MEMBER(TECHNICAL)

FINAL ORDER NO. 30279/2023

Date of Hearing: 25.08.2023
Date of Decision:21.09.2023

PER ANIL CHOUDHARY

The applicant is a Life Insurance Company which have started business from the year 2005. Service tax on life insurance was introduced vide Section 65(105)(zx) of the Finance Act with effect from 16/06/2005 wherein the taxable service have been defined as – "any service, provided or to be provided to a policy holder or any person, or any insurer including reinsurer, carrying on life insurance business in relation to the risk cover, in the life insurance.

2. The brief facts are, Appellant was registered with the Service Tax Department and was depositing the admitted taxes and filing the periodical returns regularly. Pursuant to introduction of Service Tax on Life Insurance Premium, the Board issued Circular No. 80/10/2004-ST dated 17/09/2004 by way of clarifying the scope of the newly introduced Services vide inance Act (No. 2) of 2004, enacted on 10/09/2004, clarifying that the risk cover in life insurance becomes subject to levy of service tax.

3. The appellant assessee in compliance to the Board Circular in respect of 'group insurance schemes', obtained the prescribed certificate from the appointed Actuary and accordingly paid the service tax on the composite policy (risk plus savings, etc.). Revenue conducted verification of the accounts and records of the appellant for the period July 2009 to March 2010 and it appeared that the entire premium collected in respect of group insurance policies, consists of risk cover only and therefore the taxable value in the case of group insurance policies is the gross premium collected from the policy holders, and hence service tax is liable to be discharged on the gross premium collected. Accordingly, there appeared to be a case of short payment of service tax as the appellant had deposited their service tax on the part of the premium relating to risk cover, as certified by the Actuary. Accordingly, Revenue worked out the short payment of service tax for the period 2006-07 till 2010-11 (up to October 2010) and worked out differential duty of Rs. 3,41,82,280/-.

4. In response to the objection of Revenue, being Audit Objection dated 7th December 2010, the appellant sought clarification from their group tax cell and in order to close the issue in a non- litigious manner, reworked the service tax paid on the group insurance policies, and paid the said amount of Rs. 3,41,82,280/- along with interest on 11/12/2010 and 8/12/2010 and

also gave intimation to the Department vide their letter dated 20/12/2010. and further intimation on 28/2/2011 mentioning their request to close the matter under the provisions of Section 73(3) of the Finance Act.

5. Further, Revenue chose to issue Show Cause Notice dated 30/08/ 2011 invoking the extended period of limitation, alleging non-payment of differential service tax (short-paid) alleging suppression as the appellant have declared and paid service tax only on the part amount received, instead of gross Premium. Further stressing that the suppression, mis-declaration would have gone unnoticed but for the timely action initiated by the department, by verifying the records.

6. The appellant filed detailed reply dated 18/11/2011 to the said SCN contesting the allegations therein and inter alia submitted that since they had paid the differential service tax along with interest before issuance of SCN, no penalty should be imposed on them, giving benefit of closure under section 73(3) of the Act, as they were under the bonafide belief that the Act contemplated that service tax was payable only on the risk portion of the premium. However, the Commissioner adjudicating the show cause notice on contest, confirmed the proposed demand and appropriated the amount already deposited prior to issue of show-cause notice, as well as the interest. Further, equal penalty was imposed under Section 78. Being aggrieved, the appellant have preferred appeal before this Tribunal after depositing 25% penalty i.e. Rs 85,45,570/- vide challan dated 16/01/2013.

7. Assailing the impugned order, learned counsel for the appellant Mr Aqeel Sheeraji urges that the appellant had rightly paid the service tax as clarified by the Board vide Circular No. 80/010 dated 17/9/2004, by obtaining the prescribed certificate from the appointed Actuary. No errors have been found in the said certificate issued by the Actuary, and no

violation has been alleged in following the directions given in the Board Circular. He also refers to Para 49 of the budget speech of the Finance Minister, wherein it has been clearly stated that- service tax is being imposed on life insurance service to the extent of risk premium. The said intention was clarified by the Board in the aforementioned circular.

8. He further urges that from a plain reading of Section 65(105)(zx), read with the aforementioned Board Circular dated 17/9/2004, it is evident that service tax has to be paid in respect of composite policy, only on that part of the premium which relates to risk coverage, and not on the other part which relates to savings/investments. Thus the Show-Cause notice is erroneous and issued without analyzing the balance amount of the premium, as to what it relates, service tax has been demanded on the same which was never the intention of the Statute. The premium collected by the appellant in respect of composite policy/group insurance policy includes various other expenses incurred by the appellant in the course of providing life insurance service. Reliance is placed on the ruling of the Hon'ble Delhi High Court in the case of International Consultants and Technocrats Vs Union of India [2012-TIOL- 966-HC-Del-ST] wherein it was held that only the gross amount charged towards the taxable service can be subjected to tax. He further urges that there is no allegation that they actually got issued a false/wrong certificate, nor the Actuary has been made a co-noticee in the show-cause notice.

9. In the facts and circumstances, as the appellant has been maintaining proper books of accounts as required under law, was registered with the department, have filed periodical returns regularly, Revenue seems to have woken up only in the year 2010-11, which is wholly due to change in interpretation on the part of the Revenue. There is no element of suppression, fraud, misstatement, etc. made out from the allegations in the

show-cause notice. The Revenue have erred in the invocation of extended period of limitation, and also at the same time denying the benefit of closure of dispute under section 73(3)of the Act. Accordingly, the learned counsel prays for allowing the appeal with consequential relief. He relied on the decision in the case of CCI Logistics Pvt Ltd VS Commissioner of CGST & C.EX Kolkatta North Commissionerate [2021(54)GSTL 27(Trib), wherein it was held that show-cause notice was not required to be issued in view of the provisions of section 73(3) of the Finance Act, there being no evidence of willful short payment of tax, nor of any fraud or suppression, as the entire service tax amount was deposited along with interest immediately after short payment of tax was informed by the audit party. Show-cause notice was issued subsequently and that Learned counsel also places reliance on clarification issued by Board vide DOF No. 334/3/2011-TRU dated 28/02/2011, wherein, it was clarified that amounts relating to deductions for mortallity, commission and expenses are not available for investment and an option was given to pay tax at the rate of 1.5% of the gross premium amount. Thus, this subsequent clarification by the Board is ample evidence that the issue involved is one of interpretation of legal provisions and no case of fraud/suppression is made out. Appellant relies on the following rulings:

i) Ispat Industries Ltd Vs CCE [2006(199)ELT 509 (Tri-Mum)]

ii) Secretary Town Hall Committee Vs CCe [2007(8)STR 170 (Tri-Bang)]

iii) CCE Vs Sikar Ex-Serviceman Welfare Coop Society Ltd [2006(4)STR 213 (Tri-Del)]

iv) Haldia Petrochemicals Ltd Vs CCE [2006(197)ELT 967 (Tri-Del)]\

v) Siyaram Silk Mills Ltd Vs CCE [2006(195)ELT 284 (Tri-Mumbai)]

vi) Fibre Foils Ltd Vs CCE [2005(190)ELT 352 (Tri-Mumbai)]

vii) ITEL Industries Pvt Ltd V CCE [2004(163) ELT 219 (Tri-Bang)]

10. As regards penalty under Section 78, Learned Counsel urges that in the facts and circumstances, no case for imposing penalties was made out, there being total absence of fraud, suppression, misstatement, etc., and denial of benefit under section 73(3) of the Act, in spite of giving proper information to the Revenue after depositing the tax with interest, prior to issue of show-cause notice.

11. Opposing the appeal, Learned AR for Revenue relies on the impugned order. Learned AR further urges that there is a case of misinterpretation of the Taxing Statue on the part of the appellant. It is further urged that the benefit of closure under section 73(3) have been rightly not given in view of Section 73(4), which provides that nothing contained in sub-section (3) shall apply to a case where any service tax has been short-paid or short-levied by reason of fraud or collusion or willful misstatement, suppression of facts or contravention of any of the provisions of the Finance Act or the Rules made there-under, with intent to evade payment of service tax.

12. Having considered the rival contentions, we find that in the facts and circumstances of this case appellant had rightly deposited the tax, as clarified by Board Circular dated 17/09/2004. We further find that the appellant was a registered assessee, and have regularly deposited the admitted taxes and have filed periodical returns. It is further evident that the whole case is due to interpretational issue (change of opinion) on the part of the Revenue. We further find in the facts and circumstances of this case, that the benefit of closure under section 73(3) has been wrongly

denied to the appellant assessee, and no show-cause notice was required to be issued.

13. Accordingly in view of the aforementioned findings and observations, we set aside the impugned order and further hold that the appellant is entitled to benefit of closure under Section 73(3) the Act. The appellant shall be entitled to consequential benefits in accordance with law.

14. Appeal is allowed.

(Order pronounced in open court on 21/09/2023)

(ANIL CHOUDHARY)
MEMBER(JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Neela reddy