

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 71118 of 2013**

(Arising out of Order-in-Original No.13/Commr/ST/Kol/2013-14 dated 14.06.2013
passed by Commissioner of Service Tax, Kolkata)

M/s. United Bank of India : **Appellant**
11, Hemanta Basu Sarani, Kolkata-700001.
VERSUS

Commissioner of Service Tax, Kolkata. : **Respondent**
Kendriya Utpad Shulk Bhawan (3rd Floor), 180 Santipally,
Rajdanga Main Road, Kolkata-700107.

APPEARANCE:

Mr. Tarun Chatterjee & Raju Mondal, Advocate for the Appellant

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 76439/ 2024

DATE OF HEARING :16.07.2024

DATE OF DECISION:16.07.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein the demand of Service Tax has been confirmed of Rs. 132.38 Crores along with interest for the period from 16.05.2008 to 06.07.2009. Penalties under Section 77(2) and Section 78 of the Act were also imposed. Against the said order the appellant is before us.

2. The appellant is a banking company and providing service and registered under the category of "Banking and Financial Services". During the course of scrutiny of their Financial Accounts and calculation provided by them along with ST 3 returns, it was found that the appellant did not

consider Forex turn over on account of Inter Banking Transaction of Foreign Currency (both sale and purchase account) towards discharging payment of Service Tax. The appellant stated that in case of Inter Banking Transaction Banks, they do not pay the charges to each other as it is having neutral effect. They had discharged Service Tax liability on Rs. 100/- as charged by both of them for each set of transaction during the period from 16.05.2008 to 06.07.2009 as advised by Indian Banks' Association (IBA) to all Public sector Banks. Since this is a dictated value by IBA for the purpose of discharging payment of Service Tax and no Invoice/Bill are available against such transactions the same cannot be treated as value for the purpose of discharging payment of Service Tax especially when there is specific provision for payment of Service Tax by the person liable to pay Service Tax in relation to purchase and sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorized dealer in foreign exchange or an authorized money changer referred to in sub-clause (zm) and (zzk) of section 65 of the Finance Act, 1994 prescribed with effect from 16/05/2008 vide Notification No. 19/2008-ST dated 10/05/2008. A demand of Service Tax was raised against the appellant for the value of foreign currency transaction involved during the material period in terms of Sub Rule 7(b) of Rule 6 of the Service Tax Rules introduced vide Notification No. 19/2008-ST dated 10/05/2008 with effect from 16.05.2008.

3. The matter was adjudicated. The demand of Service Tax was confirmed.

4. Against the said order, appellant is before us.

5. The Ld. Counsel appeared on behalf of the appellant submits that as per the Notification No. 19/2008-ST dated 10.05.2008 there was an option given to the appellant to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchange towards discharge of Service Tax liability instead of paying Service Tax at the rate specified under Section 66 of Chapter 5 of the Act. It is his contention that as directed by Indian Bankers Association, they have discharged their Service Tax liability Rs. 100 per transaction. Therefore, they are not liable to pay Service Tax as demanded by way of Show Cause Notice as they have complied with a condition under Sub Rule 7 (b) with a Notification dated 10/5/2008.

6. On the other hand, the Ld. Authorized Representative for the Revenue, supported the impugned order and submits that transaction value cannot be fixed or determined by any third party under Service Tax Statute. The consideration of taxable value as per Section 67 (2) of the Finance Act, 1994 is nothing but a value exchanged between two parties –service provider and service receiver. Therefore, the decision of Indian Bank Association cannot override the relevant decision of Service Tax impugned.

7. Heard the parties and considered the submission.

8. We find that the issue has been examined by the Respondent and the same has been clarified by F. No. 137/139/2011-Service Tax dated 5th June, 2015 wherein it has been clarified as under:

*"4. This issue has been examined by the Board. In terms of the first proviso to rule 4A of the Rules, an invoice, bill or challan issued by a banking company or a financial institution includes any document interalia containing description and value of taxable service provided and the service tax payable thereon. In the instant case, the banks had shown the amount of service charges paid or collected for the purchase or sale of foreign currency, description of service, service tax registration no., etc in their inter-banking documents which, in terms of the first proviso to rule 4A of the Rules *ibid*, would be considered as an invoice.*

5. Further, as per sub-rule (7B) of rule 6 of the said rules, the banks had the option to pay service tax at a composition rate of 0.25% of the gross amount of money exchanged, except in the cases where the consideration for the service provided or to be provided was shown separately in the invoice issued by them. Since the banks had issued consolidated invoices showing the consideration or service charges paid or collected for purchase or sale of foreign currency separately, in terms of the second proviso to sub-rule (7B) of rule 6 of the Rules, the option to pay service tax at a composition rate of 0.25% of the gross amount of money exchanged was not available to such banks and they were, thus, required to pay service tax at the rate specified in section 66 of Chapter V of the Act on the consideration or service charges shown separately in the invoice. The fact that one consolidated invoice was being issued will not alter the fact that an invoice was indeed being issued."

9. In view of the above clarification, it is clear that appellants are raising invoices in terms of sub rule 7(B) of Rule 6 of the said Rules by raising invoice Rs. 100 per transaction and they are having an option to pay Service Tax at a composition rate of 0.25% of the gross amount of money exchanged was not available to such banks. Therefore, as the

appellant has discharged Service Tax per transaction at the rate of Rs. 100, in that circumstances, the appellant has complied with the condition of 7(b) of the Rule 6 of the said Rules.

10. In that circumstances, no demand of Service Tax is sustainable against the appellant.

11. Therefore, we set aside the impugned demand and hold that no penalty is imposable on the appellant.

12. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)