

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

Appeal No. ST/11120/2016-DB

Appeal No. ST/695/2010-DB

[Arising out of Arising out of OIO-AHM-SVTAX-000-COM-22-15-16 dated 24/02/2016 passed by the
C.S.T & S.T-AHMEDABAD]

[Arising out of OIA- OIA-299/2010/STC/MM/COMMR-A-/AHD dated 14/09/2010 passed by the C.S.T
& S.T.,- AHMEDABAD]

M/s Kunvarji Finstock Pvt Ltd

Appellant

Vs

C.S.T.-Service Tax – Ahmedabad

Respondent

Represented by:

For Appellant: Shri.Jigar Shah & Priyanka Kalwani (Advocate)

For Respondent: Ms. Nitina Nagori (A.R.)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing: 10.09.2018

Date of Decision: 05.12.2018

Final Order No. A / 12707-12708 /2018

Per: Ramesh Nair

Brief facts of the case are that the appellant are engaged in providing Service under the category of Stock Broker as defined under Section 69 of the Finance Act, 1994 (herein after referred to as "the Act") and hold a valid Service Tax Registration No.AAACK8760EST001. It was observed that the appellants had not paid Service Tax on certain amount received on account of their services, such as NSE/BSE transaction charges and SEBI turnover fees which forms an integral part on their services viz. Stock Broker Service. The case of the department is that the appellants were availing wrong exemption on certain amount received by them during providing their

taxable services, such as NSE/BSE transaction charges and SEBI turnover fees as non-taxable amount. However it was observed that they were charging and collecting such amount in their billing / contract notes from their clients/ customers. Accordingly, the Services Tax remands of such NSE/BSE charges were proposed the same confirmed by the adjudicating authority. The Ld. Commissioner (Appeals) in the appeal filed by the appellant also upheld the demand confirmed by the Original Authority, therefore, the present appeals.

2. Shri. Jigar Shah, Ld. Counsel appearing on behalf of the appellant at the outset submits that the identical issue has been considered by this Tribunal in the appellants own case as well as in the other cases also, wherein, it was upheld that similar NSE/ BSE charges collected from the client of the Stock Broker need not to be imported in the gross value of Stock Broker. He place reliance on the following judgments.

- Span Caplease Pvt Ltd Vs. CST Final Order A/12761-12788/2017 DATED 29.09.2017
- Intercontinental Consultants & Technocrats Pvt Ltd Vs. UOI 2013 (29) STR 9 (Del.)
- UOI Vs. Intercontinental Consultants & Technocrats Pvt LTD 2018 (10) GSTL 401 (SC)
- CST VS. Bhayana Builders (P) Ltd 2018 (10) GSTL 118 (SC)
- Suchitra Components Ltd Vs. CCE 2007 (208) ELT 321 (SC)
- Kunvarji Commodities Brokers Pvt Ltd Vs. CST 2018 (4) TMI-543-CESTAT-AHMEDABAD.
- Indeses Securities & Finance Ltd Vs. CST 2018 (2) TMI-569-CESTAT-AHMEDABAD.
- Nizam Sugar Factory Vs. CCE 2008 (9) STR 314 (S.C)

3. Ms. Nitina Nagori, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the issue is that the statutory NSE / BSE charges paid by the appellant Broker and subsequently collected from the client is includable in the gross value of Stock Broker service of the appellant. The very same issue has been considered by this Tribunal in appellants own case as well as in the case of Indses Securities & Finance Ltd (Supra), the relevant portion are both the orders are reproduced below.-

- Kunvarju Commodities Brokers Pvt Ltd Vs. CST 2018 (4) TMI-543-CESTAT-AHMEDABAD.

"6.As far as the issue relating to levy of service tax on turnover charges is concerned, this Tribunal following the judgment in LSE Securities Limited case (Supra) decided the issue in favour of the assessee. Hence, on the said issue Revenues Appeal is devoid of merit. On the issue of inclusion of Computer Linkage Charges collected from the sub broker and paid to the Commodity Exchange in the value of Forward Contract Service Charges, we are of the opinion that, the said issue is no more res-integra, in view of the principle laid down by the Honble Supreme Court in Intercontinental Consultants and Technocrats Pvt. Ltd.s case (Supra). Their Lordships have observed as follows. 29) In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the learned counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited (2015) 1 SCC 1=2014-TIOL-78-SC-IT-CB wherein it was observed as under:

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. *Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips v. Eyre* [(1870) LR 6 QB 1], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

29. *The obvious basis of the principle against retrospectives is the principle of "fairness", which must be the basis of every legal rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."*

30) *As a result, we do not find any merit in any of those appeals which are accordingly dismissed.*

7. *In the result Revenues appeal is dismissed and the assesses appeals is allowed. Appeals are disposed as above."*

- **Indses Securities & Finance Ltd Vs. CST 2018 (2) TMI-569-CESTAT-AHMEDABAD**

"9. The limited question of law involved in the present appeals is to be addressed is: whether the appellants-stock brokers are required to include NSE/BSE transaction charges, SEBI turnover fees, Stamp duty, Depository/Demat charges and Security Transaction charges in the value of brokerage and commission charges recovered from their customers/clients. The contention of the Advocates for the respective appellants is that these charges are collected separately and in accordance with various statutory Bodies Regulations and not retained by the stock brokers but deposited with the authorities concerned viz., Stock Exchanges, hence, such charges cannot form part of the taxable value as alleged by the Dept. The determination of the aforesaid question should not the same has been considered by way of judgments including M/s LSE Securities Ltd (supra)

12.1 Matters before us fall within the periods before 2001 and after 2001 but before 2004. When service tax was introduced in the year 1994 to tax the service provided to investors by stock brokers in connection with sale or purchase of securities listed on a recognized stock exchange, Legislature, up to the year 2001 intended that aggregate of the commission or brokerage charged to the investors by stock broker for sale or purchase of securities shall be taxed under the charging provision of the Act. So also the commission or the brokerage paid by stock broker to any sub-broker was made liable to tax. Such receipts were measure of value for taxation. The

valuation provision incorporated in Section 67 of the Act envisaged that aggregate of commission or brokerage only shall be measure of tax. Basis of taxation was provided in express terms and no implied taxation was permitted by law.

12.2 Law is well? settled that there is nothing like an implied power to tax. The source of power which does not specifically speak of taxation cannot be so interpreted by expanding its width as to include therein the power to tax by implication or by necessary inference. The judicial opinion of binding authority flowing from several pronouncements of the Hon'ble Supreme Court has settled these principles :

(i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section; and

(iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject.

12.3 There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the Legislature's failure to express itself clearly. It is well settled that power to tax cannot be inferred by implication; there must be a charging section specifically empowering the State to levy tax. When these are the principles laid down by Apex Court in the case of *State of West Bengal v. Kesoram Industries Ltd.* - (2004) 10 SCC 201, bringing a strange element to the ambit of tax shall be without authority of law. There was no scope provided by Section 67 of the Act to expend its width to have artificial measure of levy bringing a receipt by implication or inference running counter to the charging provision.

12.4 The scheme of? valuation of aforesaid service which was in force till 15-7-2001 underwent amendment by Finance Act, 2001. The amending Act replaced Section 67 by Finance Act, 2001, prescribing levy of tax on the gross amount charged by service provider (stock broker) for the taxable service provided by him. Such aggregate charge was gross value. An explanation appeared in the amended section declaring that value of taxable service as the case may be shall include certain receipts prescribed by different clauses appearing under Section 67. Clause (a) is the relevant clause insofar as that relates to taxable service provided by stock broker and that is under consideration in these appeals. That clause states that aggregate of commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock broker to any sub-broker shall be liable to service tax. Thus, there is no extended meaning of measure of levy even by amended definition of valuation of taxable service.

12.5 Provision of Section 67 provides the basis to determine the value of taxable service. No ambiguity persists in Section 67 of the Act. No receipt other than commission or brokerage made by a stock broker is intended to be brought to the ambit of assessable value of service provided by stock broker. Charging section in a taxing statute is to be construed strictly. As is often said, there is no equity about tax. If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute [Ref : *Govt. of Andhra Pradesh v. P. Laxmi Devi* - (2008) 4 SCC 720 - AIR 2008 SC 1640].

13. Learned? Counsels arguing the matter are correct to say that budget speech of the Hon'ble Finance Minister made clear what was intended to be taxed in respect of service provided by stock broker. It was submission of the learned Counsel Shri Mittal that insofar as stock brokers are concerned, brokerage or commission charged by them only from value of taxable service and that was intended to be taxed by the budget of 1994-95. This was the proposal in Part'B' of the Budget presented to the Parliament on 28th February, 1994. Reading of the legislative intent from the budget speech and the express legislation in Section 67 of the Act does not leave any room for implication of ambiguity. Therefore, express grant of the statute no way leaves scope for implication to make the statutory grant ineffective. Law being well settled that there is no intendment in taxation and the State has to discharge its burden of proof to bring the subject into tax, there is no scope

to bring any other element of receipt other than brokerage or commission to the scope of assessable value in respect of service provided by stock brokers.

14. Normally value? is derived from the price and value is the function of the price. This is conceptual meaning of value. Section 67 is the sole repository of law governing value of taxable service provided by the stock broker. Any charge on the non-includible elements other than brokerage or commission will result in arbitrary taxation. Similarly receipts not in the nature of commission or brokerage should not be taxed in disguise. The brokerage or commission service provided by stock broker shall be liable to service tax. That being consideration for taxable service provided, become assessable value of such service. Because tax is compulsory exaction, no subject shall be made liable without authority of law. To the extent authority is vested, only to that extent tax can be imposed. Commission or brokerage charged by stock broker are only liable to tax by express provision of law. Any other exercise of authority beyond that shall make that fatal.

15. The correct assessable value of taxable service usually is the intrinsic value of the service provided since service commands that value only and that should only be taxed without any hypothetical rule of computation of value of taxable service under Section 67 of the Act. The other receipts a stock broker makes are irrelevant for determination of the assessable value of taxable service provided by him. Thus the test is whether a receipt of stock broker is in the nature or commission or brokerage to levy service tax.

Burden of proof failed to be discharged by Revenue to bring the receipts to charge

16. The appellants in these appeals received "turnover charges", stamp duty, BSE charges, SEBI fees and DEMAT charges contending that the same was payable to different authorities and claimed that the same is not taxable. But Revenue taxed the same on the ground that such receipt by stock broker was liable to tax. Revenue failed to bring out whether the turnover charges and other charges in dispute in these appeals received by appellant were commission or brokerage. The character of receipts was claimed by appellants as recoveries from investors to make payment thereof to respective authorities in accordance with statutory provisions of Indian Stamp Act and SEBI guidelines and were not received towards consideration in the nature of commission or brokerage of sale or purchase of securities. While burden of proof was on Revenue to establish that such receipts were in the nature of commission or brokerage or had the characteristic of such nature that was failed to be discharged. The character of commission or brokerage is remuneration for the service of stock broking provided by a stock broker to investors. Therefore, aforesaid charges realized by appellants were not being of commission or brokerage are not taxable and shall not form part of gross value of taxable service. On merit, all the appellants succeed on the fundamental principles of taxation. Therefore, other contentions on merit made in respective appeals are not considered in this order."

"10. Similar view has been expressed recently by the Tribunal in M/s Consortium Securities Pvt Ltd's case (supra). We do not find any reason to deviate from the ratio laid down in the aforesaid judgments of this Tribunal. We are also of the view that the allegation of the department that the demat charges collected by the brokers are banking and financial service, hence taxable, also devoid of merit in as much such charges are collected by the Appellant and paid to the depository participants viz. CDSL/NSDL who are authorised to levy such charges under the Depositories Act, 1996. Thus, in view of the aforesaid precedent, we do not find merit in impugned orders and accordingly set aside. The appeals are allowed with consequential relief, if any, as per law."

From the reading of the above judgments it is cleared that the identical issue has been considered by this Tribunal relying on various judgments including Supreme Court judgment, therefore, we are of the

view that the demand confirmed by the lower authority is not sustainable, in view of the settled position of law in the above judgment.

5. Accordingly, the impugned orders are set aside. The appeals are allowed.

(Pronounced in the open court on 05.12.2018)

(Raju)
Member (Technical)

Prachi

(Ramesh Nair)
Member (Judicial)