

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Service Tax Appeal No. 88448 of 2014

(Arising out of Order-in-Appeal No. PD/592/ST-I/2014 dated 26.05.2014 passed by the Commissioner of Central Excise (Appeals-IV), Mumbai)

**M/s. HDFC Life Standard Life Insurance
Company Ltd.**

Appellant

Lodha Excelus, N.M. Joshi Road,
Apollo Mills Compound,
Mahalaxmi, Mumbai 400 011.

Vs.

Commissioner of Service Tax, Mumbai-I

Respondent

5th floor, New Central Excise Bldg.,
Maharshi Karve Road, Churchgate, Mumbai 400 020.

Appearance:

Shri Mehul Jiwani, Chartered Accountant, for the Appellant
Shri Nitin Ranjan, Deputy Commissioner, Authorised Representative
for the Respondent

CORAM:

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

FINAL ORDER NO. **A/85007/2022**

Date of Hearing: 02.12.2021
Date of Decision: 06.01.2022

PER: SANJIV SRIVASTAVA

This appeal is directed against the Order in Appeal No PD/532/ST-I/2014 dated 26.05.2014 of the Commissioner (Appeals) -IV, Central Excise, Mumbai. By the impugned order, the Commissioner (Appeals) upheld the order in original of the Additional Commissioner, Service Tax – I, Mumbai holding as follows:

"ORDER

30) *Accordingly after careful consideration of the facts of the case under the subject show cause notice F No ST.Mum/Dn-I/ Gr VII/ HDFCSL1/2011 dated 03.10.2012 (C No*

068/ADC-JC/DIV-I/2012-13) for Rs 35,84,582/- and evidence available on records, I pass following order: -

30.1) I, hold that the noticee is liable to pay service tax on the three charges viz agency processing fees, backdating charges and recoveries of look-in, recovered by them over and above the normal premium, under the taxable service of "Life Insurance" as defined under Section 65 (58), 65 (61) and 65 (80) read with Section 65 (105) (zx) of the Chapter V of Finance Act, 1994, in terms of Section 67(1) of the Finance Act, 1994.

30.2) I, confirm the demand of Service Tax amounting to Rs 35,84,582/- (Rupees Thirty Five Lakhs Eighty Four Thousand Five Hundred and Eighty Two only), under the taxable service of "Life Insurance", under section 73(2) of the Finance Act, 1994.

30.3) I, order for payment of interest under Section 75 of the Act, at appropriate rates prevalent during the material period, on the delay in payment of service tax amounting Rs 35,84,582/- (Rupees Thirty Five Lakhs Eighty Four Thousand Five Hundred and Eighty Two only) confirmed at para 30.2) above.

30.4) I, impose a penalty under Section 76 of the Finance Act, 1994, on the notice, which shall be one hundred rupees for every day during which such failure continued or at the rate of one percent (1%) of such tax, per month, which ever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax. The total amount of the said penalty shall, however, not exceed fifty percent (50%) of the service tax payable by them, as mentioned at para 30.2) above.

30.5) I, impose a penalty of Rs 10,000/- (Rupees Ten Thousand only) on the notice under Section 77 of the Finance Act, 1994."

2.1 Appellant is registered with Service Tax authorities as provider of various services namely, Life Insurance Services, Insurance Auxiliary Services, Renting of Immovable Property and Business Auxiliary Services.

2.2 It was observed that appellant was recovering the charges in nature of, - (i) agency processing fees (examination fees, license fees), (ii) back dating, altering charges, (iii) lapse charges, (iv) look in charges and (v) policy reinstatement charges. These charges though reflected in their book of accounts were not included by the appellant for determining their tax liability.

2.3 A show cause notice dated 3.10.2012 was issued to the appellant demanding service tax in respect of the above referred charges, not paid by the appellant during the period 2011-12 and amounting to Rs 35,84,582/-. This show cause notice was adjudicated by the Additional Commissioner as per the order referred in para 1, above. Aggrieved by the order of Additional Commissioner appellant preferred this appeal before the Commissioner (Appeal) which was dismissed by the Commissioner (Appeal) as per the impugned order.

2.4 Aggrieved by the impugned order, appellant has preferred this appeal.

3.1 We have heard Shri Mehul Jiwani, Chartered Accountant for the appellant and Shrin Nitin Ranjan, Deputy Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned Chartered Accountant submitted that: -

- The appellants are engaged in providing services of life insurance which was taxable under the category of life insurance service. The taxable service was defined as per section 65(105) (zx) of the Finance Act, 1994. The said Section was amended w.e.f. from 01.05.2011.
- The appellants have paid the service tax as per the provisions contained in rule 6(7A) of Service Tax Rules, 1994.
- The demand of service tax is on account of recovery of following 3 amounts: (a) Recovery of agency processing charges Rs.34,84,395/- b) Back dating charges Rs.26,050/- (c) Look-in charges Rs.74,137/-
- The demand in respect of the same charges for the earlier period which was confirmed by the adjudicating authority

vide order in original No 17/ST/SB/2011-12 dated 30-1-2012. was considered and has been remanded back, by the CESTAT as per the order reported at 2013-TIOL-1296-CESTAT-MUM

- No service has been provided by the appellants in respect of the three charges, which are sought to be included in the taxable value of the Services of Life Insurance Services defined as per Section 65 (105) (zx) provided by them.
- As per the various clarifications issued by the Board from time to time and from the definition of taxable service under the category of Life insurance services, it is evident that after the amendments made in Section 65 (105) (zx), by the Finance Act, 2011, the Service Tax under this category is leviable on the risk portion and investment management part of the premium paid by the policy holder.
- In the case of Shilpa Colour Labs 2007 (5) STR 423 (Tri) [maintained by Hon. Supreme Court as reported in 2009 (14) STR 163 (SC)]has held that the amount received by the service provider shall have nexus to the taxable service rendered in order to consider the said amount as value of taxable service. Similar view has been expressed by the Hon'ble Apex Court in the case of Bhayana Builders (P) Ltd [2018 (10) GSTL 118 (SC)].

3.3 Arguing for the revenue learned Authorized Representative reiterated the findings recorded impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 The taxable service for the period 1-5-2006 to 30-4 2011 and after 1-5-2011 were as follows:

1-5-2006 to 30-4-2011

"Taxable service means any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business in relation to the risk cover in life insurance"

After 1-5-2011

"Taxable service means any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business"

4.3 Life Insurance Business has been defined in section 2(11) of Insurance Act as follows:

"life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency depending on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include

- a. the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;
- b. the granting of annuities upon human life; and
- c. the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependent of such persons:

4.4 Board has vide letter DOF 334/3/2011-TRU dated 28/02/2011, explaining the amendments made by the Finance Act, 2011, to the definition of taxable services have stated as follows:

"2.1 Life insurance companies provide services relating to risk cover and managing investment for the policy holders. The former is already subjected to service tax. The latter is now being brought into the tax net. Similar services rendered by way of ULJP are already subject to service tax since 2008.

2.2 When the entire premium is only for risk cover the same shall continue to be taxed even in the revised definition. However in the case of other schemes, a significant portion of the premium is used towards investment, while the rest is allocated towards various overheads and mortality. IRDA in its

circular Ref: IRDA/ACT/CIRVIP/171/2010 dated November 21, 2010 has made it mandatory for the insurance companies to share this break-up with the policy holders in the case of "Variable Insurance Policies" under the heads: premium received, deductions towards mortality, commission and expenses, interest added and closing balance. Thus amounts relating to deductions for mortality, commission and expenses are not available for investment. After the enactment of the new levy, it is proposed to amend the Service Tax Rules to give the option to pay tax at the standard rate on that portion of the premium that has not been invested and is so indicated in any of the documents given to the policy holder. Where the break-up is not indicated in any document issued to the policy holder, option will be given to pay tax @ 1.5% of the gross amount of premium."

4.5 The three charges sought to be included in the taxable value of the Life Insurance Services, provided by the appellant are as follows:

- a. Recovery of agency processing charges - As per Regulation 5 of Insurance Regulatory and Development Authority (Licensing of Insurance Agents) Regulations, 2000, every applicant who intends to become agents is required to undergo training of 100 hours in approved institution and pass the examination conducted by the approved institution. The appellants collect training and examination fees from the aspiring applicants and pay the same to concerned institution and authorities.
- b. Back dating interest - In case if a conventional policy is required to be backdated, the appellants collect interest for the time gap between the date of receipt of proposal and the risk commencement date. These amounts are collected in addition to the premium which is paid by the policyholder.
- c. Look-in Charges- As per regulation 6(2) of IRDA (Protection of Policy Holders Interest) Regulations 2002 every policy holder is provided a period of 15 days from the date of receipt of policy document to review the terms

and conditions of the policy. In case he is not satisfied with the terms and conditions, he can return the policy. The premium, after deducting the amount of risk premium for the period covered is returned. The expenses incurred on medical examination and stamp duty is recovered.

4.6 Adjudicating authority and Commissioner (Appeals) both have recorded in their order that the Show Cause Notice under consideration, is a periodic show cause notice issued in continuation to earlier demands made for the past period. Adjudicating Authority has observed as follows;

"16) Before going into the evaluation of the allegations and defence contentions of the Noticee, I find that the subject Notice is a periodical Notice for the period 2011-12, earlier Notices being issued on 16.10.2009 for Rs. 18,70,80,875/-, on 24.08.2010 for Rs. 54,53,842/- and on 19.09.2011 for Rs. 23,85,10,180/-.

16.1) All the above said earlier 3 Notices were subject matter of Order In-Original No. 17/ST/SB/2011-12 dated 30-1-2012 issued by the Commissioner (TAR), Mumbai, under F.No. V/ST(HQ)Adj/HDFC-1328/09 dated 30.01.2012

17) The facts of the case as well as the defence contentions of the Noticee, so far as they are relevant to the Impugned Notice dated 03.10.2012 for Rs. 36,84,582/-, remain the same. I have also gone through the findings in the bald Order-In-Original No. 17/S.T./88/2011-12 dated 30.01.2012 issued by the Commissioner (TAR), Mumbai, and have found no basis, reasoning or facts which would affect into differentiation or deviation from the said findings. Nevertheless, I proceed with my findings of this issue."

The order of the Commissioner (TAR) referred to by the learned adjudicating authority has been set aside by CESTAT vide order as reported at 2013-TIOL-1296-CESTAT-MUM holding as follows:

"5.1 When the Service Tax levy is imposed on life insurance policy, the Hon'ble Finance Minister in his budget-speech before the Parliament had categorically stated that he is imposing Service Tax on life insurance service to the extent of risk premium. The instructions issued by the CBE&C at the time of

imposition of Service Tax on life insurance service also made it clear that Service Tax is leviable on that portion of the service, which pertains to the risk element and in the case of composite policy i.e. risk + saving, the taxes are applicable only on the risk premium and not on the premium for saving. Subsequently, in 2008 also at the time of introduction of Investment Management Service provided under ULIP, it was clarified that consideration for management of the segregated fund can be computed as the difference between the total premium and the sum of premium for risk cover plus amount of segregated fund. It was also pointed out that in the case of ULIP, risk premium attributable to risk cover is taxed under 'Insurance Service' and management of investment is taxed under the new levy of 'Investment management Service'.

5.2 When the scope of the levy of Service Tax was extended in the Budget, 2011, it was further clarified that the scope of the levy is being extended to cover all services including in relation to management of investment. Thus, from the budget-speech of the Hon'ble Finance Minister and the circulars issued by the Board at various points of time, what emerges so far as the life insurance is concerned is that prior to 1.5.2011 the Service Tax was leviable on the risk premium and nothing else. If that be so, we do not understand how the various charges collected by the insurer in addition to the risk premium can be taxed under 'Life Insurance Service'.

5.3 The various contentions raised by the appellant have not been examined in detail by the adjudicating authority, who has simply made a sweeping observation that the agency processing fees, lapse charges, backdating alteration charges and policy reinstatement charges were recovered in relation to the life insurance service provided by the noticee and these charges are linked to the risk cover of the policy. This sweeping observation of the adjudicating authority is without examining the matter in detail and without taking into account the IRDA guidelines on the subject and hence cannot be sustained. It is a well settled position that due weightage should be given to the clarifications given by the administrative department, when a new levy was imposed as observed by the Hon'ble Apex Court in the case of

K.P. Verghese Vs. Income Tax Officer – 1982 SCR 629 (2002-TIOL-128-SC-IT) and Commissioner of Central Excise, Guntur Vs. Andhra Sugar – 1988 (38) ELT 564 (SC) = (2002-TIOL-513-SC-CX).

5.4 The adjudicating authority in our view has not examined the matter in proper perspective taking into account the instructions issued by the Board from time to time. Accordingly, we are of the considered view that the matter has to go back to the adjudicating authority for fresh consideration in the light of the observation made by us and pass a speaking order after considering all the submissions made by the appellant by giving a clear finding on each and every contention raised by the appellant."

4.7 From the analysis of the definitions of the Life Insurance Services as per Section 65 (105) (zx) and various clarifications issued by the Board it is quite evident that the charges which are towards the risk cover and managing investment for the policy holders, are part of the value of such taxable services provided by the appellant.

4.8 The argument advanced by the revenue that the scope of definition of taxable service as defined by the Section 65 (105) (zx), do not limit the provision of the taxable service under the said category to the policy holder but is applicable to the services provided by the appellant to the applicant for insurance license because of use of phrase "any person" is without any substance. The phrase "any person" cannot be read in isolation, but will have to be read along with the entire definition as per the said section. The expression "any person" was inserted in Section 65 (105) (zx) by the Finance Act, 2006 to levy service tax on re-insurance activities carried by Life Insurance Company. Re-insurance is nothing but the services provided by the insurance company to mitigate the risk of the insurer while providing the insurance cover to insured. Here the insurance company insures a part of risk assumed by it with another insurance company. Insurance company seeking to mitigate its risk by way or reinsurance, cannot be said to be the policy holder. Thus to expand the scope, cover re-insurance business

the phrase "any other person" was added. This has also been explained in TRU letter wherein following has been stated: -

"4. SCOPE OF CERTAIN EXISTING SERVICES IS BEING EXTENDED OR CLARIFIED AS FOLLOWS:

1)

5) Life Insurance service, to include service provided to a policy holder or any person by an insurer, including a re-insurer;

5.2 Exemption provided to re-insurance vide Notification No. 3/94-Service Tax dated 30.6.1994 has been withdrawn. To make it explicit, it is mentioned that insurer includes re-insurer.

4.9 From the nature of charges, as explained above we are not in position to find any nexus between these charges and the life insurance services provided by the appellant to the policy holders, or to any other person as reinsurer. In absence of any such nexus such charges cannot be added to the value of taxable services provided by the appellant under the category of life insurance services. The argument advanced by the revenue to effect that Section 67 provides for determining the taxable value on the basis of the gross amount received for providing the taxable service, for inclusion of these charges in taxable value cannot be acceded to, in view of Hon'ble Supreme Court decision in case of Bhayana Builders [2018 (10) G.S.T.L. 118 (S.C.)] holding as follows:

14. We may note at this stage that Explanation (c) to subsection (4) was relied upon by the learned counsel for the Revenue to buttress the stand taken by the Revenue and we again reproduce the said Explanation hereinbelow in order to understand the contention :

"gross amount charges" includes payment by (c) cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called 'suspense account' or by any other name, in the books of account of a person liable to pay service tax, where the

transaction of taxable service is with any associated enterprise.”
[emphasis supplied]

15.*It was argued that payment received in ‘any form’ and ‘any amount credited or debited, as the case may be...’ is to be included for the purposes of arriving at gross amount charges and is liable to pay service tax. On that basis, it was sought to argue that the value of goods/materials supplied free is a form of payment and, therefore, should be added. We fail to understand the logic behind the aforesaid argument. A plain reading of Explanation (c) which makes the ‘gross amount charges’ inclusive of certain other payments would make it clear that the purpose is to include other modes of payments, in whatever form received; be it through cheque, credit card, deduction from account etc. It is in that hue, the provisions mentions that any form of payment by issue of credit notes or debit notes and book adjustment is also to be included. Therefore, the words ‘in any form of payment’ are by means of issue of credit notes or debit notes and book adjustment. With the supply of free goods/materials by the service recipient, no case is made out that any credit notes or debit notes were issued or any book adjustments were made. Likewise, the words, ‘any amount credited or debited, as the case may be’, to any account whether called ‘suspense account or by any other name, in the books of accounts of a person liable to pay service tax’ would not include the value of the goods supplied free as no amount was credited or debited in any account. In fact, this last portion is related to the debit or credit of the account of an associate enterprise and, therefore, takes care of those amounts which are received by the associated enterprise for the services rendered by the service provider.”*

4.10 In case of Shilpa Color Labs, referred to by the appellant following have been held: -

“8.2 *The question is how to value the services rendered by the appellants. Section 67 of the Finance Act deals with Valuation of taxable services for charging Service Tax. It is stated that “for the purpose of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service, rendered by him.” A careful reading of the above*

mentioned provision reveals that the amount charged by the service provider for such service is normally taken for purposes of calculating tax. The service provider may charge certain amounts for purposes other than the service rendered by him. In such a case, those charges would not form part of the value of taxable service. Hence, one should not assume that any amount charged by the service provider would be liable for Service Tax. ..."

4.11 In view of the discussions as above we do not find ourselves in agreement with the findings recorded in the impugned order.

5.0 The appeal is allowed setting aside the impugned order.

(Order pronounced in the open court on 06.01.2022)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suwendu Kumar Pati)
Member (Judicial)

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