

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 581 of 2012-DB

(Arising out of OIA-SSP/05/SRT-I/2012 dated 17.09.2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

STATE BANK OF INDIA

NANPURA BRANCH, ATHUGAR STREET,
TIMILAWAD, NANPURA, SURAT-GUJARAT

.....Appellant

VERSUS

C.C. E. & S.T. – Surat-I

NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

.....Respondent

APPEARANCE:

Shri. Uday M. Joshi, Advocate for the Appellant

Shri. R.K. Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

Final Order No. A/ 10944 /2023

DATE OF HEARING: 09.01.2023

DATE OF DECISION: 24.04.2023

RAJU

This appeal has been filed by State Bank of India against demand of service tax and imposition of penalties under Section 77 and 78 of the Finance Act, 1994.

2. Learned Counsel appearing for the appellant pointed out that appellant was providing various banking and financial services on which they were paying taxes. They were however not paying any tax on the Commission amount received on account of operation of EPF/ESI account. Demand of service tax on the Commission amount received under this head was raised and confirmed by the lower authorities. The order-in-original imposed penalties under Section 76, 77 and 78. However the impugned order allowed them the relief in respect of penalty under Section 76. The appellants are seeking waiver of penalty on the ground that the service provided by them was entitled to exemption under Notification No. 13/2004 dated 10.09.2004. It was argued that the said

notification exempts taxable service provided by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, to the government of India or the Government of a State.

2.1 It was argued that the issue is not beyond doubt and therefore, invocation of extended period of limitation is also improper.

2.2 Learned Counsel relied on the decision of Tribunal in the case of Canara Bank vide Order No. A/723/WZB/AHD/2012 dated 29.08.2012.

2.3 On the issue of limitation the appellant relied on the following decisions:

- Wagad Infraprojects Pvt. Ltd. 2022 (59) GSTL 95 (Tri-Amd.)
- CC vs Northern Operating Systems Pvt. Ltd. 2022 (61) GSTL 129 (SC)

3. Learned Authorized Representative relied on the impugned order.

4. We have considered the rival submissions. We find that the services provided by the appellant are in relation to the disbursement of EPF and ESI. Notification No. 13/2004-ST dated 10.09.2004 provides following exemption:

".... exempts taxable service provided by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, to the government of India or the Government of a State from the whole of the service tax leviable thereon under Section 66 of the said Act."

It is seen that the exemption granted by the aforesaid Notification relates to collection of taxes. EPF and ESI are not taxes by any stretch of imagination. In this regard, the benefit of Notification 13/2004 dated 10.09.2004 cannot be granted.

5. Learned counsel has also relied on the decision of Tribunal in the case of Canara Bank (supra). In the said case, the issue involved was benefit of Notification 22/2006 dated 31.05.2006. The said exemption Notification read as under:

“In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No. 7/2006-Service Tax, dated the 1st March, 2006, G.S.R. 121(E), dated the 1st March, 2006, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable

thereon under section 66 of the said Finance Act, namely:- (1) taxable services provided or to be provided to any person, by the Reserve Bank of India;

(i) taxable services provided or to be provided by any person, to the Reserve Bank of India when the service tax

for such services is liable to be paid by the Reserve Bank of India under sub-section (2) of section 68 of the

said Finance Act read with rule 2 of the Service Tax Rules, 1994; (iii) taxable services received in India from outside India by the Reserve Bank of India under section 66A of the Finance Act, 1994.

[Notification No. 22/2006-S. T., dated 31-5-2006]”

It is seen that the said Notification is very different and therefore, the decision of Canara Bank has no application in the instant case.

6. We also find that the language of the Notification is very clear and there is no scope of confusion between the EPF / ESI scheme with taxes collected by Government. Therefore, non inclusion of the Commission and claim of exemption under Notification 13/2004 is clearly an attempt to evade the taxes.

7. The appellant has sought benefit of limitation by relying on the aforesaid decisions. We find that the facts in the said cases are significantly different from the instant case and therefore, have no application in the instant case. The appeal is therefore, dismissed.

(Pronounced in the open court on 24.04 .2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)