

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 86351 of 2021

(Arising out of Order-in-Original No. 45/SN/COMMR-AUDIT-III/CGST & CEX/2020-21 dated 30.03.2021 passed by the Commissioner of CGST & Central Excise, Audit-III, Mumbai)

Principal Commissioner CGST & Central Excise, Mumbai EastAppellant
9th Floor, Lotus Infocentre,
Near Parel Station,
Parel (E), Mumbai-400 012.

VERSUS

M/s. SBI Life Insurance Company Ltd.Respondent
5th Floor Natraj,
Andheri Kurla Road,
Opp. W. E. Highway,
Gundavali Andheri,
Mumbai-400 069

APPEARANCE:

Shri Pramod Kumar Maurya, Additional Commissioner, Authorised Representative for the Appellant.

Shri S. S. Gupta, Chartered Accountant for the Respondent.

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85046/2024

Date of Hearing: 14.12.2023
Date of Decision: 25.01.2024

PER: DR. SUVENDU KUMAR PATI

Duty demand along with interest and penalties under Section 73, 75, 77 and 78 of the Finance Act, 1994 made on the basis of differential figures available in Service Tax-3 Returns and Income Tax Returns for the period between October 2013 and March 2014, that was set aside by the *Commissioner of CGST & Central Excise, Audit-III, Mumbai* in his

Adjudication order referred above, is assailed before this Tribunal by the Revenue-Department.

2. Facts of the case, in brief, is that Respondent M/s SBI Life Insurance Company Ltd., having its registered Office at Andheri, Mumbai has been engaged in providing different type of insurance services, apart from providing services like renting of immoveable property etc. Appellant-Department, on verification of data obtained from Income Tax Return and Service Tax Returns of the aforesaid period had observed that against Rs.10,382 Crores of turnover shown as services rendered by it in its Form-26(AS) against which appropriate TDS was deducted, it had discharged Service Tax on the turnover of Rs.7,254 Crores and therefore, additional Service Tax liability to the tune of Rs.387 Crores @12.36% was not discharged by the Respondent. It was pointed out to the Respondent-Assesse but it offered no plausible explanation for which Show Cause-cum-demand notice dated 16.04.2019 was issued to the Respondent. Adjudication was carried out but the Commissioner of CGST & Central Excise, Mumbai absolved the Respondent/Appellant SBI Life of its liabilities by his detailed Adjudication Order passed on dated 30.03.2021. Being aggrieved by the Order of the Commissioner, Department is before us assailing the legality of the said order.

3. We have heard submissions from both the sides. The primary ground raised in the appeal memo, which is in conformity to the review order passed by the Committee of Chief Commissioners, indicates that

placing reliance mainly on the certificate issued by the Chartered Accountant on dated 10.03.2021, learned Commissioner had passed the erroneous order without verification of its content and without verification of any other document to ascertain corroborative evidence for which in view of the decision of this Tribunal passed in the case of *Commissioner of Customs, Mumbai Vs. Eltech Enterprises 1999(112) ELT 877(Trb)*, that clearly states that Chartered Accountant certificate cannot be accepted as sufficient evidence without production of other relevant documents regarding placing of orders, supply of goods etc., the demand on the Respondent should not have been set aside by the Commissioner.

4. Learned Authorised Representative for the Appellant-Department, Shri Pramod Kumar Maurya, AR reiterates the same observations during course of his argument.

5. In response to such submissions Learned Counsel for the Respondent Shri S. S. Gupta Chartered Accountant, in placing reliance on the judgment of this Tribunal passed in the case of *M/s Umesh Tilak Yadav Vs. Commissioner of Central Excise, Nagpur* reported in 2023 (11) TMI 473-CESTAT Mumbai, *M/s Maheshwari Transport Vs. Commissioner of Central Excise & Service Tax, Raigad* reported in 2023 (9) TMI 77-CESTAT Mumbai, *M/s Sharma Fabricators & Erectors Pvt. Ltd. Vs Commissioner of Central Excise, Allahabad* reported in 2017 (7) TMI 168- CESTAT Allahabad, *M/s Kush Constructions Vs. CGST Nacin, ZTI, Kanpur* reported in 2019 (5) TMI 1248-CESTAT Allahabad, argued that

the entire demand was raised on the basis of difference between Income Tax Return and Service Tax-3 Returns, which in view of these judgments, cited *supra*, cannot form the sole basis of the demand for which the order of the Commissioner needs no interference by this Tribunal.

6. We have gone through the appeal case record, relied upon judgments and the order passed by the Commissioner. At the outset it is to be noted that certificate issued by the Chartered Accountant is alone a valid piece of evidence without corroboration in view of several decisions of this Tribunal including the one with Final Order No. A/11206/2023 dated 08.06.2023 in the case of *Rajashree Polyfil Vs. Commissioner of Central Excise & Service Tax, Surat-II*. It can be treated as expert's evidence for the reason that Institute of Chartered Accountants of India, a statutory body instituted by the Government of India has recognized them to be competent to issue certificates on Financial Statements and Auditor General of India has been accepting the Financial Statement of registered Companies, when endorsed by Chartered Accountants with their signatures and seals, apart from the fact that Section 32(2) of the Indian Evidence Act, 1872 permits acceptance of such document without a formal proof, in their absence under certain contingences. Be that as it may, it is worth mentioning here that apart from examining the certificate issued by Chartered Accountant, Learned Commissioner had also examined other relevant documents from the case records and observed glaring discrepancies ranging from taking of figures of Income Tax Return of the preceding

year 2012-13 and comparing the same with Service Tax-3 Return of the subsequent year 2013-14 and making demand on the basis of Service Tax-3 returns of six months while taking figures of Income Tax Return for the entire Financial Year. Interestingly enough, he has categorically pointed out, which is also noted in the Review order of the Committee of the Chief Commissioner's, that three different percentage of Service Taxes ranging from 1.545% and 3.09% to 12.36% were leviable against the services rendered by the Respondent for different insurance categories but Show-cause notice contains a calculations of demand on the basis of its calculations @12.36%. It is, therefore, cannot be said that other relevant documents or corroborative piece of evidence were not examined by the Learned Commissioner before passing of his order to set aside the demand raised against the Respondent and we find no irrationality in such a speaking order passed by the Commissioner, Reproduction of para 9.1 only would clearly reveal the glaring omission in the Departmental Proceedings. It reads...

...Para 9

I have gone through the facts available on the records of the case, the written and oral submissions made during the personal hearing....

...Para 9.1

The above two factors bring out the fact that there is an apparent flaw in the show cause notice for the following reasons-

- a. Though the show cause notice has been issued for the period from Oct 2013 to March 2014, the demand has been raised on the differential value purportedly for the difference in the turnover as per IT returns and ST3 returns for the period of 2013-14, the basis itself of which has been proven wrong as above.*
- b. The demand should have been restricted to the difference in the value of turnover as per the IT returns for the period of Oct. 2013 to March 2014 and the value as per ST3 returns for the said period.*
- c. The notice has wrongly taken the turnover of the financial year 2012-13 as the turnover for the financial year 2013-14.*

d. The value of ST3 returns for 2013 -14 has also been wrongly taken as Rs.7254,32,73,290/- as against actual figure of Rs.4907,51,86,530/-.

e. ,The actual difference in the turnover as per IT returns and the ST3 returns for the financial year of 2013-14 works out to Rs.::>749,58,64,606/- [Rs.10657,10,51,136 - Rs.4907,51,86,530/-] as against Rs.3127,78,64,875/- mentioned in the notice.

f. As the demand should have been restricted to the period of Oct. 2013 to March 2014, service tax should have been demanded on the differential value of Rs.137,56,88,081/- [value as per Schedule-I of Trial Balance i.e. Rs.7171,60,69,047/- less value as per ST3 return for the said period i.e. Rs.3034,03,80,966/-] as against the demand raised on differential value of Rs.3127,78,64,875 /-.

g. Though the assessee is required to discharge service tax at different rates of 12.36%, 1.545% and 3.09%, the notice has demanded service tax on the entire differential amount at the rate of 12.36%...

7. In view of our observation as above and having regard to the findings of the Commissioner noted above, which speak a lot about the defects in the Show-cause notice that has formed the foundation of this proceedings, we have got no hesitation to go with the order passed by the Commissioner in setting aside the demand etc. raised in the Show-cause notice dated 16.04.2019. Further the basis of demand is purely taken from the difference between the value shown in the Service Tax Returns and income shown in the Income Tax Return. In this context it is worth reproducing the finding of this Tribunal made in the case of *M/s Umesh Tilak Yadav Vs. Commissioner of Central Excise, Nagpur* reported in 2023 (11) TMI 473-CESTAT Mumbai, the relevant portion of which reads.

Para-4 We have carefully gone through the record of the case and submissions made. The demand was raised invoking the provisions of sub-section (1) of Section 73 of Finance Act, 1994. The said provision of Finance Act empowers Revenue for recovery of service tax which has not been levied or which has not been paid or which has been short levied or which has been short paid or which

has been erroneously refunded. Therefore, the first step for Revenue is to establish that a specific amount to be demanded through show cause notice by invoking the said provision is service tax either not paid or short paid or not levied or short levied. Therefore, it is essential to establish that the value on which such service tax is calculated is the value under Section 67 and the same is derived from the consideration received by the appellant out of the activity which has to satisfy definition of service under sub-section (44) of Section 65B of Finance Act, 1994. Such type of examination of the facts and arriving at the prima facie view that the appellant had received the consideration by providing service is missing in the show cause notice. We, therefore, hold that the said show cause notice dated 26.06.2020 is not sustainable in law

8. Hence, in view of irregularity in the Show cause and the non-sustainability of demand purely on the basis of difference between ST-3 return and Income Tax returns of any other period, without any further examination to establish that the difference is on account of consideration received towards discharge of services, the following order is passed.

THE ORDER

9. The appeal is dismissed and the order passed by the Commissioner in Order-in-Original No. 45/SN/COMMR-Audit-III/CGST&CEX/2021 vide order dated 30.03.2021 is hereby confirmed.

(Order pronounced in the open court on 25.01.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)