2014 (2) ECS (261) (Tri. –Bang.)

In the Customs Excise & Service Tax Appellate Tribunal

South Zonal Bench Bangalore

ING VYSYA LIFE INSURANCE COMPANY LIMITED

VS.

CCE & ST, LTU, BANGALORE

Date of Hearing: 01/04/2014

Date of Decision: 01/04/2014

ST/Stay/26200/2013, ST/Stay/26201/2013, ST/Stay/26203/2013 in ST/2590412013-DB, ST/25905/2013-DB, ST/25909/2013-DB

Appearance:
Shri S. Thirumalai and Shri Harish Bindhumadhavan, Advocates — for the appellant
Shri Ganesh Haavanur, Addl. Commissioner (AR) — for the respondent

CORAM
Hon'ble Shri B.S.V. Murthy, Technical Member
Hon'ble Shri S.K. Mohanty, Judicial Member

(Misc Order No. 20880-208822/2014)

If the services or activity relation to this amount is held as banking service, the same is fully exempt from tax in respect of account operation service and similar services. The learned AR on the other hand submits that Rule 2(e) of the CCR defines exempted service as taxable service exempted from the whole of the service tax payable thereon and includes services in which no service tax is leviable under Section 66 of the Act. Non-taxable service has been interpreted to mean and include those services not specified under Section 65(105) of the Act also. (Para 4)

As regards the investment activity, one of the supporting points for the Revenue is the fact that the portion relating to investment in ULIP became taxable from 2011 onwards fully. Therefore there cannot be any second opinion that it is a service. Once it is a service whether it is taxable or exempted, it has to be treated as an exempted service. It is settled law that the Board's circular cannot override the statutory provisions. Further we also find that the observations of the Board and the submissions made by the learned AR that payment of 1% composition rate of tax does not mean that a portion cannot relate to exempted service is also correct. Therefore, we do not find a prima facie case on merits in favour of the appellants. (Para 5)

Order Per: B.S.V.MURTHY

The common issues involved in all the above mentioned three appeals filed by the appellant is applicability of Rule 6(3) of the CENVAT Credit Rules, 2004 (CCR), and correctness of the impugned orders confirming the demand equal to 8%/6% of the value of the non-taxable service. The taxable services provided by the appellant are life insurance service Involving risk coverage and investment related services in the Unit Linked Insurance Policy (ULIP) covered under Section 65 (105) (zx) and 65 (105) (zzzzf), respectively. The appellant is availing credit on various input services including Insurance Auxiliary Service on which they pay service tax under Finance Act, 1994. The service tax paid on Insurance Auxiliary Service is specified under Rule 6(5) of the credit rules providing for full credit as input service irrespective of its usage for taxable and non-taxable output services. In the premium amounts collected by the appellant for providing taxable services, some portion of the amount is allocated for providing services related to savings. The appellant is not liable to pay service tax on the value of premium amount collected for providing non-taxable service related to savings. The appellant opted for payment of service tax under composition rate of 1% on the full value of the premium amount under Rule 6(7A) of the Service Tax Rules as against tariff rate of 12% under Section 66 on the value of only taxable service (premium amount allotted for risk coverage in life insurance). The appellant's contention is that since tax has been paid on full value, no portion of the value of the premium can be treated as non-taxable service and hence the demand confirmed is erroneous. However, in this regard, Board vide Circular dt. 12/07/2011 has clarified that paying 1 % tax under composition scheme is only for the purposes of quantification and that would mean that there is no payment of service tax on the non-taxable service.

2. The period of dispute and other details are as under:-

Particulars	Description
Period of Dispute	April 2008 to March 2009 April 2009 to March 2010 April 2010 to March 2011
SCN No. and date	INGVIGLT3/COMRIST069/2009 on 20th October 2009 INGV/GLT3/COMR/ST1073/2010 on 29th September 2010 INGV/GLT3/COMR/ST/04712011 on 10th August 2011
010 No. and date	Order-in-Original No. 157/2012-ST (Commr) dated Order-in-Orioinal No. 15812012-ST (Commr) dated Order-in-Ori final No. 160/2012-ST Commr dated

Demands	(1) Rs. 76,82,48,9921- under Rule 6(3)(i) of the CENVAT credit Rules,2004 read with Section 73 of Finance Act, (ii) Rs. 86,88,46,1621- under Rule 6(3)(i) of the CENVAT credit Rules.2004 read with Section 73 of Finance Act, (iii) Rs. 67,52,15,847/-under Rule 6(3)(i) of the CENVAT Credit Rule,2004 read with Section 73 of Finance Act,
Interest	
	(i) Non-Quantified interest in terms of Section 75 of Finance Act 1994:
Penalty	(i) Rs. 76,82,48,992/- under Rule 15(3) of the CENVAT Credit Rules.2004 read with Section 78 of Finance Act.
	(ii) Rs. 86,88,46,162/- under Rule 15(3) of the CENVAT credit Rules,2004 read with Section 78 of Finance Act,
	(iii) Rs. 67,52,15,847/-under Rule 15(3) o f the CENVAT credit Rules 2004 read with Section 78 of Finance Act

3. The submissions made before us by the learned counsel for the appellants is briefly detailed below:-

- Life insurance business is one single service and valuation is restricted to risk cover in insurance service.
- Life insurance includes not only effecting contracts of insurance but also payment made of mandatory investments of premiums as prescribed by regulations.
- Investments are mandated/required for the carrying on of the life insurance business.
- IRDA considers investment management by insurance company as integral part of life insurance business and carrying out any other business other than life insurance business will result in cancellation of insurance license.
- Saving component of premium is not consideration accruing to the insurer. Hence reduced rate has been prescribed under Rule 6(7A) of Service Tax Rules,1994 (STR). The fact that for the purposes of calculation of service tax, the value of taxable services is restricted only to the risk cover in the life insurance does not render the saving and investment component to be an exempted service for the purpose of Rule 2(e) of CCR, 2004.
- Order-in-Original for the period 2010-2011 (Appeals No.ST/25909/2013) in Annexure to SCN itself has considered the entire value subjected to Rule 6 (7A) of the Service Tax Rules 1994 as tantamount to provision of taxable services.

Further, it was also submitted that exclusion of value portion from the taxable service does not mean that such excluded value relates to exempted service. The learned counsel relied upon the decision in the case of M/s. Amrita Enterprises Pvt. Ltd. in Misc. Order No.27049/2013 dt. 28/08/2013.

He also submitted that interest of loan was excluded from the value of taxable service in terms of Service Tax Valuation Rules 2006 not to be treated as exempted service for the purpose of Rule 6(3) of CCR. He relies on the Board's circular dt.16/03/2012 for this purpose.

He also made another submission as an alternative submission that in the event of decision on merits going against the appellant, the appellant should be entitled to the benefit of Rules 6(3A) wherein they can calculate and reverse the proportionate credit. Today, he submitted a revised calculation, according to which the appellant would be required to reverse approximately Rs.16,86,94,987/-, if this is taken.

4. The learned AR on the other hand submits that Rule 2(e) of the CCR defines exempted service as taxable service exempted from the whole of the service tax payable thereon and includes services in which no service tax is leviable under Section 66 of the Act. Non-taxable service has been interpreted to mean and include those services not specified under Section 65(105) of the Act also. He relied upon the decisions in the case of Idea Cellular Ltd. [2009(16) STR 712 (Tri. Del.)], mPortal India Wireless Solutions Ltd. [2012(27) STR 134 (Kar.)] and Loreal India Pvt. Ltd. [2012(28) STR 443 (Tri. Mumbai)]. He also submits that if the services or activity relation to this amount is held as banking service, the same is fully exempt from tax in respect of account operation service and similar services. He submits that therefore the premium amount collected towards savings management can be considered as exempted by notification issued under Section 93.

5. We have considered the submissions made by both sides. As regards the investment activity, one of the supporting points for the Revenue is the fact that the portion relating to investment in ULIP became taxable from 2011 onwards fully. Therefore there cannot be any second opinion that it is a service. Once it is a service whether it is taxable or exempted, it has to be treated as an exempted service. It is settled law that the Board's circular cannot override the statutory provisions. Therefore the clarification issued by the Board may not be valid. It would have helped the appellant if the demand were to be beyond the normal period of limitation, which is not the case here. Further we also find that the decisions of the Hon'ble High

Court of Karnataka and other decisions relied upon by the learned AR are relevant and would apply. Therefore, we are unable to consider the decision relied upon by the learned counsel which is only a miscellaneous interim order and not a final order. Further we also find that the observations of the Board and the submissions made by the learned AR that payment of 1% composition rate of tax does not mean that a portion cannot relate to exempted service is also correct. Therefore, we do not find a prima facie case on merits in favour of the appellants.

6. As regards financial condition, it was submitted by the learned counselthat out of Rs,1,466 crores capital, Rs.1,127 crores has already been eroded. Further he also submits that appellants had cash balance of Rs.128 crores which is enough for meeting 3 months' operational expenses in their account as on 31/03/2013. This aspect is being taken into account while determining the final amount to be deposited.

7. Having regard to the prima facie case on merits and financial position of the appellant, we consider that if the appellant deposits an amount of Rs.17 crores which is payable according to them if the benefit of Rule 6(3A) of CCR is extended, that would be sufficient for the purpose of hearing the matter finally. Accordingly, the appellant is directed to deposit an amount of Rs.17 crores (Rupees seventeen crores only) within eight weeks and report compliance on 16/06/2014. Subject to compliance with the above requirement, the requirement of pre-deposit of balance dues is waived and stay against recovery is granted during the pendency of appeal.

(Operative portion of the order pronounced in open court)