

SC upholds Rajasthan HC order allowing CENVAT credit on reinsurance premium paid by the insurance company

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Summary

The Supreme Court (SC) has upheld the Rajasthan High Court's (HC) order allowing CENVAT credit on the reinsurance premium paid by the insurance company. The Rajasthan HC had noted that the Insurance Act makes it compulsory for every insurer to re-insure a certain percentage of the sum insured on each policy. Therefore, the re-insurance being a statutory obligation, the CENVAT credit of service tax paid on the re-insurance premium was allowed. The SC has dismissed the Revenue's Special Leave Petition (SLP) against the Rajasthan HC's order and stated that the HC's order does not call for an interference.

Facts of the case

- Shriram General Insurance Company Limited (the appellant) is an insurance provider having pooling agreement with other insurance companies for re-insuring its policies. The appellant paid service tax on the premium paid for re-insurance and claimed CENVAT credit of the tax paid.
- The revenue believed the assessee cannot claim credit of such tax paid on re-insurance as an input service as defined under Rule 2(l) of the CENVAT Credit Rules, 2004 (CCR).
- On appeal, the CESTAT noted the decision of the Karnataka HC in PNB Metlife and allowed the service tax paid on the re-insurance premium as input service.
- Aggrieved by the decision of the CESTAT, the Revenue appealed before the Rajasthan HC.

Rajasthan HC observations and ruling (D.B. Central/excise Appeal No. 4/2021 order dated 19 January 2023):

- **IRDA regulations:** In exercise of the powers granted to the IRDA, it has issued the reinsurance regulation for the re-insurance of general insurance business. One of the directions issued by the IRDA in exercise of powers conferred under Section 34 of the Insurance Act was for creation of an insurance pool. In pursuance of the said directions, all general insurance companies in India entered into an agreement for creating the insurance pool.
- **Statutory obligation:** Section 101A of the Act makes it compulsory for every insurer to re-insure

such percentage of the sum insured on each policy as may be specified by the authority with a previous approval of the central government. These directives had statutory force and the act of the insurance companies to create such a pool was not a voluntary act. This pooling system is nothing but a form of re-insurance.

- **Situation is revenue neutral:** If the entire service tax that is collected by the insurer, while selling its insurance policies, has to be deposited without being given the credit of the tax which is paid by it while procuring a policy of reinsurance (as mandatorily required in law), the same would be against the ethos of the CENVAT credit policy, as the same would amount to double taxation, which is not permissible in law. Since the entire situation is revenue neutral, no question of law arises.
- **CENVAT credit allowed:** The transfer of a portion of the risk of the re-insurance has to be considered as having nexus with the output service, as the re-insurance is a statutory obligation and the same is co-terminus with the insurance policy. Therefore, the re-insurance being a statutory obligation, the CENVAT credit of service tax paid on re-insurance premium was allowed.

SC observations and ruling (SPECIAL LEAVE PETITION (CIVIL) Diary No. 4928/2023 order dated 27 February 2023):

- **Revenue's SLP dismissed:** The SC has dismissed the Revenue's SLP against the Rajasthan HC's order and stated that the HC's order does not call for interference.

Our comments

On a similar issue earlier, the Karnataka HC, in the case of PNB Metlife India Insurance Co. Ltd., had upheld the CESTAT Bangalore Bench's order and allowed the CENVAT credit of tax paid on re-insurance services availed from overseas companies by Indian companies. The HC stated that re-insurance is a statutory obligation and the same is co-terminus with the insurance policy issued by assessee. Therefore, the transfer of a portion of the re-insurance risk must be considered as having nexus with output service.

This is a significant ruling and should settle the issue with respect to the availability of the CENVAT credit of service tax paid in case of re-insurance for the insurance sector.

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