

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No.51743 of 2016 (DB)

(Arising out of Order-in-Original No.DLI-LTUNT-000-COM-061-2015-16 dated 13.01.2016 passed by the Commissioner of Central Excise & Service Tax, New Delhi)

M/s. Max Life Insurance Company India Ltd.

Appellant

90A, Sector-18,
Udyog Vihar,
Gurgaon, Haryana-122 002.

VERSUS

Commissioner of Central Excise & Service Tax,

Respondent

Large Taxpayer Unit, NBCC Plaza,
Pushp Vihar, Saket,
New Delhi-110 017.

APPEARANCE:

Shri Sanjeev Sachdeva, Advocate for the appellant & written submissions filed by
Shri S. K. Mathur, Special Counsel for the appellant.
Dr. Radhe Tallo, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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

FINAL ORDER NO.50991/2022

DATE OF HEARING:28.04.2022

DATE OF DECISION: 19.10.2022

ANIL CHOUDHARY:

The issue in this appeal is whether service tax was leviable under "Investment or Management Service under ULIP" under Section 65(105)(zzzzf) of the Finance Act for the period 1.7.2010 to 30.04.2011 on Policy Administration Charges, Front End Load and Switching Charges collected by the appellant – Insurer, from the Policy holders and the other issue is whether show cause notice is hit by limitation.

2. The brief facts are that the taxable service called "Management of Investment under ULIP" was brought under Service Tax Net, read as follows:-

"(zzzzf) to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business known as Unit Linked Insurance Plan (ULIP) Scheme."

Explanation – for the purposes of this sub-clause –

- (i) Management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and
- (ii) the gross amount charged by the insurer from the Policy Holder for the said services provided or to be provided shall be equivalent to the difference between –
 - (a) premium paid by the Policy Holder for ULIP, and
 - (b) the sum of premium paid for or attributable to risk cover-whether for life, health or other specified purposes and the amount segregated for actual investment.

The aforementioned Explanation (II) has been substituted w.e.f. 1.7.2010 vide notification no.24/2010-ST dated 22.06.2010, as follows:-

"(ii) the gross amount charged by the insurer from the policy holder for the said service, provided or to be provided shall be equal to the maximum amount fixed by IRDA, as fund management charges for ULIP or the actual amount charged for the said purpose by the insurer from the policy holder, whichever is higher."

3. The appellant is a insurance service provider and is registered with the Department and has been paying taxes regularly as well as filing the returns. The other service provided by the appellant i.e. life risk coverage service was taxable under Section 65(105)(zx), which provides, "taxable

services” 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 risk cover in life insurance.

4. This definition was amended by way of substitution w.e.f. 1.5.2011, vide Finance Act, 2011, the amended sub-section reads as follows:-

“(zx) to a policy holder or any person by an insurer including re-insurer carrying on life insurance business”

5. A show cause notice dated 19.12.2014 was issued to the appellant – an LTU, *inter alia*, alleging that during thematic audit of the records of the appellant conducted in the year 2013 by the Director General of Audit (Central Receipt), A.G.C.R., it appeared that the appellant have collected charges from the policy holders like administration charges, front end load charges and switching charges totaling Rs.5,20,43,50,816/- during the period July, 2010 to April, 2011 but have not paid service tax on the same amounting to Rs.53,60,48,134/- under Investment Management Service of ULIP. The details of the charges are as follows:-

Period	Name of the charge collected	Amount of the charges	Service Tax payable
07/10 to 03/11	Policy administration charges	2161212584	222604896
	Front end load	2682786883	276327049
	Switching Charges	58566	6032
04/11	Policy administration	204172132	21029730
	Front End Load	156116651	16080015
	Switching Charges	4000	412
	Total	5204350816	536048134

6. It also appeared that the appellant have not discharged service tax liability of Rs.67,03,565/- on unallocated premium of Rs.75,02,08,637/- pertaining to the period March, 2011 on or before due date but paid the

same on 6.5.2011 i.e. late by 36 days and accordingly, interest of Rs.1,19,011/- was chargeable.

7. It was further alleged that the appellant have not disclosed the material facts of receipt of these charges and non-payment of service thereon in their Service Tax Returns submitted to the Department, which appears to be deliberate suppression with intent to evade payment of tax. Had the Audit team not visited the appellant premises for audit, the above facts of tax skipped assessment would have remained unearthed. Hence, proviso to Section 73 (1) and 73 (4) of the Act for extended period of limitation are invoked. The show cause notice was adjudicated on contest vide order-in-original dated 13.01.2016 by the Id. Commissioner, who vide impugned order was pleased to confirm the proposed demand of Rs.53,60,48,134/-. Further confirmed interest under Section 75 of Rs.1,19,011/-. Further, imposed penalty of equal amount under Section 78. Rs.10,000/- under Section 77 for failure to assess the value of the taxable service correctly. So far the issue of limitation raised by the appellant, the extended period is not invocable, the said ground was rejected and held against the assessee. Being aggrieved, the appellant is in appeal before this Tribunal.

8. Ld. Counsel for the appellant, Shri Sanjeev Sachdeva urges that the issue is no longer *res integra* and the same has been decided in favour of the insurer company in the matter of **Sahara India Life Insurance Co. Ltd.- 2018 (5)TMI 1217 (CESTAT-Allahbad)**, wherein the issue before the Tribunal was demand of service tax on Policy Administration Charges for the period prior to 1.5.2011. This Tribunal held – such levy has been introduced w.e.f. 1.5.2011, when the definition in Section 65(105)(zx) was amended and for the words, “in relation to the risk cover in the Life Insurance business”, the words “ by an insurer including re-insurer carrying

on life insurance business" were substituted. Thus, evidently, the administrative charges also became taxable being part of the insurance premium w.e.f. 1.5.2011. The period of dispute (in Sahara appeal) was July, 2010 to March, 2011 (similar to this appeal). This Tribunal held that administrative charges were not subject to service tax prior to 1.5.2011 and accordingly, set aside the demand with consequential benefits.

9. Ld. Counsel further refers to clarificatory TRU Circular No. DOF/334/1/2010 dated 26.02.2010. As per this Circular particularly, in paras 3, 3.3, 3.4, 3.5 and 3.6, it has been clarified that policy administration charges, switching charges, partial withdrawal Charges, miscellaneous charges, etc. were taxable under Life Insurance Service as defined under Section 65(105)(zx) of the Act, and not under Section 65(105)(zzzzf). However, the definition of taxable service called as "Life Insurance Service" under Section 65(105)(zx), provided for levy of tax only on services provided to a policy holder, by an insurer, related to the risk cover. It was only pursuant to amendment in the definition w.e.f. 1.5.2011, that the insurer became liable to pay service tax on other services (other than risk cover like policy administration charges, switching charges, etc.). Under the provisions of Section 65(105)(zzzzf), the insurer/assessee was liable to pay service tax only on the management charges collected for management of the amount invested in the ULIP plan, which undisputedly, the appellant have paid.

10. Ld. Counsel further draws attention to the report of the Comptroller and Auditor General of India for the year ended March, 2014, wherein the CAG has concluded that the said charges remained out of the service tax net during the period from July 1, 2010 to April 30, 2011 due to the legislative lacuna. Relevant extract from 2.5.3 of the said Report of the CAG is reproduced below:-

“The stand taken by the assesses was that the definition of taxable service under Section 65(105)(zx) of the Act, *ibid*, relating to Life Insurance business covered only services provided in relation to the risk cover in life insurance until the statutory provision itself was amended with effect from 1 May, 2011. The scope of Life Insurance Service was expanded from 1 May, 2011 to cover both risk and management of investment components. **Thus, the mismatch between the provisions of Section 65(105) (zx), 65(105)(zzzzf) of the Act, *ibid*, and TRU’s DO letter dated 26 February, 2010 resulted in loss of revenue during the period 1 July, 2010 to April, 2011. As amendment to Section 65(105)(zzzzf) with effect from July, 2010 had not been synchronized with the scope of coverage in section 65(105)(zx), certain elements got excluded from levy under either head of service resulting in loss of revenue....”**

Further, relies on the order of the Commissioner in the case of **Canara HSBC Oriental Bank of Commerce Life Insurance Co. Ltd.**, wherein the Id. Commissioner held that the assessee correctly paid service tax only on the ‘fund management charges’ in respect of ‘Management of Investment under ULIP services’ as per the provisions, which existed during July, 2010 to April, 2011 as the demand raised on the (i) Policy Administration Charges (ii) Allocation & Miscellaneous charges under the show cause notice was not backed by legal provisions, which existed during that period. The relevant extracts from the said order of the Commissioner dated 31.03.2017 is reproduced hereinbelow:-

“17.....In this case the dispute pertains to the (i) Policy Administration charges (ii) Allocation & Miscellaneous charges collected by the noticee from its clients or policy holders. The impugned show cause notice has alleged that

the noticee has not included the policy administration charges, allocation & Misc. Charges in the taxable value for the purpose of calculation of service tax on the services of "Management of Investment under ULIP services.

18. The noticee has submitted that they have paid service tax during the impugned period under Fund Management charges and that the subject charges are not liable to be taxed. The noticee has placed reliance on the decision of CESTAT in the case of HDFC Standard Life Insurance Co. Ltd., vs. Commr. Of S. Tax, Mumbai-I reported at -2015 (38) STR 124 (Tri.).

19. **In this regard, I find that it was already clarified by para 3.4 of the DO letter No.334/I/2010-TRU dated 26.02.2010 that Policy administration charges, monthly charges for managing the paper work and other formalities for the insurance, and is not related to assets management. It is chargeable to service tax under insurance service. However, the impugned show cause has considered these charges includible in the value of Management of Investment under 'ULIP' services, which is incorrect.**

20. **I find that it is not disputed that during the impugned period the Noticee has paid service tax on the Fund Management Charges (FMC). As discussed above, the explanation (ii) to Section 65(105)(zzzzf), which defined the Management of Investment under ULIP services clearly provided that the value of taxable service for any year of the operation of policy will be the actual amount charged by the insurer for management of funds under ULIP or the maximum amount of FMC fixed by the IRDA whichever is higher. The Noticee has paid service tax on the Fund Management Charges in accordance with the IRDA guidelines. I am therefore of the view that the submissions of the Noticee has merit and since the Noticee has paid service tax on the fund management**

charges received in respect of the Management of Investment under ULIP services as per the provisions existed during the impugned period, the demand raised through the impugned show cause notice is not backed by the legal provisions existed during that period and therefore is liable to be dropped.”

It is submitted that the Department did not file any appeal against the said order of the Commissioner dated 31.03.2017 and therefore the same has attained finality.

11. So far limitation is concerned, Id. Counsel urges that the show cause notice is bad for invocation of extended period for the following reasons:-

A. Regular scrutiny of the records and financial statements of the appellant by the Revenue authorities, including detailed investigations by the DGCEI. On the basis of their investigation a show cause notice dated 16.04.2014 was issued by the DGCEI. DGCEI did not propose any demand for the period from 01.07.2010 to 30.04.2011, on Policy Administration Charges, Front End Load or Switching Charges, and as may be seen from the following extract of the show cause notice dated 16.04.2014:

“For the period 01.07.2010 to 30.04.2011:

10.6Thereafter, amendment made in clause (ii) Section 65(105)(zzzzf) of the Act and clarification issued by the C, B, E, C. Vide letter F. No. 334/I/2010-TRU dated 2.6.2010 which stipulated that fund management charges alone should form the value for taxable purpose for unit linked insurance plan. Since this amount was capped for ULIPs by Insurance Regulatory and Development Authority (IRDA, it was provided that the value of taxable service for any year of the operation of the policy shall be or the actual amount charged for the said purpose or the maximum amount of fund management charges fixed by IRDA, whichever is higher. Therefore, no other charges collected from policy holders are chargeable to Service Tax for providing services under management of investment under ULIP.”

B. The report of the CAG for the year ended March 2014 itself makes it clear that the non-payment of service tax on the said charges during the impugned period was an industry wide practice. The report

of the CAG further states that the department itself took different views on the matter in different cases, making it obvious that the issue at hand was at best one of interpretation of statute, and can in no way be construed to be an act of omission or commission by the appellant to suppress any facts with an intent to evade the payment of service tax.

12. Further, urges that imposition of penalty under Sections 77 and 78 is also bad as the issue is wholly interpretational in nature. Accordingly, prays for setting aside the same. It is further urged that service tax is not payable and the appeal may be allowed with consequential benefits.

13. Opposing the appeal, Special Counsel, Shri S.K. Mathur has filed written submissions and relies on the allegations in the show cause notice. He also relies on the Board's Circular No DOF/334/1/2010 dated 26.02.2010. It is further urged by the Special Counsel that the appellant was collecting policy administration charges, etc. from the insurer and the onus to prove that the same was related with management of investment was on the appellant, which they have failed to establish. Further, urges that management of investment enlarges the scope and covers charges like policy administration charges, front end load charges and switching charges. Thus, the service tax has been rightly demanded and the extended period has been rightly invoked.

14. Thus, under the facts and circumstances, the appellant did not have any *bonafide* belief in not paying service tax on administration charges, etc. under dispute and accordingly, prays for dismissal of the appeal.

15. Having considered the rival contentions, we find that the issue is no longer *res integra* and has been allowed in favour of the Insurance Company under the similar facts and circumstances in the case of **Sahara India Life Insurance Co. Ltd. (supra)**, wherein by a Coordinate Bench (of which one of us – Member (Judicial) was a Member of the Division Bench), wherein it has been categorically held that prior to 1.5.2011, policy administration

charges, etc. are not chargeable to service tax. Further, in view of the clarification by the Board vide TRU Circular No. DOF/334/1/2010 dated 26.02.2010, that such policy administration charges are chargeable to tax under Section 65(105)(zx). Thus, Revenue cannot be permitted to be taken u-turn in the light of the Board's Circular. Further, Board circular are binding on the officers of the Revenue Department.

16. Accordingly, in view of our findings and observations, we allow this appeal and set aside the impugned order. The ground of limitation is left open. The appeal is allowed.

[Order pronounced on 19.10.2022.]

**(ANIL CHOUDHARY)
MEMBER (JUDICIAL)**

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

Ckp.

