CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 86306 OF 2021

[Arising out of Order-in-Appeal No: SM/36/Appeals-II/MC/2021 dated 26th February 2021 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.]

Commissioner of CGST & Central Excise
Mumbai Central
4th Floor, GST Bhawan, 115,M K Road,
Churchgate, Mumbai – 400 020 … ***Appellant***

versus

Deposit Insurance & Credit Guarantee Corporation
Reserve Bank of India, 2nd Floor,
Opp. Mumbai Central Railway Station,
Mumbai Central, Mumbai, Maharashtra – 400 008. ***…Respondent***

APPEARANCE:

Shri Nitin M Tagade, Joint Commissioner (AR) for the appellant

Shri Omprakash Bihari, Chartered Accountant for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86110/2023

DATE OF HEARING: 31/01/2023
DATE OF DECISION: 14/07/2023

PER: C J MATHEW

This appeal of Commissioner of CGST & Central Excise,

Mumbai Central arises from the setting aside of the rejection of claim for refund of ₹ 158,11,16,024, paid 'under protest' following audit of the Deposit Insurance and Credit Guarantee Corporation (DICCGC) and objection raised thereon on value of 'taxable' services rendered between October 2011 and March 2013 by the competent authority, in order[1] of Commissioner of GST & Central Excise (Appeals-II), Mumbai in challenge of the respondent herein. It appears that the claim of refund had been prompted by an order[2] of the first appellate authority dated 11th January 2016 holding that the liability under Finance Act, 1994 would be duly discharged upon tax being remitted on the premium considered as inclusive of tax.

2. The respondent, as a wholly owned subsidiary of Reserve Bank of India, was established as insurer of banks to protect constituents of each bank from 'run on their money' for which banks pay a premium. Tax on the appellant, as insurer providing service in relation to 'general insurance business' to policy-holder, in terms of section 65(105)(d) of Finance Act, 1994 and as provider of 'taxable service' from 1st July 2012 was being charged from 20th September 2011. For the period from October 2011 to December 2013, audit was of the opinion that liability under Finance Act, 1994 had been improperly discharged by permitting appellant to consider the premium thereof to be inclusive of tax component which was not being separately

[1] [order-in-appeal no. SM/36/Appeals-II/MC/2021 dated 26th February 2021]
[2] [SK/128-134/LTU/MUM/2015]

recovered from client-bank.

3. Consequently, and even before the objection could find a place in the 'final audit report', the appellant remitted the differential tax arising therefrom, along with interest thereon, in January and June 2015 which was, by claim dated 1st June 2018, sought to be restored to themselves. Upon the objection, the respondent herein remitted ₹ 88,44,10,696 and ₹ 39,46,81,068 by challans dated 12th January 2015 that was supplemented by remitting ₹ 30,20,24,260 by challan dated 30th June 2015 accounting for ₹ 118,64,34,956 towards differential tax and ₹ 39,46,81,068 towards interest. Having discharged liability thereafter by availing privilege of 'cum tax' computation of assessable value, the audit exercise *supra* led to the objection on the assessable value adopted by the assessee and the discharge of differential tax liability along with interest thereon in two tranches.

4. The order of the original authority, set aside in the order now impugned by Commissioner of CGST & Central Excise, Mumbai Central before us, had held that the claim was premature owing to the said audit objection not having assumed a definite form as 'final audit report (FAR)' fructifying in notice dated 27th May 2016, that the decision of the Tribunal, in *M/s Deposit Insurance and Credit Guarantee Corporation v. Commissioner of Central Excise & Service Tax [2015 (5) TMI 143-CESTAT MUMBAI]* against confirmation of

demand for the period from May 2006 to August 2012, had held that tax liability would not arise prior to 20th September 2011 in view of clarification of Central Board of Excise & Customs (CBEC) dated 24th February 2009 but that liability subsisted on consideration received for providing services in relation to 'general insurance business' after 20th September 2011 and that they had failed to challenge the 'final audit report (FAR)' as well as the show cause notice dated 27th May 2016 demanding interest of ₹ 17,40,18,648 on tax liability of ₹ 30,20,24,260 that had been discharged only on 30th June 2015 thus rendering finality to the levy of differential tax and interest thereon.

5. The impugned order, on appeal of M/s Deposit Insurance and Credit Guarantee Corporation (DICGC) disputing the rejection, was based on the finding that finality accorded to tax leviability on premium collected by the appellant did not consider the question of value of taxable services, that the finding of the lower authorities of the application being premature and of remittance being concurrence with audit objection was misplaced and incorrect in view of the earlier decision of the first appellate authority on the computation of assessable value and the protests large by the respondent herein. The first appellate authority took note of the decision of the Tribunal in *Sidwal Refrigeration Industries P Ltd v. Commissioner of Central Excise, Delhi [2002 (145) ELT 682 (Tri-Del)]* that communication of audit objection does not constitute show cause notice envisaged in

taxation statutes.

6. The grounds of appeal, and elaborated upon by Learned Authorized Representative, contend that no factual evidence has been cited by the appellant in proceedings before the lower authorities that tax has been included in the gross amount collected as premium, that the entire value is liable to tax under section 66 of Finance Act, 1994, that the statutory rate of premium prescribed by the Reserve Bank of India (RBI) cannot be truncated, under section 15(1) of Deposit Insurance and Credit Guarantee Corporation Act, 1961, to include tax component except with approval of Reserve Bank of India thus excluding the relevance of Explanation 2 in section 67, now section 67(2), of Finance Act, 1994. Reliance was placed on the decision of the Hon'ble Supreme Court in *Amrit Agro Industries v. Commissioner of Central Excise, Ghaziabad [2007 (210) ELT 183 (SC)]* on the requirement of manufacturer to establish that price included duties of excise.

7. We have heard Learned Chartered Accountant at length.

8. The essence of the case of Revenue is that tax has been properly collected on the gross value and any restoration to the respondent would be tantamount to sacrifice by the State in favour of the respondent; the presumption being that an instrument of the state collecting an amount prescribed by an agency of the State should

either have been able to recover the tax amount from banking institutions supervised by the agency of the State or to reduce its profits, and, thereby, dividend accruing to the State, by absorbing the tax payable on the amount excluded from premium as tax component in computing the tax liability. That the amount involved is of such magnitude is attributable to the mandate of the State that every bank in the country must be recipient of service rendered by the appellant.

9. We are unable to comprehend the finding of the original authority that the claim for refund was premature. It was preferred after payment of the claimed amount and it was certainly later than the final audit objection came to approved by the appropriate internal authority. Not unnaturally, the reviewing authority has not placed much store on that line. The thrust of the grounds is that the respondent has not evinced any factual material to contend that the amount collected did include the taxes; on the contrary, it was pointed out that, prior to the decision of the Tribunal in 2015 upholding the leviability of tax on activity undertaken by the respondent from 2011 onwards, the assessee had not been functioning under the premise that tax was not leviable and, hence, the claim that such is included in the premium is not tenable.

10. The decision in *re Amrit Agro Industries Ltd* pertains to an issue of dispute on valuation of manufactured goods for levy of

central excise in which the computation was to exclude duties and taxes from the wholesale price and rested upon the principle that was elaborately expounded in *Commissioner of Central Excise, Indore v. Grasim Industries Ltd*[3] by the Hon'ble Supreme Court that the valuation provision in section 4 of Central Excise Act, 1944 was not controlled by section 3 of Central Excise Act, 1944 as held in *Union of India and Ors v. Bombay Tyre International and Ors [(1984) 1 SCC 467]*. On the other hand, in *Union of India v. Intercontinental Consultants & Technocrats (P) Ltd [TS-72-SC-2018-ST]* , the Hon'ble Supreme Court, settling a dispute on section 67 of Finance Act, 1994 held that the value was limited by the expression 'of service rendered' thus bringing it under the control of section 66 of Finance Act, 1994. Therefore, for the reason that central excise is a duty leviable before any transaction is even contemplated, it would be in the realm of the possible that duty was included in the price paid by customer while a transaction in services, as destination based consumption tax, such demonstration is not possible. It is only from circumstances that such may be ascertained insofar as services are concerned.

11. The history of the dispute itself offers reliable guide to the view to be taken. The respondent had been providing the impugned service since 1st January 1962 by mandate of Parliament after failure of banks left small depositors stranded and though service tax was introduced

[3] [order dated 11th May 2018 in civil appeal no. 3159 of 2004]

as far back as 1994 on ‘insurance service’, the nature of its activity left it undisturbed from tax oversight until the issue determined by the Tribunal in re Deposit Insurance and Credit Guarantee Insurance Corporation fastened the tax liability on them in 2015 and, in accordance with circular of Central Board of Excise & Customs (CBEC). In the very same decision, it has been recorded that

> *‘5.6.2 …The facts on record show that they sought exemption as early as 01/08/2008 and pursued the matter with CBEC after their request for exemption was rejected…..’*

12. It is evident from this finding that they were aware that, in the absence of exemption, tax liability does lie and, in such circumstances, the tax would have to be borne from the premium itself. Furthermore, as set out in the grounds of appeal, they could not have collected any amount higher than the premium specified by the Reserve Bank of India (RBI) as their customers – the banks also bound under the supervision of the Reserve Bank of India – would not pay up any amount over and above the premium. Consequently, the consideration, and gross value, includes the tax amount and liability was to be computed only on the ‘cum tax’ value.

13. The computation of premium is a complicated exercise involving several aspects and factors as well estimation of probability; it is, therefore, not possible to conclusively conclude that inclusion of tax liability would have altered the premium payable for the service.

A normal commercial transaction cannot be equated with insurance service and the extent to which the premium represents consideration for insurance cover. No evidence has been placed on record by the appellant to demonstrate otherwise.

14. For the above reasons, we find no merit in the appeal which is dismissed.

(Pronounced in the open court on 14/07/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*