

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 55596 of 2014

[Arising out of Order-in-Original No. CHD-CEX-001-COM-62-2014 dated 31.07.2014 passed by the Commissionerate-I, Central Revenue Building, Plot No. 19, Sector 17-C, Chandigarh 160017]

M/s Punjab National Bank

State Govt. Link Cell, Sector-17B, Chandigarh, 160017

.....Appellant

VERSUS

Commissioner of Service Tax, Chandigarh

I

Central Revenue Building, Plot No. 19, Sector 17-C,
Chandigarh 160017

.....Respondent

APPEARANCE:

Present for the Appellant: Ms. Shruti Khandelwal, Advocate

Present for the Respondent: Shri Anurag Kumar, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60456/2024

DATE OF HEARING: 30.07.2024

DATE OF DECISION: 30.07.2024

PER S. S. GARG

The present appeal is directed against the impugned order dated 31.07.2024 passed by the Commissioner of Central Excise and Service Tax Commissionerate, Chandigarh whereby the Ld. Commissioner has confirmed the demand of service Tax of Rs. 1,53,75,352/- along with interest and also imposed equal penalty under Section 78 of the Finance Act 1994 of the Act.

2. Briefly the facts of the of the present case are that the appellant is a Nationalized Bank having its registered office in Chandigarh and was registered with the Service Tax department for providing taxable services in the category of Banking and Financial Services, Transportation of goods by road and Renting of immovable property dated 16.04.2009 as defined under Section 65(105)(zzk) 65(105) (zzp), 65(105) (zzzz) of the Finance Act, 1994. That the Reserve Bank of India (hereinafter "RBI") through a network of its public Accounts Departments and branches of other Agency Banks (appointed under Section 45 of the RBI Act) carries out Govt. transaction for the Central and State Government. The Appellant is an Authorized Branch of Punjab National Bank (hereinafter "PNB") that carries out Central & State government transactions for States of Punjab, Haryana & Himachal Pradesh.

2.2 Appellant was a link branch for Punjab National Bank (PNB), serving branches in Punjab, Haryana, and Himachal Pradesh in relation to government transactions. These branches send summaries of daily transactions to the link branch, which PNB used to credit or debit the branch accounts accordingly. Further, these summaries were consolidated into a single figure on a quarterly basis and reported to the RBI.

2.3 Based on the above consolidated summary, the RBI credited the Appellants' account with the commission earned, out of the total commission received, Appellant retained 25% (approx.) and transfer the remaining 75% (approx.) to the respective branches.

2.4 During the disputed period i.e., 01.10.2006 to 30.09.2011, the Appellant has received total commission of Rs. 13,80,13,654/ out of which only 25% (approx.) of the commission amounting to Rs. 3,53,85,775 is retained by appellant for carrying out State Government business transactions for RBI. Out of 25% of the amount retained, Rs. 1,36,48,430/- are received by the appellant from RBI in lieu of providing services of collection of taxes and duties (treasury business). The department issued a show cause notice dated 23.04.2012 proposing the demand of Rs. 1,53,75,352/- under "Business Auxiliary Service" for the period 01.10.2006 to 30.09.2011. The appellant filed its detailed reply to the show cause notice and after following due process, the Ld. Commissioner vide the impugned order confirmed the demand along with interest and equal penalty. Hence, the present appeal.

3. Heard both the parties and perusal of the material on record.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the binding judicial precedents on identical issue. She further submits that the service provided for Discharge of Sovereign or Statutory functions of the State is outside the purview of Service Tax which makes the entire demand unsustainable.

She further submits that the RBI has delegated its work of managing the currency and business of banking to various agency banks including the appellant and all the activities comes under statutory functions entrusted by RBI under Circular No DGBA/GAD.No.H-5029/42.01.033/2011-12 dated 31.01.2012. Hence, no service tax is chargeable on such transactions.

4.2 She further submits that the services rendered by the appellant to RBI are exempt from Service tax vide notification No. 22/2006-ST dated 13.04.2006 because the appellant was acting as an agency bank of RBI and any services provided by or to RBI are exempt from leviability of service tax. She further submits that this issue is no more res integra and has been held in favour of the assessee bank in the following decisions:

- *State Bank of Hyderabad Versus CCT, Hyderabad - GST dated 20.08.2018 cited as 2018 (11) TMI 165-CESTAT Hyderabad*
- *CCE & S.T. Chandigarh Versus State Bank of Patiala dated 17.10.2016 cited as 2016 (10) TMI 800-CESTAT NEW DELHI-LB*
- *Syndicate Bank Versus Commissioner of Central Excise and Service Tax dated 02.08.2018 cited as 2018 (8) TMI 699-CESTAT Bangalore*

4.3 She further submits that the show cause notice issued in the present case is also defective because it has failed to specify the particular sub-clause of Section 65(19) of the Finance Act, 1994 defining term "Business Auxiliary Services" and thus rendering the

entire demand not sustainable. She also submitted that extended period has wrongly been invoked for the present case as the issue relates to interpretation and all the transactions were recorded in the books of account of the appellant; no suppression has been made by the appellant.

5. On the other hand, Ld. AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, we find that the main services rendered by the appellant to the RBI are exempt from service tax vide notification No. 22/2006-ST dated 13.04.2006. Further, we find that this issue is no more *res integra* and the Larger Bench of the Tribunal in the case of CCE & S.T. Chandigarh Vs. State Bank of Patiala reported in 2016 (10) TMI 800 – CESTAT New Delhi-LB has settled the said issue and has held as under:

"7.4 On careful reading of above reproduced Section 45, it can be noticed that, RBI, under the direction of Central Government of India having regard to public interest, convenience of banking and other factors. can appoint a national bank or the State Bank to transact business as its agent at any place in India. Drawing power from this Section, RBI appoints various national banks/public sector banks for collection of various taxes and making payment of pension etc. This would mean that various national banks are agents of the RBI.

7.5 The Central Govt. of India by Notification No. 22/2006-ST has given exemption from the payment of service tax of any taxable services provided to or by RBI either in India or under Reverse Charge Mechanism. In our view as the respondent assessee is an agent of RBI, exemption granted by notification No. 22/2006-ST, needs to be extended to respondent. In our view the claim of the respondent from exemption of the service tax on the commission received for undertaking the activity of receiving various taxes on behalf of the Govt. of India, seems to be justified inasmuch as that the provisions of Section 45 of RBI Act categorically mandated for appointing national bank or a State Bank by the RBI for specified purposes as directed by Government, and the said Section also mandates that such Banks will be agents of RBI. As whether an agent will be eligible for exemption or otherwise is being contested in the appeal, in our view the question does not arise as Chapter V of the Finance Act, 1994, in Section 65 (7), the term assessee has been defined which is reproduced:-

"Section 65 (7)-Assessee means a person liable to pay the service tax and includes his agent."

7.6 It can be seen from the above reproduced definition, the Finance Act itself acknowledges the fact that the person who is liable to pay service tax includes its agent which would mean in the case in hand that in the absence of Notification 22/2006-ST, RBI would be liable to pay service tax as also banks which are appointed by RBI as agent under Section 45 of RBI Act. Applying the same analogy, in our view if RBI is exempted from the service tax liability in respect of various services, its agent for doing such services also needs to be extended the same benefit.

7.7 We may also look at the present controversy from another angle. State Bank of Patiala has been appointed by RBI as its agent under Section 45 of the RBI Act. RBI itself has been entrusted by the Central Government to transact Government business. Hence once State Bank of Patiala has been appointed as agent of RBI, it is transacting Government business which is in the nature of a sovereign function performed on behalf of the Government and hence not liable to Service Tax.

7.8 In our considered view the judgement of the Tribunal in the case of Canara Bank 2012-TIOL-790- CESTAT-Ahm has correctly interpreted notification no. 22/2006-ST and is correct exposition of the law. In our view the said judgement does not require any reconsideration.

7.9 As regards the case law cited by the learned D.R. and reliance placed in the case of Malwa Industries Ltd (supra) we find that in that case, the Apex Court was considering the situation of exemption by a notification from a countervailing duty. Learned Commissioner (A.R.) was relying upon this decision to canvass his point that exemption notification should be read literally and should be construed liberally once it is concluded that benefits the notification is applicable. We do not find any merits in the said submission made by the learned D.R. inasmuch as that the definition of assessee in the Finance Act in Section 65(7) clearly states that assessee means a person liable to pay service tax and includes his agent. In the case in hand RBI a person liable to pay tax as an assessee but for exemption, will include their agents viz. Banks appointed under Section 45 of RBI Act, to execute functions of RBI. Accordingly, the ratio of the judgement of the

Apex Court as cited by learned A.R. may not be applicable in the facts of this case. In our view the reliance placed by the learned Commissioner (A.R.) in the case of Uttam Industries (supra) may also not carry the case of revenue any further as facts were totally different, than the facts in the case in hand.

8. In view of the foregoing discussion, we answer the reference in favour of the respondent and hold that the law as laid down by the Tribunal in the case of Canara Bank (supra) is correct exposition of law. Present appeal has no merit and dismissed.

7. Further, we find that in the case of Syndicate Bank Vs. Commissioner of Central Excise and Service Tax reported in 2018 (8) TMI 699 – CESTAT, Bangalore, the Tribunal has relied upon the decision in the case of Canara Bank and has observed as under:

5. We find that the Tribunal in the case of Canara Bank cited supra has observed that

"it can be seen that RBI have the right to transact Government business and allow any agent to perform its function; from the agreement also, it is quite clear that the Canara Bank have been appointed as an agent. We find that the decision of Hon'ble Supreme Court on this issue in the case of State of Madras Vs. Cement Allocation Co-ordinating Organization-1971 (2) SCSS/587 & Manu/SC/0636/1997 as quoted by the learned counsel for the Chartered Accountant would be applicable to the facts and the circumstances of the case".

"The Hon'ble Tribunal observed that the observations of the Hon'ble Supreme Court make it clear that exemption available

to the principal would be available to the agent also. For this purpose, since the agent is liable for the exemption which is available to the principal in terms of relationship with the principal of the agent and not because of exemption granted specifically to the agent or principal, we have to hold that the appellant is eligible for exemption. If RBI were to undertake the activity there would have been no question of levy of Service Tax. It was also brought to our notice that RBI is not paying Service Tax. Same functions being carried out by RBI are exempted. Therefore, we hold that the benefit of exemption available to RBI would be available to the agent ie. Canara Bank. The services are in the nature of statutory/sovereign functions and hence not liable to Service Tax"

6. We find that the issue is squarely covered by the above judgment, therefore, we have no doubt in holding that the appellants are working as an agent of RBI in the discharge of sovereign functions, therefore, whatever exemption is applicable to RBI, that should also be applicable to the appellants who are working as an agent in the discharge of statutory/sovereign functions.

8. By following the ratio of the above said decisions, we are of the considered opinion that the impugned order is not sustainable in law and the same is set aside by allowing the appeal of the appellant with consequential relief, if any, as per law.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)