CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85811 of 2019

(Arising out of Order-in-Original No. 80/SRP/COMMR/MUM. SOUTH/2018-19 dated 14.12.2018 passed by the Commissioner of CGST & Central Excise, Mumbai South Commissionerate, Mumbai.)

Life Insurance Corporation of India **.... Appellants**
Central Office, 3rd Floor, West Wing
'Yogakshema', Jeevan Bima Marg
Mumbai – 400 021.

Versus

Commissioner of CGST & Central Excise **.... Respondent**
Mumbai South Commissionerate
13th Floor, Air India Building,
Marine Drive, Nariman Point,
Mumbai 400 021.

APPEARANCE:

Shri Dinesh Agarwal, Chartered Accountant along with Shri Pranay Sahay, Advocate for the Appellant

Shri Shashank Kumar Yadav, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85948/2026

Date of Hearing: 15.04.2026
Date of Decision: 31.07.2026

PER: M.M. PARTHIBAN

This appeal has been filed by M/s Life Insurance Corporation of India (LIC), Mumbai (herein after, referred to as 'the appellants', for short), assailing the Order-in-Original No. 80/SRP/COMMR/MUM.SOUTH/2018-19 dated 14.12.2018 (herein after, referred to as 'the impugned order') passed by the Commissioner of CGST & Central Excise, Mumbai South Commissionerate, Mumbai.

2.1 Brief facts of the case are that the appellants herein is a state-owned insurance corporation engaged in provision of taxable services viz., life insurance service/policies to various clients as per the provisions of Insurance Act, 1938 and Insurance Regulatory & Development Authority

(IRDA) of India Act, 1999. For the purposes of payment of service tax and for compliance with the Finance Act, 1994, the appellants are centrally registered with service tax authority by taking the Service Tax Registration No. AAACL0582HSTCN6.

2.2 On the basis of intelligence developed by the Directorate General of Central Excise Intelligence, Kolkata Zonal Unit (DGCEI), it was identified that the appellants while providing life insurance services to their policy holders were paying service tax on the receipt of premium amount. As per the terms and conditions of the policy, if the policy holder does not pay any premium during the initial three-year period of coverage, and if such policies are not revived within a period of two years from the date of the first unpaid premium, then the amount of premium deposited by the policy holders will stand forfeited. The DGCEI had interpreted that such amount forfeited is a consideration received by the appellants for tolerating an act of the policy holder and the same is liable for payment of service tax in terms of Section 66E(e) of the Act of 1994 read with Section 65B ibid, whereby 'agreeing to an obligation to tolerate an act' is a 'declared service'. After conducting detailed investigation and taking note that since the appellants had not paid the service tax on such consideration, the department had initiated show-cause proceedings. Accordingly, Show-Cause Notice (SCN) dated 27.04.2018 was issued for demand of service tax for the period 01.07.2012 to 30.06.2017 by invoking the extended period of time along with interest and for imposition of penalties under Sections 77 & 78 of the Finance Act, 1994. The said SCN dated 27.04.2018 was adjudicated by the learned Commissioner vide the impugned order dated 14.12.2018 in confirmation of the service tax demands on appellant and in imposing mandatory penalty under Section 78 *ibid*. The said original authority also imposed penalty of Rs.10,000/- under Section 77 *ibid*. Feeling aggrieved with the impugned order, appellants have preferred this appeal before the Tribunal.

3.1 Learned Counsel appearing for the appellants had submitted that the appellants as an insurer is carrying on life insurance business in providing various types of life insurance policies to the policy holders. In terms of the legal provisions of Section 67(4) ibid read with Rule 6(7A) of the Service Tax Rules, 1994, an insurer has the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment in case of unit linked insurance plan. Further, in case of single premium annuity policies, service tax is liable to be paid at 1.4% of the single premium amount charged from the policy holder; and in all other cases, service tax is liable to be paid at 3.5% of the premium charged in the first year and at 1.75% for the premium charged in the subsequent period. The appellants have been duly discharging the service tax on the afore-mentioned premium amounts received from their policy holders.

3.2 Learned Counsel further stated that the appellants have entered into an insurance contract with the insured person in terms of Section 2(D) of the Indian Contract Act, 1872 and the Insurance Act, 1938. In terms of Section 113 of the Act of 1938, in case of non-payment of premium or for providing incorrect information by the policy holders, the same is liable to be forfeited. The department had interpreted that on forfeiture/repudiation of policy in such cases, the entire premium amount forfeited is to be treated as consideration on account of the same being a contract to tolerate breach of insurance contract and service tax is liable to be paid by treating the same as a 'declared service' under Section 66E(e) ibid.

3.3 He further submitted that in terms of policy documents entered into between the appellants and their policy holders, Clause 5 of the policy document states that the said policy would be rendered 'void' on happening of certain events which include non-payment of premium or mis-declaration by the policy holder. Accordingly, if policy lapses due to non-payment of premium and if the same is not revived, then the policy does not acquire any surrender value and therefore, nothing is payable to the policy holder. This concept has been wrongly interpreted by the department as 'forfeiture of premium'. Similarly, in case of mis-representation by a policy holder, insurer can reject the claim or terminate policy without any obligation to pay death benefit or surrender value. This is repudiation of policy, which has been misunderstood by the department as forfeiture of premium. Therefore, he submitted that such amounts cannot be treated as consideration, since there is no contract to tolerate breach of agreement between appellant LIC and the insured persons. Further, the only contract entered into between the appellant and the insured is for the life insurance service, on which the applicable service tax on the amount of premium was duly paid by the appellants. Therefore, he pleaded that there is no liability for payment of service tax by the appellants on such forfeiture of premium.

3.4 He further submitted that the disputed issue has already been clarified by the Central Board of Indirect Taxes and Customs (CBIC) vide Circulars No. 214/1/2023-Service Tax dated 28.02.2023 and No.178/10/2022-GST dated 03.08.2022. Furthermore, he stated that the disputed issue has also been settled in favour of the assessees in a number of judicial decisions as follows. Further, he also placed reliance on the following judgements for consideration of the point that there is no provision of any taxable service, and the appellants having filed the service tax returns regularly, there is no ground for invoking extended period of limitation with an intention to evade payment of tax, by the department in the SCN.

(i) *Steel Authority of India Limited Vs. Commissioner of CGST & Central Excise, Salem* - 021 (55) G.S.T.L. 34 (Tri. - Chennai)
(ii) *South Eastern Coal Fields Limited vs. Comm. of CE and Service Tax, Raipur* (2021 (2) TMI 821 - CESTAT New Delhi]
(iii) *Jubilant Motor Works (South) Pvt. Ltd. vs. Commissioner of CGST & CE, Chennai* [(2024) 17 Centax 52 (Tri. - Mad)]
(iv) *Madhya Pradesh State Mining, Corporation Ltd vs Principal Commissioner of CGST & Central Excise, Bhopal* [(2023) 10 Centax 253 (Tri.-Del)]
(v) *GET&D India Limited vs Dy. Commissioner of CE* [WP 26292/2018 decided on 13.12.2019]
(vi) *M.P. Poorva Kshetra Vidyut Vitran Co. Ltd. vs Principal Commissioner, CGST & C. Ex., Bhopal* [2021 (46) GSTL 409 (Tri. Del)]
(vii) *Commissioner of Service Tax, Chennai vs. Repco Home Finance Ltd* [2020 (42) G.S.T.L. 104 (Tri. - LB)]
(viii) *IIFL Holding Ltd vs Commissioner of CGST & Central Excise* [(2024) 17 Centax 272 (Tri.-Bom)]
(ix) *Commissioner of Service Tax vs. Bhayana Builders (P) Ltd.* [2018 (2) TMI 1325]
(x) *Pahwa Chemicals Pvt Ltd. vs. Commissioner of CE* [2005 (189) ELT 257 SC]
(xi) *Tamil Nadu Housing Board v. CCE* [1994 (74) ELT 9 (SC)]

4. On the other hand, learned Authorized Representative appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. The issues for consideration before the Tribunal are as under: -

(a) whether the amount forfeited by the appellants on account of non-payment of premium or mis-declaration by the policy holder, are liable for payment of service tax under the taxable category 'declared service' under Section 66E(e) *ibid*?

(b) Whether the adjudged demands confirmed in the impugned order is sustainable or not?

7.1 Learned Commissioner had examined the issues in dispute and had come to a conclusion that any service provided by any person to other person, who receives such service and if there is a consideration then it satisfies the definition of 'service' having been provided. Since the appellants have retained the premiums already paid by the policy folder, due to his inaction in payment of premium, and the same was tolerated by the appellants, it would amount to provision of declared service under Section 66E(e) *ibid* and the appellants are liable to pay service tax on the amount received by them. Sine the evasion of service tax would not have come to light but for the audit conducted by the Department, he held that there was willful mis-declaration and suppression of facts by the appellant in not reflecting the amount in their statutory ST-3 returns and thus imposed mandatory penalty while confirming the service tax demand by invoking the extended period of limitation.

7.2 On perusal of the facts of the case, it is seen that the appellants conducts insurance business as per the legal provisions contained in the Insurance Act, 1938 and Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000. Further, a separate legislation governs more specifically the insurance business activities in terms of The Life Insurance Corporation Act, 1956. The legal provisions governing the conduct of the business of the appellants include use of surplus fund from the life insurance business and its utilization as provided under Section 28 of the Act of 1956. Further, Section 113 of the Insurance Act, 1938 provides for acquisition of surrender value as follows:

> [7]**[113. Acquisition of surrender value by policy.**—(*1*) A policy of life insurance shall acquire surrender value as per the norms specified by the regulations.
>
> (*2*) Every policy of life insurance shall contain the formula as approved by the Authority for calculation of guaranteed surrender value of the policy.
>
> (*3*) Notwithstanding any contract to the contrary, a policy of life insurance under a non-linked plan which has acquired a surrender value shall not lapse by reason of non-payment of further premiums but shall be kept in force to the extent of paid-up sum insured, calculated by means of a formula as approved by the Authority and contained in the policy and the reversionary bonuses that have already been attached to the policy:
>
> Provided that a policy of life insurance under a linked plan shall be kept in force in the manner as may be specified by the regulations.
>
> (*4*) The provisions of sub-section (*3*) shall not apply—
>
> (*i*) where the paid-up sum insured by a policy, inclusive of attached bonuses, is less than the amount specified by the Authority or takes the form of annuity of amount less than the amount specified by the Authority; or
>
> (*ii*) when the parties, after the default has occurred in payment of the premium, agree in writing to other arrangement.]

7.3 Further, in terms of the conditions and privileges contained as a part of the Insurance Policy document entered into by the appellants with each of the policy holder provide for specific clauses including those covering certain crucial information relating to the insured, personal details in context with the insurance service, proof of age, payment of premium, revival of discontinued policies, non-forfeiture regulations, forfeiture in certain events, suicide clause, guaranteed surrender value, loans, assignments and nominations, disability benefit etc., From the above guidelines provided by the insurance statute, it transpires that if a policy lapses due to non-payment of premium and if the same is not revived, then the policy does not acquire any surrender value and therefore, nothing is payable to the policy holder. Similarly, in case of mis-representation by a policy holder, insurer can reject the claim or terminate policy without any obligation to pay any benefit or surrender value. These forms part of the regular insurance business between the appellants insurer and the insured policy holder. There is no involvement of any specific contract for repudiation or retention of surrender value of premiums paid, in case of non-payment of premium amounts or mis-declaration by a policy holder. Therefore, in our prima facie view this cannot be considered as a service of the nature involving an arrangement in which the appellant had agreed to the obligation to refrain from doing an act, or to tolerate an act or a situation, or to do an act, attracting the taxable entry of declared service under Section 66E(e) of the Act of 1994, for charging the appellants with service tax liability as demanded in the show cause proceedings.

7.4 In this regard, we find that the above issue has been examined by the Central Board of Indirect Taxes & Customs (CBIC) at length and necessary instructions have been issued to the field formations vide Circular No. 214/1/2023-Service Tax dated 28.02.2023. Accordingly, the field formations were directed to follow the guidelines discussed in the said circular and jurisprudence that has evolved over time, in determining whether service tax is payable in respect of taxable services under the category "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act". The relevant paragraphs of the said instructions of CBIC are extracted below:

"CIRCULAR NO. 214/1/2023-SERVICE TAX
[F.NO. CBIC-110267/14/2023-CX-VIII SECTION-CBEC], DATED 28-2-2023

An issue has arisen on the levy of service tax on liquidated damages arising out of breach of contract, forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period and similar other issues arising out of clause (e) of section 66E of the Finance Act, 1994. Reference has also been invited to Circular No. 178/10/2022-GST, dated 3rd August, 2022 regarding applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law, and its applicability to service tax related issues.

2. It may be seen that "Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" is a Declared Service as per clause (e) of section 66E of the Finance Act, 1994. A service conceived in an agreement where one person agrees to an obligation to refrain from an act or to tolerate an act or to do an act, would be a 'declared service' under section 66E, read with section 65B(44) and would be leviable to service tax.

3. The description of the declared service in question, namely, agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is similar in GST. "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5 (e) of Schedule II of the CGST Act, 2017.

4. As can be seen, the said expression has three limbs: —

(i) Agreeing to the obligation to refrain from an act,

(ii) Agreeing to the obligation to tolerate an act or a situation,

(iii) Agreeing to the obligation to do an act. Service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act is nothing but a contractual agreement. A contract to do something or to abstain from doing something cannot be said to have taken place unless there are two parties, one of which expressly or impliedly agrees to do or abstain from doing something and the other agrees to pay consideration to the first party for doing or abstaining from such an act. Such contractual arrangement must be an independent arrangement in its own right. There must be a necessary and sufficient nexus between the supply (i.e. agreement to do or to abstain from doing something) and the consideration.

5. The issue also came up in the CESTAT in Appeal No. ST/50080 of 2019 in the case of M/s Dy. GM (Finance) Bharat Heavy Electricals Ltd in which the Hon'ble Tribunal relied on the judgement of divisional bench in case of M/s South Eastern Coal Fields Ltd v. CCE Raipur {2021(55) G.S.T.L 549(Tri-Del)}. Board has decided not to file appeal against the CESTAT order ST/A/50879/2022-CU[DB], dated 20-9-2022 in this case and also against Order A/85713/2022, dated 12-8-2022 in case of M/s Western Coalfields Ltd. Further, Board has decided not to pursue the Civil Appeals filed before the Apex Court in M/s South Eastern Coalfields Ltd. supra (CA No. 2372/2021), M/s Paradip Port Trust (Dy. No. 24419/2022, dated 8-8-2022), and M/s Neyveli Lignite Corporation Ltd. (CA No. 0051-0053/2022) on this ground.

6. In view of above, it is clarified that the activities contemplated under section 66E i.e. when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are the activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity. Field formations are advised that while taxability in each case shall depend on facts of the case, the guidelines discussed above and jurisprudence that has evolved over time, may be followed in determining whether service tax on an activity or transaction needs to be levied treating it as service by way of agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. Contents of Circular No. 178/10/2022-GST, dated 3rd August, 2022, may also be referred to in this regard."

From the above instructions of CBIC, it is clear that in the present case in the absence of any contractual obligation or flow of consideration for the specific act of tolerating an act etc., it cannot be said that such amount of premium on account of forfeiture due to non-payment of further premiums by the policy holder or for the mis-declaration by policy holder occurring in a 'life insurance service' could be said to be another taxable service, under the category of 'declared service' for the purpose of levy of service tax under 66E(e) of the Act of 1994. In fact, such a presumption may lead to double taxation and is not enforceable in terms of the legal provisions of the Finance Act, 1994.

8.1 We further find from the factual matrix of the case that the event of forfeiture of insurance policy entered with the policy holder by the appellant occurs when a policy lapses due to non-payment of periodical premium amount, as per the contract and the same being not revived within the prescribed period specified therein, or on account of factual incorrectness with respect to certain particulars provided by the policy holder, thus the insurance service contract becomes void *ab initio*. Hence, even under the existing insurance contract of the appellants, there is no further service is being provided to the policy holder and thus there cannot be any more service tax liability arising from such transactions.

8.2 We further find that similar issue involved in the present dispute was examined by the Co-ordinate Bench of this Tribunal in the case of *Steel Authority of India Limited Vs. Commissioner of CGST & Central Excise, Salem* - 021 (55) G.S.T.L. 34 (Tri. - Chennai), wherein it was held as under: -

> ***"15.*** *The Tribunal rejected the contentions advanced on behalf of the Department that penalty amount, forfeiture of earnest money deposit and liquidated damages had been received by the said appellant towards "consideration" for "tolerating an act" leviable to service tax under Section 66E(e) of the Finance Act.*
>
> ***16.*** *In this connection it would be appropriate to reproduce the relevant portions of the decision of the Tribunal in South Eastern Coalfields and they are as follows :*
>
> > *"25. It is in the light of what has been stated above that the provisions of section 66E(e) have to be analyzed. Section 65B(44) defines service to mean any activity carried out by a person for another for consideration and includes a declared service. One of the declared services contemplated under section 66E is a service contemplated under clause (e) which service is agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. There has, therefore, to be a flow of consideration from one person to another when one person agrees to the obligation to refrain from an act, or to tolerate an act, or a situation, or to do an act. In other words, the agreement should not only specify the activity to be carried out by a person for another person but should specify the :*
> >
> > *(i) consideration for agreeing to the obligation to refrain from an act; or*

(ii) consideration for agreeing to tolerate an act or a situation; or
(iii) consideration to do an act.

26. Thus, a service conceived in an agreement where one person, for a consideration, agrees to an obligation to refrain from an act, would be a 'declared service' under section 66E(e) read with section 65B(44) and would be taxable under section 68 at the rate specified in section 66B. Likewise, there can be services conceived in agreements in relation to the other two activities referred to in section 66E(e).

27. It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.

28. It also needs to be noted that section 65B(44) defines "service" to mean any activity carried out by a person for another for consideration. Explanation (a) to section 67 provides that "consideration" includes any amount that is payable for the taxable services provided or to be provided. The recovery of liquidated damages/penalty from other party cannot be said to be towards any service per se, since neither the appellant is carrying on any activity to receive compensation nor can there be any intention of the other party to breach or violate the contract and suffer a loss. The purpose of imposing compensation or penalty is to ensure that the defaulting act is not undertaken or repeated and the same cannot be said to be towards toleration of the defaulting party. The expectation of the appellant is that the other party complies with the terms of the contract and a penalty is imposed only if there is non-compliance.

29. The situation would have been different if the party purchasing coal had an option to purchase coal from 'A' or from 'B' and if in such a situation 'A' and 'B' enter into an agreement that 'A' would not supply coal to the appellant provided 'B' paid some amount to it, then in such a case, it can be said that the activity may result in a deemed service contemplated under section 66E (e).

30. The activities, therefore, that are contemplated under section 66E(e), when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity."

17. *This decision of the Tribunal in South Eastern Coalfields was followed by the Tribunal in M.P. Poorva Kshetra Vidyut Vitran.*

18. *In view of the aforesaid decisions of the Tribunal, it is not possible to sustain the view taken by the Commissioner that since the task was not completed within the time schedule, the appellant agreed to tolerate the same for a consideration in the form of liquidated damages, which would be subjected to service tax under Section 66E(e) of the Finance Act.*

19. *As service tax could not be levied, the imposition of interest and penalty also cannot be sustained."*

9. In view of the foregoing discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants in respect of the amount forfeited on account of non-payment of premium or mis-declaration by the policy holder, which are in no way can be considered as service of 'tolerating or refraining from an act, or to tolerate an act or a situation, or to do an act". Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellants.

10. In the result, the impugned order dated 14.12.2018 is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 31.07.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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