IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL No. 181 OF 2018

The Commissioner, CGST,
Mumbai (West) .. Appellant
vs.
Reliance Nippon Life Insurance
Co. Ltd. .. Respondent.

Mr. Sham Walve a/w. Ms Maya Majumdar for the Appellant.
Mr. Sriram Sridharan a/w. Mr. Suyog B. and Jas Sanghvi i/b PDS Legal for the Respondent.

CORAM: M.S. SANKLECHA, J.
AND M.S.SONAK, J.
DATE : 11 JUNE 2019.

P.C.:

1] This appeal under Section 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 challenges the order dated 25th September 2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (Tribunal).

2] The appellant urges only the following question of law for our consideration:

> "(B) Whether the applicant was right invoking proviso to Section 73(1) of the Finance Act, 1994 in applying

extended period for demands?"

3] The respondent is engaged in providing Life Insurance Service. The impugned order of Tribunal dated 25th September 2017 holds that the respondent was providing taxable service (risk premium), Non Taxable Service (investment management services) and exempted service (Traditional Golden Year Plan). On merits, it holds that the respondent was not entitled to avail of input credit under Cenvat Credit Rules, 2004 to the extent the same have been utilised in providing Life Insurance service under the Traditional Golden Plan as it was in the nature of exempted service. However, it held that the demand as raised upon the respondent for the period May 2010 to April 2011 by Show Cause Notice dated 3rd August 2012 was time barred. This as the Tribunal found on facts that the respondent had *bonafide* belief that they are entitled to avail of Cenvat credit even in respect of inputs utilised for providing exempted services viz., Traditional Golden Plan. On the above grounds, it held that penalty was not imposable under Section 78 of the Finance Act, 1994 upon the respondent. This on the ground that there was no intent to avail Cenvat credit illegally on the part of the respondent.

4] The appellant-Revenue has challenged the impugned order only to the extent it holds that the extended period of limitation is not invokable in the present case. There is no challenge in the appeal against deletion of penalty by the impugned order on the same grounds, on which it was held that the extended period is not invocable.

5] On the last occasion, the appeal was adjourned to enable Mr. Walve, learned counsel appearing for the appellant to take instruction with regard to challenge even deletion of penalty. However, it appears that the Revenue has chosen not to challenge the deletion of penalties upon the respondent by the impugned order of the Tribunal.

6] Mr. Walve, learned counsel appearing for the appellant, in support of the appeal *inter alia* submits that the extended period of limitation is invokable in the facts of the present case. This in view of the fact that the respondent took Cenvat credit in respect of exempted services came to light only on Audit being conducted by the appellant – Revenue. Besides, it is submitted that the respondent had not declared the value of the exempted service in their ST-3 Returns and this clearly establishes suppression of the facts on the part of the respondent so as to evade duty. In these circumstances, it is submitted that the invocation of the extended period of limitation by the Commissioner ought not to have been deleted by the impugned order.

7] We note that the impugned order records the fact that the respondent was under *bonafide* belief that the Life Insurance Service *per se* was not exempted service. It was this which resulted in the respondent proceeding to take credit in respect of inputs used in exempted services. The impugned order records the fact that during the course of investigation nothing has been brought on record that there was any intent on the part of the respondent to evade the service tax payable under the Act. Further, the impugned order places reliance upon the letter dated 29th August 2011 addressed by the Commissioner of Service Tax, Mumbai to Joint Secretary of Central Board of Excise and Customs to the effect that the Life Insurance Companies have all availed Cenvat credit under a *bonafide* belief that they are entitled to the same. In the above circumstances, it may not be appropriate to invoke the extended period of limitation while raising demands for incorrect availment of Cenvat credit. This also supports the view that across the Life Insurance Industry that they are entitled to Cenvat credit in respect of entire Life Insurance business which had been carried out by them. The impugned order further holds that the issue really is one of interpretation and the extended period in such case could not be invoked.

8] The submission of Mr. Walve, learned counsel for the appellant, that non-declaration of value in ST-3 Returns coupled with the fact the Department came to know of the taking of credit during Audit would establish that there was intent to evade the tax on the part of the respondent cannot be accepted. This for the reason that when the respondent had a *bonafide* belief that it is entitled to Cenvat Credit even in respect of inputs used in providing Traditional Golden Year Plan. In such circumstances, no occasion of making of declaration in ST-3 Returns would arise. Besides, that the Commissioner of Service Tax has himself recorded the understanding that the Life Insurance Industry as a whole believed they are entitled to Cenvat Credit as is evident from its communication dated 20th August 2011 addressed to CBEC. Therefore, in the above facts, it cannot be said that the respondent intended to evade the service tax.

9] We note that the impugned order of the Tribunal has made a detailed examination on the issue of limitation and has come to a finding of fact that there was no intent on the part of the respondent to evade the service tax. This finding of fact is not shown to be perverse.

10] Thus, the question as proposed does not give any rise to any substantial question of law.

11] Accordingly, the appeal is dismissed.

(M.S.SONAK, J.) **(M.S.SANKLECHA, J.)**