

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 70441 of 2013

(Arising out of Order-in-Original No. 03/Commr/C.Ex./Kol-I/2013 dated 05.02.2013 passed by the Commissioner of Central Excise, Kolkata-I, Kendriya Utpad Shulk Bhawan, 180, Rajdanga Main Road, Shantipally, EM Bypass, Kolkata – 700 107)

M/s. United Bank of India

11, Hemanta Basu Sarani,
Kolkata – 700 001

: Appellant

VERSUS

Commissioner of Service Tax

Kendriya Utpad Shulk Bhawan,
180, Rajdanga Main Road, Shantipally, Kolkata – 700 107

: Respondent

APPEARANCE:

Shri Tarun Chatterjee and Shri Raju Mondal, Advocates for the Appellant

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75608 / 2024

DATE OF HEARING / DECISION: 11.03.2024

Order : [Per Shri K. Anpazhakan]

The Appellant is a public sector Bank under the Banking Companies Regulation Act, 1949. The Appellant provides 'banking and other financial service' which is a taxable service under Section 65(12) of the Finance Act, 1994 (hereinafter referred as the 'Act') read with Section 105(zm) of the Act.

2. On the basis of an audit objection raised by CERA, a Show Cause Notice dated 29.01.2010 was issued to the appellant demanding service tax on the following allegations:

- a. Rs. 6,18,000/- (inclusive of Cess) as service tax was short paid for the period from 2006-07 to 2007-08 on reimbursement of postage and other expenses.
- b. Rs.2,09,91,467/- was payable under Rule 6(3)(i) of the CENVAT Credit Rules (CCR), 2004 read with Notification No. 29/2004-S.T. dated 22.09.2004.
- c. Rs.7,03,723/- was payable as interest for the delay in reversal of the CENVAT Credit under Rule 6(3) of the CCR,2004.

3. The Notice was adjudicated vide Order-in-Original No. 03/Commr/C.Ex./Kol-I/2013 dated 05.02.2013 passed by the Commissioner of Central Excise, Kolkata-I, wherein the Ld. Commissioner has confirmed the demands of service tax along with interest and imposed equal amount of tax confirmed as penalty. Aggrieved against the said order, the appellant has filed this appeal.

4. Regarding the demand of service tax of Rs. Rs.2,09,91,467/- under Rule 6(3)(i) of the CENVAT Credit Rules (CCR), 2004, the appellant submits that the demand has been confirmed on the ground that the appellant is providing taxable and exempted services and not maintained separate accounts for the input services credit received and utilized for providing the said taxable and exempted services. The service of banking and other financial services as defined in Section 65(12)(a)(ix) of the Act, includes lending, i.e., overdraft facilities, cash credit facilities, discounting of bills, bills of exchange, cheques, etc. By Notification No. 29/2004-S.T. dated 22.09.2004, interest on overdraft, cash credit facilities and discount are exempted from the Service Tax; this

exemption is only sort of an abatement in the gross value but the Service per say is taxable. Therefore, it is submitted that it cannot be said that the cash credit facilities, overdraft facilities, discounting of bills are exempted service. Accordingly, they submit that Rule 6(3)(i) of the CCR, 2004 shall not apply in the instant case.

4.1. The appellant further submits that during the period 2008-09, the total credit utilized by them for payment of tax was Rs.66,41,251/-. Hence, the demand cannot go beyond the credit availed and utilized; under these circumstances, it is contended that no further demand can be made under Rule 6(3) of the CCR, 2004.

4.2. The appellant submits that the issue is squarely covered by the following decisions:

- I. *Gautam Sahakari bank Ltd. vs. Commr. of C. Ex, Aurangabad [2019 (20) G.S.T.L 584 (Tri.- Mumbai)]*
- II. *Ahmednagar District Central Co-op Bank Ltd. Vs. Commissioner of Service Tax, Aurangabad [ORDER NO. A/86340/2018].*
- III. *Shriram Life Insurance Company vs. Commr. of Cus, C.Ex & S.T., Hyderabad [2019 (31) G.S.T.L 442 (Tri.-Hyd.).*

4.3. The appellant submits that the issue is also squarely covered by the decision of this Tribunal in the case of *M/s. Punjab National Bank VS. Commr. of Service Tax & Central Excise, Kolkata-I [Final Order No.77592/2023 dated 09.11.2023 in Service Tax Appeal No. 70357 of 2013 – CESTAT, Kolkata]*.

4.4. Regarding the demand of service tax of Rs. 6,18,000/- (inclusive of Cess) short paid for the period

2006-07 to 2007-08 on reimbursement of postage and other expenses, the appellant submits that they have already paid the tax along with interest before issue of the Show Cause Notice vide challan number 00001 dated 07.10.2009, which was well before issuance of the Notice and the same has already been appropriated in the impugned order. The appellant is not contesting this issue.

4.5. The appellant submits the whole demand is beyond the normal period. They have been regularly furnishing ST-3 returns with the Department in due time. Therefore, the allegation of suppression is not maintainable. Since the appellant is a PSU, they have no intention to evade payment of service tax. Accordingly, the appellant submits that the demand beyond the normal period is not sustainable. For the same reason, it is their contention that the penalty imposed under Section 78 of the Act is not sustainable.

5. The Ld. Authorized Representative appearing on behalf of the Revenue reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe from the impugned order that service tax of Rs. Rs.2,09,91,467/- has been demanded under Rule 6(3)(i) of the CENVAT Credit Rules (CCR), 2004. The demand has been confirmed in the order on the ground that the appellant is providing taxable and exempted services and not maintained separate accounts for the input services credit received and utilized for providing the said taxable and exempted services.

7.1 We observe that the appellant provides the services of lending, which includes services such as overdraft facilities, cash credit facilities, discounting of bills, bills of exchange, cheques, etc. By Notification No. 29/2004-S.T. dated 22.09.2004, interest on overdraft, cash credit facilities and discount are exempted from the Service Tax. This exemption is in the nature of an abatement in the gross value but the Service per say is taxable. Therefore, it cannot be said that the cash credit facilities, overdraft facilities, discounting of bills are exempted service. Further, the appellant had already reversed credit (by way of cash payment) amounting to Rs.1,01,17,118/- in the month of April,2009. Accordingly, we hold that Rule 6(3)(i) of the CCR, 2004 is not applicable in the instant case.

7.2. We observe that this view has been taken by the Tribunal, Mumbai in the case of *M/s. Gautam Sahakari Bank Ltd. v. Commr. of C.Ex., Aurangabad [2019 (20) G.S.T.L. 584 (Tri. – Mumbai)]*. The relevant portion of the said order is reproduced below: -

"4. We have considered the submissions made by both the sides. We find that the adjudicating authority, for holding that the taxable service equivalent to interest on overdraft facility, interest on cash credit facility and discount on discounting of bills, bills of exchange or cheques is exempted by Notification No. 29/2004-S.T., dated 22-9-2004. Therefore, the service equivalent to the interest is exempted. Hence the provision of Rule 6(3)(i) of Cenvat Credit Rules, 2004 is applicable. Notification No. 29/2004-S.T. is reproduced below :-

"Service tax exemption for providing services of overdraft, cash credit or discounting of bills on value of interest or discount

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of taxable

service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to, -

- (a) overdraft facility;*
- (b) cash credit facility; or*
- (c) discounting of bills, bills of exchange or cheques,*

as is equivalent to the amount of interest on such overdraft, cash credit or, as the case may be, discount, from the service tax leviable thereon under Section 66 of the said Act, subject to the condition that the said interest amount is shown separately in an invoice, a bill or, as the case may be, a challan issued for this purpose."

From the reading of the above notification, it is observed that the notification does not exempt the service as whole whereas the service tax is exempted only to the extent of so much of the value of taxable service provided to a customer in relation to overdraft facility, cash credit facility or discounting of bills, bills of exchange or cheques as is equivalent to the amount of interest on such overdraft, cash credit or as the case may be. It is therefore, very clear that the service per se is not exempted, but a part of the taxable value is only exempted. If this be so, then it cannot be said that the service provided by the appellant is exempted. Accordingly, in respect of taxable service, Rule 6(3)(i) of Cenvat Credit Rules, 2004 shall not apply. As regards the reliance placed by the appellant on the adjudication order of M/s. Kopergaon People's Co-operative Bank Ltd., though it is not binding on us but it has a strong persuasive value. On going through the said order, we find that the Commissioner has dropped the proceedings mainly on the ground that the service per se is not exempted. Only a part of the value is exempted of taxable service under Notification No. 29/2004-S.T., dated 22-9-2004. As we have already discussed above, we agree with this observation. On going through this Tribunal's decision in the case of Vaidyanath Urban Co-operative Bank Ltd., (supra), we find that the identical issue involved in the said case. Therefore, the ratio of the judgment is applicable. The relevant finding of the said order is reproduced below : -

"5. Considering that the issue is full covered by Jost's Engineering (supra) and in the case of Nagar Urban Cooperative Bank Ltd. (supra), I find that the appellant's case is squarely covered. Further,

the aforementioned ruling was not available before the adjudicating authority at the time of passing of the impugned order and rulings were pronounced subsequently. In this view of matter and after recording the finding that the appellant's case are covered by these two rulings, I remand the matter back to the adjudicating authority with a direction to verify the amount of CENVAT Credit reversed. If the same is found to be short then the appellant may be allowed an opportunity to reverse the amount along with interest. It is also held that the Banking and other Financial Service, which are the output service of the appellant are not fully exempted and accordingly, do not fall under the category of exempt service as defined under Rule 2(e) of the Cenvat Credit Rules, 2004."

5. As per our above discussion, we hold that the demand confirmed by the adjudicating authority is not sustainable. Hence the impugned order is set aside. Appeal is allowed."

7.3. The same view has been taken in the following decisions:

- I. Ahmednagar District Central Co-op Bank Ltd. Vs. Commissioner of Service Tax, Aurangabad [ORDER NO. A/86340/2018].*
- II. Shriram Life Insurance Company vs. Commr. of Cus, C.Ex & S.T., Hyderabad [2019 (31) G.S.T.L 442 (Tri.-Hyd.).*

7.4. Further, a similar view was also taken by this Tribunal in the case of *M/s. Punjab National Bank VS. Commr. of Service Tax & Central Excise, Kolkata-I [Final Order No.77592/2023 dated 09.11.2023 in Service Tax Appeal No. 70357 of 2013 – CESTAT, Kolkata]*.

7.5. By relying on the decisions cited above, we hold that the demand of service tax confirmed in the impugned order is not sustainable. Since the demand of service tax is not sustainable, the question of demanding interest and penalty does not arise. Accordingly, we set aside the demands of service tax along with interest and penalty confirmed in the impugned order on the above issue.

8. In view of the above discussions, the appeal filed by the appellant is allowed, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sdd