

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench - Court – I

**SERVICE TAX APPEAL No. 1365 of 2011**

(Arising out of **Order-in-Appeal** No. 25/2011(H-II) S.Tax, dated 15.03.2011 passed by Commissioner (Appeals-II) of Customs, Central Excise & Service Tax, Hyderabad).

**Bharat Re-insurance Brokers Pvt. Ltd.**

..

**APPELLANT**

1-1-130, 144/308, 3<sup>rd</sup> floor,  
Navaketan Towers,  
Sarojini Devi Road,  
SECUNDERABAD – 500 034.

**Vs.**

**Commissioner of Central Excise**

..

**RESPONDENT**

**Customs and Service Tax, Hyderabad-II,**

L.B. Stadium Road,  
Basheerbagh,  
HYDERABAD – 500 004.

**APPEARANCE:**

Shri M.N. Bharati, Advocate for the appellant.

Shri C. Mallikharjun Reddy, Superintendent/AR for the respondent

**CORAM: HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No. A/30877/2020**

DATE OF HEARING: 11.02.2020

DATE OF DECISION: 10.06.2020

**[ORDER PER: Mr. P.V. SUBBA RAO]**

**1.** This appeal is filed against the impugned Order-in-Appeal No. 25/2011(H-II) S.Tax, dated 15.03.2011.

**2.** Heard both sides and perused the records.

**3.** The appellant is registered with the Central Excise Department for payment of service tax under the head of Insurance Auxiliary Service and have been discharging service tax. They undertook brokerage service in respect of direct insurance as well as reinsurance. Verification of the records by the Department showed that they had not paid service tax on the brokerage received from overseas reinsurance on the ground that the service falls under the category of export of service.

**4.** The appellant acts as reinsurance brokers and arranges for reinsurance of Indian insurance companies with overseas reinsurers. Insurance companies are in the business of protecting the insured from potential loss by collecting a small amount of premium from them. Since the total number of people could take insurance and pay premium is much larger than the number of people who suffer loss and make claims, it is a business of spreading the risk among all the insured. However, where an insurance policy itself involves a large risk with a potential loss too great for insurance company, they in turn re-insure the policy with other insurance companies. In this case, the reinsurers were located abroad. The appellant identifies appropriate reinsurers located abroad for the Indian Insurance companies and negotiates terms of contracts with them. For this service, they get a commission called 'Reinsurance Brokerage'. It is alleged in the show cause notice that by and large what they provide is the service to the Indian Insurance companies for which remuneration is received in India currency from foreign insurance companies. It is the case of the Revenue that the Hon'ble CESTAT, Chennai has, in the case of Suprakesh General Insurance Services & Brokers Pvt. Ltd. [2009(13)S.T.R 641 (Tri.-Chen.)] held that reinsurance brokerage received in Indian rupees does not amount to export of services because the amount has not been received in convertible foreign exchange and confirmed the service tax on such amounts. Accordingly, the show cause notice demanded service tax on the amounts received as brokerage reinsurance for the period April 2004 to March 2009, along with

interest, under section 75 and also proposed to impose penalties upon the appellant under sections 77 & 78 of the Finance Act, 1994.

**5.** After following due process, the Ld. Additional Commissioner in his Order-in-Original confirmed the demands along with interest and imposed penalties under sections 77 & 78 of the Finance Act, 1994. Aggrieved, the appellant appealed to the first appellate authority who, by the impugned order, upheld the order of the adjudicating authority and rejected the appeals. Hence this appeal.

**6.** At the outset, Ld. Counsel for the appellant would submit that the show cause notice specifically mentions that the amounts have been received in Indian Rupees by the appellant as reinsurance brokerage from the reinsurance companies located abroad. It further states that in terms of the order of CESTAT, Chennai in the case of Suprashes General Insurance Services & Brokers Pvt. Ltd. (supra) such amounts are chargeable to service tax and hence the demand of tax with interest and proposed penalties. He would submit that this order of Hon'ble CESTAT, Chennai has been reversed by the Hon'ble High Court of Madras in the case of Suprashes General Insurance Services & Brokers Pvt. Ltd. vs. CST, Chennai [2016(41)S.T.R 34 (Mad.)]. Revenue appealed against the judgment of Hon'ble High Court of Madras which has been admitted but it is neither stayed nor set aside [2018(11)GSTL J132(S.C.)]. He would, therefore, submit that as on date the binding precedent is of the judgment of Hon'ble High Court of Madras which may be followed in this case.

**7.** Ld. DR supports the impugned order and asserts that the duty has been correctly confirmed and penalties have been correctly imposed.

**8.** We have considered the arguments on both sides and perused the records. Usually, when any person hires a broker in connection with his

business, the broker receives a brokerage or commission from the person who hired him. Reinsurance business is a little unusual. In the case of reinsurers, the reinsurance broker is approached by the insuring company which finds the risk of the policy too much to handle alone and is seeking reinsurance. The broker, in turn, explores potential reinsurers and presents the options to the insuring company. Thereafter, the broker also negotiates the terms with the reinsurance company. After conclusion of these terms, an agreement is made either with respect to a specific policy or as per agreement/contract. As per the market practice, in the case of reinsurance, the insuring company cedes some portion of the risk as well as premium to the reinsuring company. The insuring company can also cede the risk and premium to more than one reinsuring companies. Each reinsurer will get proportionate amount of premium and also shoulders proportionate amount of risk involved. An unusual feature of the mode of payment in this case is the payments to the reinsurer as well as settlement of claim of the insured companies are routed through the insurance brokers. Thus, when a reinsurance is taken by an Indian insurance company with a foreign reinsurance company, the payments to the foreign company are made by Indian company through the reinsurance broker. After deducting his commission, the reinsurance broker then passes on the premium to the reinsuring foreign company. This is contrary to the normal practice with brokers. If 'A' sells his flat to 'B' which is mediated by broker 'C', 'B' gets the flat and pays 'A' the sale price. 'C' only get his brokerage. The cost of the flat is not paid to the broker 'C'. Reinsurance business is different and the amount is routed through the broker.

**9.** The fact that the assessee in this case is a reinsurance broker and he arranges reinsurance for the Indian company with the overseas insurers by identifying the insurer and negotiating with them, is not in dispute. It is also not in dispute that the brokerage is received for this service from the overseas insurers. There is no doubt that the services of the appellant are beneficial both to Indian insurance company and the foreign reinsurer as the

former gets the benefit of reinsurance and the latter gets the business of reinsurance. The question in this case is whether the service is being provided to the Indian company who hires them or the foreign company with whom a deal is finally reached. This is significant because if the service is being rendered to an Indian company for which money is being paid in Indian Rupees, the question of export of service does not arise. On the other hand, if the service is being rendered to the foreign company, for which brokerage is being received in Indian Rupees, the second question which arises is whether the amount should be considered as having been received in convertible foreign currency or in Indian Rupees. No doubt, the appellant is receiving money in Indian Rupees. Instead of remitting the entire amount to the overseas reinsurer in convertible foreign exchange and receiving his brokerage in convertible foreign exchange, he is deducting the brokerage and is only remitting the net amount to the overseas reinsurer.

**10.** Thus, the questions which arise in the case of reinsurance brokerage are-

- (a) In a case where the reinsuring company is located abroad, whether the service is rendered to the Indian company which takes the reinsurance or the foreign company which gives the reinsurance?
- (b) When the reinsurance broker deducts his brokerage from the premium received from the insuring company and passes the rest to the reinsuring company, is the brokerage paid by the insuring company or the reinsuring company?
- (c) whether the brokerage received by the reinsurance broker in Indian Rupees should be deemed to have been received in foreign currency or otherwise?

- (d) In view of (a), (b) and (c) above, whether the service in question should be considered as export of service or otherwise?

All these issues were also examined by the Hon'ble High Court of Madras in the case of Suprashes General Insurance Services & Brokers Pvt. Ltd. (supra) and have been decided in paras 53 to 60 as below:

**“53.** Learned Standing Counsel appearing for the Department placed much emphasis on IRDA (Insurance Brokers) Regulations stating that the definition on ‘re-insurance broker’ clearly means that an insurance broker, who, for a remuneration, arranges reinsurance for direct insurers with insurance and reinsurance companies. In the present case, the assessee has acted as a re-insurance broker with the New India Assurance Co. Ltd. and with the foreign company and his functioning as re-insurer is pre-dominantly in relation to New India Assurance Co. Ltd. and not to the foreign re-insurer.

**54.** Though such a plea appears to be appealing, it was pointed out by the learned Senior Counsel appearing for the assessee that in Swiss Re’s non-life branches manual with regard to re-insurance matters, the role of the re-insurance broker has been described as follows :

**“6.4 Role and function of the reinsurance broker**

The role of the reinsurance broker has been described as being :

“....to professionally advise clients concerning the optimal reinsurance programme, proper retentions and adequate capacity based upon the broker’s experience and knowledge of market availability. The resulting programme is then placed for the client with secure markets at competitive price or terms.”

As an intermediary, the reinsurance broker seeks suitable reinsurers, on behalf and in the interest of primary insurers and their reinsurance requirements. He advises the primary insurer on adequate risk coverage, negotiates and finalises the placement of reinsurance contracts and handles administrative issues related to the reinsurance contract. In collaboration with the reinsured, the broker prepares all the details of the reinsurance submission (general information on the market and the reinsured, portfolio profile, exposure data, statistics, terms and conditions) and identifies the reinsurance market with the best conditions, from both an economic and solvency standpoint.

The broker usually approaches a reinsurer, who is recognised as a well-known leader suitable for the type of business to be placed, and negotiates the final terms, which are summarised on the reinsurance slip. After the terms and conditions have been finalised with the leader, the broker places the entire business by approaching other reinsurers. The placement of treaties with high capacities or premium volumes, or large special facultative risks of a complex nature, is sometimes shared by and between two or more brokers, through different reinsurance markets, i.e. so-called co-brokering. After the business is successfully placed, the broker allocates the shares to the participating reinsurers (signing down in case of oversubscription) and prepares the reinsurance contract wordings. He also establishes the accounts, usually quarterly, on the basis of figures provided by the reinsured and transmits monies in settlement of balances due by either party. The correspondence between reinsured and reinsurer is channelled through the broker. It is vital for the reinsured and the reinsurer that the standard of organisation and administration of the reinsurance broker ensures reliability and efficiency, particularly with regard to contract and administration and handling of accounts, including cash loss settlements.

*The services of reinsurance brokers are usually required for placing and properly spreading high exposure cat covers (e.g. natural perils such as windstorm and earthquake), taking advantage of their contact networks with reinsurance markets worldwide.*

*The reinsurer pays the reinsurance broker a commission, called brokerage, which remunerates the broker for his services in placing and handling reinsurance contracts. The reinsurance brokerage is further justified since the broker saves reinsurer acquisition costs, which he would otherwise incur through direct marketing efforts. The brokerage is usually stipulated as a percentage of the reinsurance premium; it has recently started to take the form of a fee, especially in case of specialised types of reinsurance business. Brokerage rates tend to vary according to market conditions. As a rule, they are much lower for proportional than NP treaties since the latter normally generate lower premium volumes. Higher volumes of business tend to produce lower brokerage rates. In rare instances, brokerage is linked to treaty results.*

*Brokerage is not an integral part of the contractual relationship between reinsured and reinsurers. However, when quoting for NP business, it constitutes one of the pricing elements used by the reinsurer.*

Treaties placed through brokers usually include an intermediary clause for which two types with commentaries are included in section 2.3.8, General treaty clause.”

(emphasis supplied)

55. We find that the functions of the re-insurance broker is no different from the definition contained in Swiss Re’s non-life re-insurance manual. The assessee in this case has been conducting affairs of insurance and reinsurance for and on behalf of New India Assurance Co. Ltd. in terms of Rule 4(c), (d), (e), (f), (g) and (h) of the IRDA (Insurance Brokers) Regulations, which are as follows :

**“4. Functions of a re-insurance broker.** - the functions of a re-insurance broker shall include any one or more of the following :

- (a) ....
- (c) rendering advice based on technical data on the reinsurance covers available in the international insurance and the reinsurance markets;
- (d) maintaining a database of available *reinsurance markets, including solvency ratings of individual reinsurers;*
- (e) *rendering consultancy and risk management services for reinsurance;*
- (f) selecting and recommending a reinsurer or a group of reinsurers;
- (g) *negotiating with a reinsurer on the client’s behalf;*
- (h) assisting in case of commutation reinsurance contracts placed with them;”

It is seen that there is also a further role on the part of the assessee, which has been indicated in Regulation 4(i), (j), (k), (l) and (m), which are as follows :

- “(i) acting promptly on instructions from a client and providing it written acknowledgements and progress reports;

- (j) collecting and remitting premiums and claims within such time as agreed upon;
- (k) assisting in the negotiation and settlement of claims;
- (l) maintaining proper records of claims; and
- (m) exercising due care and diligence at the time of selection of reinsurers and international insurance brokers having regard to their respective security rating and establishing respective responsibilities at the time of engaging their services.”

**56.** From the facts narrated, we have culled out that the role of the assessee is collecting and remitting the premium. There is also a commitment on the part of the assessee in relation to any claims that may arise from New India Assurance Co. Ltd. in respect of re-insurance contract. IRDA (Insurance Brokers) Regulations further casts a duty on the assessee as to how the money collected in relation to the re-insurance contract should be dealt with by the broker. The terms contained in Regulation 23 speaks for itself that the role of the assessee as an insurance broker is not merely receiving and transmitting the amount as has been propounded by the Adjudicating Authority and the Tribunal. There is much more to be done by the Insurance broker even as per the IRDA (Insurance Brokers) Regulations, of which much emphasis has been made by the Tribunal in Paragraph No. 15. If this is the role of the assessee, we fail to understand how the Tribunal could have said that it is just forwarding the premium amount to the re-insurer company. There is also a clear finding by the Tribunal that the assessee serves the foreign company in the course of the business, but the apprehension of the Department, confirmed by the Tribunal, is that most of the work done by the assessee is in relation to the Indian Insurance Company and therefore, it is not an export of service.

**57.** That finding is a fallacy in the light of the findings given by the Supreme Court in *J.B. Boda's* case (supra), as also the provisions of the Service Tax Act, more particularly, the binding circular of the Reserve Bank of India dated 25-4-2003. On the issue of non-receipt of the commission or brokerage in convertible foreign exchange, the Adjudicating Authority as well as the Tribunal have time and again misdirected themselves to hold that since the New India Assurance Co. Ltd. have paid the premium amount, it cannot be treated as receipt of amount in convertible foreign exchange and for this, Mr. M. Santhanaraman, learned Standing Counsel appearing for the Department submitted that there is no specific agreement as in the case of *J.B. Boda* (supra) and therefore, it stands distinguished.

**58.** Under RBI Regulations, there was a requirement of such an agreement under law and the permission of the RBI has to be obtained before remitting the foreign exchange. That issue does not arise in the present case and the provisions of the Service Tax Act does not impose such a condition. In any event, as we have held that the basis of the circular, which is clarified that Notification Nos. 6/99, dated 9-4-1999, 9/01, dated 16-7-2001, 13/02, dated 1-8-2002 and 2/03, dated 1-3-2003 would not apply to export of service, the question of receiving the payment in convertible foreign exchange does not arise. Even the Export of Service Rules, 2005 does not put an embargo in relation to taxable service as specified in Rule 3(3)(i), (ii) and (iii) of the Export of Service Rules. Therefore, we answer the substantial question of law Nos. 1 and 2 in C.M.A. No. 1058 of 2009 in favour of the assessee.

**59.** In view of the above, the other questions of law raised in the appeal filed by the assessee as well as in the appeal filed by the Revenue in relation to suppression and penalty does not arise.

**60.** In the result, C.M.A. No. 1058 of 2009 is allowed and C.M.A. No. 1459 of 2009 is dismissed. No costs.”



**11.** In the present case, Ld. Counsel for the appellant produces before us a sample copy of the Credit Note cum Statement of Account, dated 16.12.2009 which they had sent to the overseas reinsurer M/s Helvetia Swiss Insurance Company Limited in respect of the insurance taken by Reliance General Insurance Company Limited. This particular treaty was a surplus type treaty covering risks of fire, engineering, marine cargo, marine and miscellaneous. The Indian Company M/s Reliance General Insurance Company Limited ceded 3.5% of the risk and premium to M/s Helvetia. Under each head, the premiums received by M/s Reliance General Insurance are taken as credit and the commission and claims paid by Reliance General Insurance are taken as debit. The difference between the credit and the debit is the reinsurers share. This could be positive or negative depending upon whether more premium has been received or there are more claims under the scheme during the period. In respect of some schemes, the difference was positive while in respect of others it was negative. Of this reinsurer's share, the share of M/s Helvetia was only 3.5%. In the statement of account, the total credits were given as Rs. 361,713,642/- and the debits were Rs. 283,393,490/- for all policies during the period. The difference was the reinsurers' share of Rs. 78,320,152/- of which the share of M/s Helvetia @ 3.5% was Rs. 2,688,000/-. Out of this amount, the appellant deducted brokerage of 2.5% amounting to Rs. 307,138/- and calculated the net amount to be remitted to M/s Helvetia. In view of above, we find that the transactions in the present appeal are similar to the transactions in the case of Suprasesh General Insurance Services & Brokers Pvt. Ltd. (supra) inasmuch as the appellant was hired by the Indian Insurance company for identifying proper reinsurers and negotiating deals with them and have received from the Indian insurance company the entire amount due to the overseas reinsurers, out of which they have deducted their brokerage and remitted the rest to the overseas insurance company. The Hon'ble High Court of Madras has held that such cases amount to

export of service and that the amounts which have been retained as brokerage in Indian Rupees by deducting instead of remitting the entire amount abroad and receiving back foreign currency should be treated as receipts for export in foreign currency. Hon'ble High Court of Madras has decided that the demand of service tax on such amounts is not sustainable. This judgment of Hon'ble High Court is now binding on us as no contrary decision has been passed by any superior Court, although the appeal has been admitted by the Hon'ble Supreme Court.

**12.** In view of the above, we find that the impugned order needs to be set aside and the appeal needs to be allowed and we do so.

**13.** The impugned order is set aside and the appeal is allowed.

*(order pronounced in open court on 10.06.2020)*

**(ASHOK JINDAL)**  
**(MEMBER (JUDICIAL))**

**(P. VENKATA SUBBA RAO)**  
**MEMBER (TECHNICAL)**