

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

**Service Tax Appeal No.979 of 2009**

(Arising out of Order-in-Original No.16/Commissioner/LKO./CX/2009 dated 31/08/2009 passed by Commissioner of Customs, Central Excise & Service Tax, Lucknow)

**M/s Sahara India,**

(Sahara India Bhawan-I,  
Kapoorthala Complex, Aliganj, Lucknow)

VERSUS

**.....Appellant**

**Commissioner of Central Excise, Lucknow**

**....Respondent**

(7A Ashoka Marg, Lucknow)

**APPEARANCE:**

Shri B.L. Narasimhan, Advocate &

Shri Prakhar Shukla, Advocate for the Appellant

Shri Deepak Kumar, Special Authorized Representative for the  
Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

**FINAL ORDER NO.70036/2024**

DATE OF HEARING : 29 August, 2023  
DATE OF PRONOUNCEMENT : 29 January, 2024

**SANJIV SRIVASTAVA:**

This appeal is directed against Order in Original No 16/Comm/LKO/CX/09 dated 31.08.2009 of the Commissioner Central Excise Lucknow. By the impugned order following has been held:

**"ORDER**

*In the facts and circumstances of the case and in view of  
the discussions and findings in the foregoing paragraphs:*

1. *I confirm demand of Service Tax amounting to  
Rs.80,99,58,723.00 (Rupees Eighty Crore Ninety Nine Lacs*

*Fifty Eight Thousand Seven Hundred and Twenty Three only) on M/s Sahara India, Sahara Bhawan-1, Kapoorthala Complex, Aliganj, Lucknow in respect of "Business Auxiliary Services" rendered by them to SIFCL during the period 01.07.03 to 31.07.06. I appropriate the amount of Rs 10 Crores deposited by them. I direct them to pay the balance forthwith.*

2. *I also direct M/s Sahara India, Sahara Bhawan-1, Kapoorthala Complex, Aliganj, Lucknow to pay interest at applicable rates, in terms of Section 75 of the Finance Act, 1994.*
3. *I impose a penalty of Rs 80,99,58,723.00 (Rupees Eighty Crore Ninety Nine Lacs Fifty Eight Thousand Seven Hundred and Twenty Three only) under Section 76 Finance Act, 1994. I direct them to pay the penalty forthwith.*
4. *I impose a penalty of Rs 1000.00 (Rupees One Thousand only) under Section 77 Finance Act, 1994. I direct them to pay the penalty forthwith.*
5. *I also impose a penalty of Rs 80,99,58,723.00 (Rupees Eighty Crore Ninety Nine Lacs Fifty Eight Thousand Seven Hundred and Twenty Three only) under Section 78 Finance Act, 1994. I direct them to pay the penalty forthwith."*

2.1 Appellant is a partnership firm engaged in mobilizing deposits from the public under various deposit schemes of M/s Sahara India Financial Corporation Limited (SIFCL). With effect from 01.01.2005 SIFCL also became a partner in the partnership firm of appellant.

2.2 Appellant entered in MOU with the SIFCL dated 01.04.2001, 20.09.2003 and 23.05.2006. As per the MOU appellant was required to undertake following activities:

- To conduct, promote, introduce and secure business on behalf of SIFCL under various schemes floated by SIFCL;
- To collect requisite amount from participating members of these schemes and remit it to SIFCL.

- To issue receipts to the members in the name of SIFCL only.
- To arrange the payments of maturity/ pre maturity/ secured loan to the depositors against the deposits made by them under the various schemes, on behalf of SIFCL.

As per MOU in lieu of above SIFCL will pay to the appellant an amount towards expenses incurred in running of its offices for administering these schemes. The amount paid will be determined in following manner:

- 5%/ 6% of the opening balance of the audited aggregate deposit liability under various schemes on account of daily deposit and recurring deposit as on 1<sup>st</sup> April of each financial year;
- 0.25%/ 2% of the opening balance of the audited aggregate deposit liability under various schemes on account of fixed deposits as on 1<sup>st</sup> April of each financial year;
- Provided that the total consideration as computed above shall not exceed 3.75% of the aggregate deposit liability as on 1<sup>st</sup> April of each financial year.

2.3 Acting on the intelligence that the appellant were evading the payment of service tax under the category of Business Auxiliary Services, DGCEI initiated investigations against the appellant. The investigation culminated into Show Cause Notice dated whereby appellants were asked to show cause as to why:

- i) *Service tax amounting to Rs 87,76,30,381/- (Rupees Eighty Seven Crore Seventy Six Lakh Thirty Thousand Three Hundred and Eighty One only) and Education Cess amounting to Rs 1,23,76,789/- (Rupee One Crore Twenty Three Lakh Seventy Six Thousand Seven Hundred and Eighty Nine only) not paid by the should not be demanded and recovered from them in terms of Sub section 1(a)/ proviso to sub-section 1 of section 73 of the Finance Act, 1994. Service tax amounting to Rs*

*10 (ten) Crore already paid by them under protest should not be appropriated against the amount supra.*

- ii) Interest at the appropriate rate on the said amount of service tax and education cess should not be charged and recovered from them in terms of Section 75 of the Finance Act, 1994.*
- iii) Penalty should not be imposed upon them in terms of Section 76 and 77 of the Finance Act, 1994.*
- iv) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994.*

2.4 The show cause notice was adjudicated as per the impugned order referred in para 1 above. Aggrieved appellants have filed this appeal.

3.1 We have heard Shri B. L. Narasimhan and Shri Prakhar Shukla, Advocates for the appellant and Shri Deepak Kumar Special Counsel for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- Show cause notice and impugned order has classified the activities undertaken by them as business auxiliary service under sub-clause (ii) and (iv) of Section 65 (19) for the period prior to 10.09.2004 and under sub clause (ii), (vi) and (vii) of Section 65 (19) for the period post to 10.09.2004. Same activity could not have been classified under multiple categories during the same period and during the different periods as has been held in following decisions
  - ESS GEE Real Estate Developers Pvt Ltd [2020 (34) GSTL 486 (T-Del)] affirmed by Hon'ble Supreme Court as reported at [2020 (34) GSTL J 93 (SC)]
  - CERSAI [2023 (4) TMI 435 (CESTAT-Delhi)]
  - Incredible Unique Buildcon Pvt Ltd. [2022 (65) GSTL 377 (T-Del)]
- For the period post 10.09.2004, classification has been made under (vi) while holding it to be classifiable under (ii) for the period prior. Both the clause are mutually

exclusive. In fact all the seven clauses of Section 65 (19) are mutually exclusive.

- Clause (iv) of Section 65 (19) as it stood before 10.09.2004 and clause (vii) after 10.09.2004, relating to incidental and auxiliary activities are not stand alone activities and unless those are rendered in relation to the other activities mentioned in the previous clauses as has been held in following decisions:
  - Atlas Documentary Facilitators Co Pvt Ltd. [2017 (50) STR 22 (T-Mum)]
  - Federal bank Ltd. [2008 (10) STR 320 (T-Bang)]
- Sub clause (i) of Section 65 (19) has been impliedly given up by the Id Commissioner, while holding that the activity of accepting deposits is rendering of service and hence covered by sub clause (ii). Reliance placed on the circular dated 05.11.2003 is incorrect as this circular has been quashed by Hon'ble Andhra Pradesh High Court in Karvy Securities Ltd. [2006 (2) STR 481 (AP)]
- Services rendered by the appellant to SIFCL can be classified under any of sub clauses of Section 65 (19) only if the activity of accepting the deposits from the customers can be treated as service in as much as all the relevant sub clause refer to '*service provided by the client*'. Commissioner has held that SIFCL is in business of accepting deposits and since the same is not goods, that amount to service. This is contrary to the decision in case of Jetlite [2011 921) STR 119 (T-Del)], Steria India Ltd. [2017-TIOL-3837-CESTAT-ALL];
- Accepting deposits from the customers cannot be considered as 'service' since the most important element of service, i.e., consideration is absent as much as contractually there is no consideration either paid or payable by the customer.
- After introduction of Support Services of Business or Commerce under Section 65 (104c) of the Act from 01.05.2006 for the same very activity appellant has taken

registration under this category, and hence no tax can be demanded under any other category for the previous period. Reliance is placed on the following decisions:

- Indian national Shipowners' Association [2009 (14) STR 289 (Bom)]
- CBRE South Asia Pvt Ltd [2020-TIOL-197-CESTAT-Del] affirmed by Hon'ble Supreme Court as reported at [2021-TIOL-06-SC-ST-LB]
- Malviya national Institute of Technology [2019 (6) TMI 127-CESTAT NEW DELHI]
- Sourav Ganguly [2020-TIOL-1687-CESTAT-KOL]
- Global Coal & Mining Pvt Ltd. [2020 (36) GSTL 77 (T-Delhi)]
- Capital transport Convoy Contractors [2016 (2) TMI 546 CESTAT NEW DELHI]
- Extended period of limitation is not invokable since the appellant was under bonafide belief that the activities performed by them are not taxable under the category of business auxiliary services.
- For the same reason the penalty is also not imposable.
- They are entitled to claim deduction of the reimbursable expenses from the gross amount charged in view of the decisions as follows:
  - Intercontinental Consultants and Technocrats Pvt Ltd. [2012-TIOL-966-HC-DEL-ST] affirmed by the Hon'ble Supreme Court at [2018 (10) GSTL 401 (SC)]

3.3 Arguing for the revenue learned special counsel submits that-

- Appellant activities are covered under the taxable category of Business Auxiliary Service under clause (ii) and (iv) ibid for the period 01.07.2003 to 09.09.2004.
- The word service used in (ii) is service and not taxable service. This clause will be applicable if the service is provided by the appellant to service recipient, even if the

service provided by the recipient does not fall within the category of taxable service. It is a settled principle in law that the taxing statute should be interpreted literally. Reliance is placed on the following decisions;

- Reliance Industries [2017 (6) GSTL 113 (SC)]
  - ALD Automotive [2018 (364) ELT 3 (SC)]
  - Doypack System Pvt Ltd [1988 (36) ELT 201 (SC)]
  - Hemraj Govardhan Das [1978 (2) ELT J 350 (SC)]
  - Bhalla Enterprise [2004 (173) ELT 225 (SC)]
- The contention of the appellant that for service to fall under promotion or marketing of service provided by client, the service recipient must be service provider for some service, is correct but their conclusion that the service provided by the service recipient should be different than the service provided to them by the appellant is erroneous.
- The client of the appellant is engaged in the service of encouraging saving habits among the public & to accept deposits as per directive of RBI whereas the appellant is engaged in providing services to SIFCL by promoting or marketing the service provided by their client SIFCL. Thus adjudicating authority has rightly concluded that the services of the appellant are covered by clause (ii) & (iv) under BAS for the period 01.07.2003 to 09.09.2004.
- The appellant's activities are covered under the clause (vi) of Section 65 (19) ibid for the period 10.09.2004 to 31.07.2006.
- Appellants have contended that the (ii) of Section 65 (19) continued as such even after introduction of (vi) in the said section with effect from 10.09.2004. Their contention relying on certain case laws to effect that, if the activity was covered under the (ii) then how can the same be classified again under (vi) is without any substance. Normally this would not happen, but when a more specific entry is introduced for defining the same service rendered then the classification has to be done as per the specific

entry. Section 65 A of the Finance Act, 1994 provided for the application of this principle for classifying the services which are classifiable under more than one entries. The decisions referred to by the learned counsel are distinguishable. Thus it is possible that the same activity of the appellant is classifiable with reference to (ii) of Section 65 (19) up to 9.10.2004 and with reference to (iv) thereafter.

- The contention of the appellant that (vi) is applicable only if SIFCL is rendering any taxable service to its clients namely depositors as it is not the case that accepting of deposit is in the nature of taxable service. It has been stated earlier also that the phrase used in section 65 (19) (vi) is service and not taxable service. Thus this contention is not tenable.
- Further the contention that SIFCL is not their client and hence (vi) will not be applicable is also not tenable. Existence of client (service receiver), service provider and payment of service charge are 3 parameters for levy of service tax. The contention of the appellant that SIFCL is not their client is based on the ground that they do not render any professional service to them. Black Law Dictionary defines client and the appellants have been engaged by SIFCL for supporting the professional line of work relating to acceptance deposits under various schemes and loans floated by the SIFCL, which in absence of appellant would have been carried out by the SIFCL. This implies that SIFCL is a client, when all three parameters referred above are satisfied.
- MOU provided that appellant was required to work as an agent of SIFCL; to secure business on behalf of SIFCL, to issue receipt to the depositors in the name of SIFCL, to issue receipt to the depositors in the name of SIFCL and to render services to SIFCL through its various office. Thus appellants were providing all the services on behalf of SIFCL and were receiving consideration for the same.

Hence they have provided service on behalf of their client. Thus the contention that the post 10.09.2004 their services cannot be classified as provision of service on behalf of client is not correct.

- Appellant had never earlier raised the contention that their activities were correctly classifiable as "Business Support Services" either before the adjudicating authority or in the appeal memo and has raised this contention for the first time during hearing. The raising of this plea at the time of final arguments is contrary to settled law on the subject as per decisions in case of:
  - Modern Industries Ltd. Vs Oriental Insurance Co Ltd. [2000 (2) SCC 734]
  - DLF Ltd. [2014 (302) ELT 303 (T-Ahmd)].
- Further in terms of the clarification dated 28.02.2006 [F No 33/4/2006-TRU)] the services rendered by the appellant were correctly classifiable as BAS
- In the same clarification it has been stated *"For the sake of clarity and ease of classification, certain categories of services are clubbed together, and a new service category created. Some of the newly specified services may also contain services which are presently covered under some of existing services. The scope and coverage of individual service should be interpreted strictly in accordance with the statutory provisions. This aspect needs to be kept in mind while classifying the taxable services."* In view of the above clarification also the contention made by the appellant that services provided by them are correctly classifiable under BSS is not correct, particularly when the said services are taxable under the category of BAS.
- Appellants have not indicated any basis of claiming the classification under the category of BSS. At Sr No 11 on page 363 of the paper book appellant has themselves declared the *"Nature of Service: The firm is engaged in services to provide office space along with infrastructural facilities like telephone security etc., from its branches in*

*India which is taxable under Business Support Service. Therefore, we are liable to pay Service Tax under the said category with effect from 1.05.2006.”* From this it is seen that appellant has taken registration under this category in respect of services which are not in dispute in the present proceedings. Just for the reason that the appellant had obtained registration under the category of BSS will not exclude the applicability of the BAS in respect of activities undertaken prior to it.

- Appellants claim for reimbursable expenses has not been denied by the adjudicating authority, it has been disallowed for the reason that the appellants were not able to produce clinching evidence in this regard. The claim made can be allowed subject to production of such evidences before the original authority.
- Appellants have not adduced any evidence about the basis on which they entertained bonafide belief that their activities were not taxable as BAS, hence the invocation of extended period to demand this tax for period 2003 to 2006 by invoking extended period of limitation can be faulted with.
- Adjudicating authority has in her order recorded that conditions prescribed under Sub Rule 7 (4) have not been fulfilled as the appellant has neither obtained registration nor submitted the relevant documents as specified under Rule 4 and 9. Their contention that the exercise is revenue neutral does not serve any purpose as taking CENVAT Credit, statutory provision of said rules has to be fulfilled by them.
- The appeal has no merits.

4.1 We have considered the impugned order along with the submissions made in appeal, during the course of arguments and in the written submissions filed by both the sides.

4.2 Section 65 (19) of the Finance Act, 1994 as amended from time to time during the period of dispute as relevant for these

proceedings is reproduced below:

**Period up to 09.10.2004**

(19) *"business auxiliary service" means any service in relation to,-*

- (i) *promotion or marketing or sale of goods produced or provided by or belonging to the client; or*
- (ii) *promotion or marketing of service provided by the client; or*
- (iii) *any customer care service provided on behalf of the client; or*
- (iv) *any incidental or auxiliary support services such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer or public relation services,*

*and includes services as commission agent, but does not include any information technology service.*

**Post 09.10.2004**

(19) *"business auxiliary service" means any service in relation to,-*

- (i) *promotion or marketing or sale of goods produced or provided by or belonging to the client; or*
- (ii) *promotion or marketing of service provided by the client; or*
- (iii) *any customer care service provided on behalf of the client; or*
- (iv) *procurement of goods or services, which are inputs for the client; or*
- (v) *production of goods on behalf of the client; or*
- (vi) *provision of services on behalf of the client; or*
- (vii) *any service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of*

*prospective customer or vendor, public relation services, management or supervision,*

*and includes services as commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section (2) of the Central Excise Act, 1944 (1 of 1944)*

4.3 From the definition of Business Auxiliary Service as per Section 65 (19) reproduced as above it is quite evident that for the period up to 09.10.2004, the clause (ii) was with reference to promotion and marketing of services provided by the client and clause (iv) was with reference to the incidental or auxiliary support services provided to the client. The clause (i), (ii), (iii) & (iv) were mutually exclusive and referred to different categories of activity which need not necessarily be in relation to the taxable service provided by the client. Counsel has argued that the client of appellant is in business of accepting deposits, which per-se is not a service hence the clause (ii) and (iv) of section 65 (19) would not be applicable to them, and their services cannot be taxed under this category. On the contrary Commissioner has in the impugned order applied this clause to hold that the services provided by appellant to fall under the category of "business auxiliary services by application of these two clauses. To understand the exact purport of the word 'service' used in this clause we need have no option but to refer to the general understanding of the word service as the same has not been defined in the Finance Act, 1994.

4.4 Commissioner has in impugned order observed as follows:

*"16 The demand of service tax as per the notice issued by DGCEI, New Delhi on the noticee is primarily on the basis of partnership deed and MOU's consisting of covenant of agreement between the Noticee and SIFCL. The essence of the MOUs therefore has to be critically examined. The salient features of the MOUs are recapitulated below;-*

16.1 *M/s SIFCL is a residuary Non Banking Companies and makes investment as per directive issued by RBI from time to time. The deposits received by M/s SFICL is required to be invested as per directions given by RBI. M/s SIFCL had been incorporated with a view to carry on as principal business of encouraging saving habits among public and to accept deposits in accordance with the directives issued by Reserve Bank of India for a Residuary No Banking Companies and shall not carry on the business as banned under Banking Regulation Act, 1949, and Prize Chits and Money Collection Scheme (Banking) Act, 1978.*

16.2 *The noticee was continuing facilitating successful launching/ running of the saving schemes floated by M/s SIFCL by utilizing its large and well organized infrastructure as per the MOUs and above MOU were duly approved by Central Government under Section 297 of the Companies Act, 1956, as per the approval letter received from the office of the Regional Director 9NR) department of Company Affairs Govt. of India.*

16.3 *The Noticee has already built up well equipped infrastructure facilities, having more than 1500 offices with, the required manpower at various places and in different parts of country. The staff & officers of the noticee have sufficient professional expertise for running business of savings & finance, as they have been doing it since last many years & whereas the noticee is also able to provide field staff & field force like Agents, Field Officers etc., which are necessary & required for carrying on & conducting business as Residuary Non Banking Financial Institution.*

16.4 *As per the agreement with SIFCL, the noticee continued to act as an agent for receipt of fixed deposits and render the service mentioned in the agreement. With all service conditions and facilities readily available with the noticee, M/s SIFCL has contacted the Noticee to*

*continue its cooperation with M/s SIFCL to enable them to continue its relationship to promote and manage its business of para banking and the Noticee has agreed to continue its business co-operation with M/s SIFCL and to continue to act as Agent to M/s SIFCL for its para banking related business activities which have been discussed amongst parties and have been mutually agreed among themselves.*

**The Agreements covenant as under:**

16.4.1      *The noticee shall continue to work as Agent to Sahara India Financial Corporation Limited to conduct, promote, introduce and secure business on behalf of M/s SIFCL under all its scheme which may be changed, varied, suspended and modified from time to time as per the instructions of M/s SIFCL.*

16.4.2      *The noticee shall collect the requisite amount from the participating members of saving schemes and shall remit it to M/s SIFCL the amount so collected through its branches along with the statements of accounts. Further the receipt shall be issued to the members in the name of M/s SIFCL. The noticee shall also arrange on behalf of M/s SIFCL for payments of maturity/ pre maturity/ secured loan to the depositors against the deposits made by the Depositors under various saving schemes run by M/s SIFCL.*

16.4.3      *The noticee shall submit to M/s SIFCL statement of accounts or such other information as M/s SIFCL may require from time to time for its financial data or other matters.*

16.4.4      *The noticee shall render the services to M/s SIFCL through its various offices being presently run by opening new offices or shifting the offices from one place to other, through its staff and officers and shall keep it manpower aware of the various directions issued by RBI to Residuary Non Banking Financial companies (RNBC's)*

16.4.5      *The noticee shall be required to give 30 day notice to Sahara India Financial Corporation Limited prior to opening of an branch office for mobilization of public deposits and prior public notice of three month in leading newspapers before closing a branch shall be given by the noticee with intimation to M/s SIFCL.*

16.4.6      *It is agreed by the parties in MOU's that M/s SIFCL shall pay the noticee towards expenses incurred in running of its office branches and rendering all services as agent under the provision contained therein. An amount computed, as per the following manner, of the opening balance of audited aggregate deposit liability of M/s SIFCL as on 1<sup>st</sup> April of every financial year shall be paid to the noticee by Sahara India Financial Corporation Limited in the following manner:*

- a) 5% of the opening balance of audited aggregate deposit liability under various scheme on account of daily deposit and recurring deposit of M/s Sahara India Financial Corporation Limited as on 1<sup>st</sup> April of each financial year; and*
- b) 0.25% of the opening balance of audited aggregate deposit liability under various scheme on account of fixed deposit of Sahara India Financial Corporation Limited as on 1<sup>st</sup> April of each financial year.*

*Provided that the total consideration as referred to above in sub-clause a) and b) shall not exceed 3.75% of the aggregate deposit liability as on 1<sup>st</sup> April of each financial year as outstanding in the books of M/s SIFCL. The amount payable to M/s Sahara India shall be paid in four quarterly installments.*

16.4.7      *The noticee shall remit to M/s SIFCL the net amount of deposits collected by the noticee under the various schemes of deposits run by M/s SIFCL after meeting all commitments for payments to depositors under all categories as set out in the respective deposit schemes.*

16.4.8 *M/S SIFCL will allow the noticee to retain an amount equivalent to the sum required for meeting maturities/ pre maturities/ secured loan for the succeeding fortnight, out of collection of deposits under various deposit schemes. The sum so retained with the noticee shall not bear any interest and will be used to meet the requirements of prompt payments of maturities, pre maturities, secured loan, death help etc., as set out in various deposit schemes.*

16.4.9 *M/S SIFCL has right to appoint at its cost any officer and/ or inspector and/ or firm of Chartered Accountants for verification of deposits liability, maturity/ pre maturity payments, death help, loan to members, and/ or expenses which are borne by M/s SIFCL and incurred by noticee*

16.4.10 *M/s SIFCL shall have the right to appoint any other Agent/ Agents to promote and secure its business and the noticee shall have no objection to any such appointment.*

16.4.11 *The staff officer of the noticee shall continue to remain the employees of the noticee and M/s SIFCL shall have no lien on any of employees, assets, tenancy agreements etc.*

16.4.12 *Any change in the constitution of the noticee following its re-constitution in future shall not affect the carrying out of this agreement.*

17. *Another Memorandum of Understanding effective from 01.04.2006 was entered between the noticee and M/s SIFCL was submitted which was also scrutinized, differs from the earlier agreement in as much as the Noticee shall act as an agent to m/s SIFCL and shall collect deposits from public through different scheme framed by M/s SIFCL and tender money so collected immediately of M/s SIFCL the consideration agreed by the parties to this MOU which the SIFCL would pay against the services of M/s Sahara*

*India equivalent to 6% of the deposit collections during the period from 01.04.2006 to 30.09.2006 under its daily and recurring deposit schemes and 2% of deposit collections during the period from 01.04.2006 to 30.09.2006 under its fixed deposit schemes for performance of functions as an Agent.*

*18. In view of the above following issues emerge for determination in these adjudication proceedings:-*

*18.1 whether during the relevant period there is provision of 'taxable service' in the nature of "Business Auxiliary Services" as provided by the Noticee to M/s SIFCL and whether Noticee is liable to pay Service Tax on the same:*

*18.2 Whether, the value of "Business Auxiliary Services" has escaped assessment and suppression of material facts with intent to evade payment of Service Tax, the extended period of demand for relevant period under Section 73 of FA'94 was invokable.*

*18.3 Whether the payout/ commission received by the noticee was cum service tax for the period of demand show cause notice.*

*18.4 Whether the CENVAT Credit on the input service was admissible to the Noticee during the period of demand.*

*18.5 Whether the Noticee is liable to penalty under Section 76, 77 & 78 of the FA'94 for violation of different provisions of the FA'94."*

*....*

*20.3 The Noticee's further main contention is that M/s SIFCL is not engaged in the providing any service or sale of goods. The deposit accepted by them is required to be invested as per the direction of RBI. The deposits are actionable claim and money which are an actionable claim and money which are not goods as per definition of goods given in sales of Goods Act, 1930. It is submitted that M/s SIFCL does not deal in goods and also do not provide any*

*services. Yet, the fact remain that they have appointed the noticee for collection of deposit and other related works as mentioned in the agreement. The Noticee has submitted that they are providing services in relation to the actionable claim and money which are not goods as per the definition of goods given in the Sales of Good Act, 1930. Due to this fact i.e. goods are not covered under the purview of service tax, the Noticee has not provided any services under the category of BAS.*

*I this regard, it is relevant to mention a circular issued by the Board dt 05.11.03. which is as under:*

*"Circular No. 66/15/2003-ST Nov 5, 2003 (F No 249/4/2003-CX.4) Applicability of service tax on commission income earned on distribution and marketing of units of mutual fund.*

*I am directed to say that some doubts have been raised regarding application of service tax on the activity of Mutual Fund Distribution as to whether*

*1) the commission received by distributors on mutual fund distribution as liable to Service Tax under the category of Business Auxiliary Services?*

*2) the services provided is exempt from service tax in terms of Notification No. 13/2003 dated 20.6.2003?*

*In this connection, it is clarified that the services provided as referred above are primarily in nature of the services of commission agent in relation to clause (ii) and (iv) of the category of services mentioned in the definition of Business Auxiliary Services and hence should be leviable to service tax under this category. This activity does not get covered under exemption Notification No 13/20003-ST dt 20.6.2003 as this is not in relation to sale or purchase of goods. The exemption provided under Notification 13/2003-ST is applicable only for commission agents dealing in goods."*

*On perusal of the circular, it is seen that the provision of service by the noticee to SIFCL is similar in nature to the activities undertaken by the noticee and the commission/ consideration received by them as agent from the principal (SIFCL) is liable to the service tax under BAS on the logic explained in this circular.”*

4.5 The relevant clauses of Memorandum of Association of SIFCL are reproduced below, which show the entire gamut of businesses of M/s SIFCL:

*“(A) The main objects to be pursued by the company on its incorporation is:*

*1. To establish, promote, conduct, manage, maintain, improve, regulate, run, work and control the different type of schemes for encouraging the habit of savings, deposit and wise economy amongst Public and also help men, women and children for their economical, social and educational welfare through its schemes in compliance with RBI Directions and Guidelines but not to carry on the banking business as defined under the Banking Regulation Act, 1949.*

*2. To borrow and receive money as deposits, loan or otherwise at interest or otherwise subject to Section 58A, 292, 293 of the Companies Act, 1956, and directions issued by reserve Bank of India, Issue debentures or debenture stocks bonds or other instruments of similar nature, perpetual or otherwise convertible into any other class of security or otherwise, unsecured or by creating a charge upon all or any of company’s assets (both present and future) including its uncalled capital, if any and issue bonds, hybrid debt, subordinate debt, bills of exchange, promissory notes or other obligation or securities or issue such other instrument of similar nature as it may deem fit for the purpose of company’s business and to apply the same or any part thereof for all or any purposes of the*

*Company and to purchase, redeem or pay of any such security/ instrument*

3. (a) *To buy acquire, sell, dispose of, exchange, convert, underwrite, subscribe, participate, invest in and hold, whether in its own account or on behalf of any person, body corporate, company, society firm or association of persons, whether incorporated or not, shares, stock, debentures, debenture stocks, promissory notes, bills of exchange, bonds warrants participation certificate, participation units, other money or capital market instrument, securities, issued or guaranteed by any Government, State, Dominion, Commission, Public Body, or Authority, Supreme Local or Municipal, company or body whether incorporated or not or by any person or association.*

(b) *Subject to the permission of statutory authorities wherever required, to buy, sell, hedge or otherwise deal in all kinds of derivatives instruments, foreign currencies, foreign currency options, forward covers, and interest rate swaps in Indian or foreign currencies, interest rate future and options, swaps of all kinds and to transact for itself or to hedge its underlying investments from exchange rate risk, interest rate risk, credit risk and all type of other risks.*

(c) *To buy, sell, invest or otherwise deal in securities, bonds or fixed deposits issued to any institution, body corporate, corporation, established or constituted under any central or state enactments or in other securities, all types of financial and capital market products which are permitted by any law in force or by any statutory authority.*

4. *To lend money to any legal entity on interest or otherwise, against the security of Fixed and/ or movable assets and/ or receivables, guarantee(s), bill of exchange, promissory notes, cheque and/ or other security as deemed fit by company, or without any security/*

*unsecured, on such terms as may be deemed fit in the interest of the company and to provide to any person, firm, body corporate, Trusts, registered societies or Co-operative societies or association or any other legal entity in form of long, medium or short terms loans, with or without security, equity, equity participation, sponsoring and underwriting new issues of shares and securities, guaranteeing loans from other investment sources and making funds available for reinvestment by revolving investment as rapidly as prudent to the advancement of Company's interest.*

5. (a) *To carry on the business of securitization and reconstruction of the financial interests and work as securitization and/ or reconstruction companies after getting registration by reserve Bank of India and in compliance with the provision of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and guidelines issued by RBI in this regard from time to time, and to facilitate easy transferability of financial assets by issue of debentures, bonds or any other security in nature of debenture and to raise funds by issue of security receipts to qualified institutional buyers and to act as an enforcement agent and or manager for any Bank or Financial Institutions for the purpose of recovery of the dues from the borrower on fee basis and as receiver if appointed by the Court or tribunal and to issue "security receipts" to qualified institutional buyers pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in the securitization.*

(b) *To carry out asset reconstruction as per the guidelines framed by RBI by change in takeover of the management of business of the borrower, the sale or lease of part of business, rescheduling the debts of the borrower, enforcement of the security as per Securitization*

*and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, settlement of the dues of the borrower and taking possession of the assets and do all other acts as may be required to protect/ further the interest of the Company.*

6. *To carry on and/ or promote the business of mutual funds, asset management company, act as sponsor and undertake other related activities as defined under Securities and Exchange Board of India (Mutual Fund) Regulations, 1996.*

7. *To carry on business as Depository Participant within the meaning of Securities and Exchange Board Of India Act, 1992 and SEBI (Depositories and Participants) regulations, 1996, as amended or replaced from time to time after obtaining registration from Securities and Exchange Board Of India ("SEBI")*

8. *To carry on business as Portfolio Managers within the meaning of Securities and Exchange Board Of India (Portfolio Managers) Rules, 1993, as may be amended or replaced from time to time and in pursuant to contracts or arrangements with persons (hereinafter referred to as "clients"), to advise, direct or undertake on behalf of clients, management or administration of shares, debentures, bonds, units, certificates of deposits or commercial papers or any other such security issued by Companies, Bank, Institutions, Statutory Authorities and Others hereinafter collectively referred to as securities or funds of the clients, as the case may be, including exercise of any degree of discretion as to the investment or management of the portfolio of securities or funds of the clients, as the case may be, under contracts with the clients and to apply and obtain requisite certificates from Securities and Exchange Board Of India ("SEBI") to carry on above mentioned business complying with the direction and guidelines of SEBI.*

9. *To carry on business as financiers, factors and to advance, deposit, or lend money securities and properties, to or with such persons and on such terms as may be seem expedient, and to discount buy, sell and deal in bills, notes, warrants, coupons and other negotiable or transferable securities or documents.*

10. *To carry on the business of soliciting or procuring insurance business of all kinds and to establish, organize, manage, promote, provide, operate and develop business of insurance of al, kinds or business allied to insurance and to act as composite broker, direct broker, reinsurance broker, writing agent and/ or corporate agent for all classes of Insurance Business as per the terms of regulation issued by Insurance Regulatory & Development Authority or any other such authority constituted under the law for purpose from time to time and to carry on the business as Insurance Advisers, Pension Advisers, Consultants, Assessors, Values and Surveyors."*

4.6 It is settled principle in law that the business of the appellant cannot be bifurcated into various limbs for computation of business income. From the above Memorandum of Association it is quite evident that "accepting deposit" is only one of the limbs of the entire gamut of business activities undertaken by the appellant. It may prima facie appear to be without any consideration as has been submitted by the appellant. It is the submission of the appellant that the act of accepting the deposits is without any "consideration" and hence cannot be termed as "service". M/s SIFCL accepts the deposits made by the depositors in various schemes launched by them. They use the deposits to fund their activities in business during the period amounts are held by them. The depositors in turn allow/ permit M/s SIFCL to utilize their deposits for the purpose of business activities of the M/s SIFCL. The permission for use of the deposits by the depositors to the M/s SIFCL for their business activities is a consideration for accepting the deposits made by the depositor. The word "consideration" has a much wider

connotation than the money consideration. Section 2(d) of The Indian Contract Act, 1872, defines the word consideration. We reproduce the relevant provisions of the said section below:

*"2. Interpretation-clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—*

*(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;*

*(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;*

*(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";*

*(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;*

*(e) Every promise and every set of promises, forming the consideration for each other, is an agreement;*

Consideration is a promise to have done or have abstained from doing something, or do something or abstain from doing it or do something or abstain from doing it in the future, which is decided on the desire of the promisor to the contract. The word consideration has been explained by various authors in following manner:

*Blackstone: Consideration is the recompense given by the party contracting to the other.*

*Pollock: Consideration is the price for which the promise of the other is brought, and the promise thus given for value is enforceable.*

*Patterson: Consideration means something, which is of some value in the eye of the law. It may be some benefit to the plaintiff or some detriment to the defendant.*

*Cheshire and Fifoot: The expression consideration has to be understood as a price paid for a promise has been commended.*

*Lush J: Lush J in Curie V. Misa (1875) LR10 Ex 153 in this case it was held, that consideration is "some right, interest, profit or benefit accruing to one party or forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other".*

4.7 Having recorded the meaning of "consideration" as above we also place on record the fact that in respect of business and commerce, every act is for gain and there is no place for free lunches in the scheme of Business and Commerce. There ain't no such thing as a free lunch (TANSTAAFL) is a phrase that describes the cost of decision-making and consumption. In economics, TANSTAAFL describes the concept of opportunity costs, which states that for every choice made, there is an alternative not chosen which would also have produced some utility. Decision-making requires trade-offs and assumes that there are no real free offerings. In the case of Curie Vs Misa referred above this principle has been applied. The consideration as such can be in form monetary transaction or otherwise.

4.8 Hon'ble Supreme Court has in case of Indian Bank Ltd. [1965 AIR 1473 SC] held as follows:

*Therefore, it seems to us that there is nothing in the language of S. 10 from which it can be fairly implied that an expenditure or allowance falling within the section must fulfill some other condition before it can be allowed.*

*A similar question arose in England in Hughes v. Bank of New Zealand(21 T.C 472), and all the Judges took the view that interest paid by the Bank on capital borrowed in the course of its business and utilised in buying tax-free securities had to be deducted in arriving at the taxable profits of the business notwithstanding that the interest earned by the Bank on the tax-free securities could not be taxed.*

*Lord Thankerton put the reason shortly thus "It is perhaps enough to say that the Crown are unable to point to any statutory provision in support of their contention, whereas the Respondents find full justification for their resistance in the provisions of Rule 3 of the rules applicable to cases I and II of Schedule D".*

*This rule is similar to s. 10(2) (xv) of the Indian Income Tax Act. After setting out the rule and noticing its effect he says "It seems to me to be incontrovertible that, in the present case, the investments in question were part of the business of the Respondents' trade, and that the expense connected with them was wholly and exclusively laid out for the purposes of the trade.*

*Expenditure, in course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense."*

*Although the Master of Rolls found force in the argument of the Crown, he could find nothing in the language of the English Act to eliminate a part of the expenses of an indivisible trade. Similarly, Greene L.J., could find no warrant in the language of the Statute to give effect to the contention of the Crown. He observed that "when the Statute says that interest is to be exempt, I am quite unable to read it as meaning that in giving effect to that exemption by implication, some repercussion is to take*

*place on a different provision of the Act altogether..... I can find nothing in the Statute which requires this interest to be treated, so to speak, as a trade within a trade. This is really what the Crown contend that in some way this interest which is to be brought into account as an item of receipt is to be taken out of it with some (1) 21 T C 472 apportioned expenses appropriated to it as though it were a trade by itself."*

*Mr. Sastri urges that the authority of the above decision has been shaken in Mitchell and Edon (H. M. Inspectors of Taxes) v. Ross (40 T.C. II), but we are unable to accept this contention. The, point ,urged in this case was that the authority of Fry v. Salisbury House Estate ([1930] A.C. 432) had been qualified by the decision in Hughes v. Bank of New Zealand(21 T.C. 472), but this was negatived.*

*A number of Indian cases have been cited before us and we will now proceed to examine them.*

*The Madras High Court's decision in Commissioner of Income 'Tax v. Somasundaran Chettiar (A.I.R. 1928 Mad. 487) does not assist Mr. sastris. The carried on business at Madras, where his head office was, and Ipoh, a place in the Federated Malay. Money was borrowed ,at Madras and part of it sent to Ipoh where it was used as capital in the conduct of Ipoh business. The High Court held that interest ,on the part of the borrowed money used at Ipoh was rightly disallowed as a deduction because the business which was being taxed was the business at Madras and not the business at Ipoh. No exception can be taken to the decision but it does not advance the appellant's case because we are concerned with one indivisible business.*

*In Provident Investment Co. Ltd. v. C.I.T. Bombay(6 I.T.C. 21), the assessee, an Indian Finance Company, borrowed some money in India and purchased sterling securities out of it and retained them in India. The Bombay High Court held that interest on the borrowed money could not be*

*deducted because "qua the capital which it (the company) is using outside British India and retaining for that length of time outside British India, is not carrying on business in respect of which profits assessable to Indian Income, tax can be earned so that allowance can be claimed for interest on capital borrowed within the meaning of S. 10(2) (iii). It :appears to us that the Bombay High Court divided the business in two separate businesses. But the business of the present assessee cannot be divided into two separate businesses. It is one and indivisible.*

*In Chellappa Chettiar v. Commissioner of Income Tax Madras((1937) 5 I.T.R. 97), the assessee carrying on business as a moneylender had borrowed money and lent it out to constituents. He was obliged to receive agricultural lands in repayment of his debts from such constituents. The question arose whether he was entitled to a deduction in respect of the interest paid by him on capital represented by the agricultural lands. The Court, following Hughes v. Bank of New Zealand (21 T.C 472) held that he was entitled notwithstanding that agricultural income was not taxable under the Income Tax Act. Mr. Sastri says that this was wrongly and was in fact dissented from by the Rangoon High Court in C.I.T. Burma v. N.S.A.R. Concern ((1938) 6 I.T.R. 194.). Dunkley J., in the Rangoon case, distinguished Hughes v. Bank of New Zealand(21 T.C 472) because he thought that the scheme of the Burma Income Tax Act was entirely different from the scheme of the English Income Tax Act, 1918. He observed that "in England a person is assessed to income tax in respect of his income, while under the Burma Act it is the income which is taxed. Under the English Act no class of income is outside the scope of the Act whereas by s. 4(3) of the Burma Act the Act is made inapplicable to a number of classes of income. The English Act merely confers certain exemptions on a person in respect of his income up to a certain amount or certain kinds, similar to*

*the exemptions conferred on certain classes of income by the provisos to Secs. 8 and 9 of the Burma Act." Then he noted the difference between the wording of s. 10 (2) (ix) of the Burma Act and the corresponding clause in the English Act. But we are unable to appreciate that these differences necessitate the rejection of the principle laid down in Hughes v. The Bank of New Zealand (21 T.C 472). It is true that under the Indian Income Tax Act it is income that is taxed but it is not taxed in vacuo. It is taxed in the hands of a person. In England, the interest of tax-free securities was exempted much in the same way as in India. It did not matter there who held them. Hughes v. The Bank of New Zealand (21 T.C 472) cannot be distinguished on the grounds mentioned by the Rangoon High Court. In our judgment Chellapa Chettiar v. C.I.T. Madras ((1937) 5 I.T.R. 97.) was correctly decided. The decision of this Court in indore Malwa United )Wills v. C.I.T. (Central) Bombay ([1962] Supp. 3 S.C.R. 310) is distinguishable. It appears to us that it was because s. 14 (2) (c) and s. 4 (1 ) (a) and (c) existed at the relevant time that the words 'profits and gains' in s. 24 were limited to such profits and gains as would have been assessable in British India or the taxable territories. This is apparent from the judgment and from the following observations of Das J.*

*"Reading the provisions in section 24 with the provision in section 4 (1) (a) and (c) and section 14 (2) (c) it seems clear to us that section 24 (1) when it talks of profits or gains has reference to taxable profits and gains; in other words, it has reference to such profits and gains as would have been assessable in British India or the taxable territories. It has no reference to income accruing or arising without British India or without taxable territories which were not liable to be assessed in the case of non-residents."*

*We cannot imply from this judgment that there is a general principle that if a part of the income of a business is tax- free, expenditure incurred for the purpose of earning this income is outside the purview of s. 10."*

4.9 From the above it is quite evident that activities of the appellant are not limited to accepting deposit. They generate funds from the deposits which are used by them to finance various other activities undertaken by the appellant and in process generate income by the use of such deposits. From the balance sheet and profit loss account of M/s SIFCL it is evident that they receive the deposits to fund and finance various activities stated in their Memorandum of Association. The principle laid down by the Hon'ble Apex Court in the case referred above in para 4.5 is applied by the appellant themselves while making their financial statements. To further elaborate on the issue we reproduce the Balance Sheet and Profit & Loss Accounts of Sahara India Financial Corporation during the relevant period.

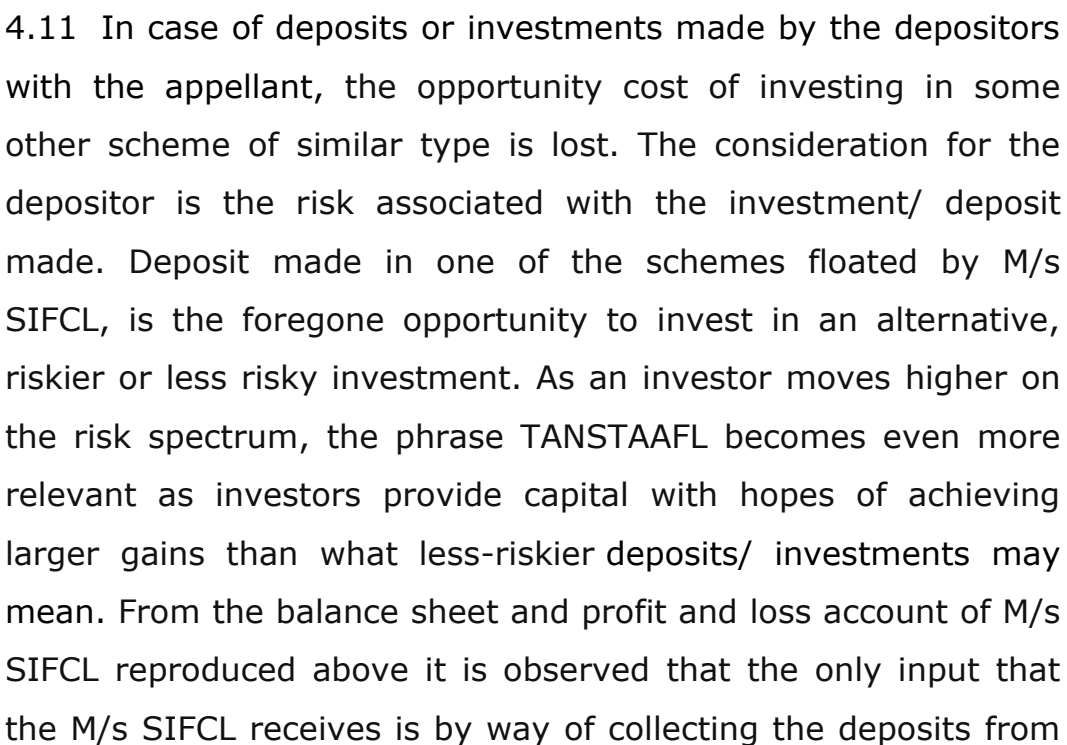
| <b>SAHARA INDIA FINANCIAL CORPORATION LIMITED</b>               |                 |                    |                     |                     |                     |
|-----------------------------------------------------------------|-----------------|--------------------|---------------------|---------------------|---------------------|
| <b>BALANCE SHEET</b>                                            |                 |                    |                     |                     |                     |
|                                                                 | <b>Schedule</b> | <b>2003-04</b>     | <b>2004-05</b>      | <b>2005-06</b>      | <b>2006-07</b>      |
| <b>SOURCES OF FUNDS</b>                                         |                 |                    |                     |                     |                     |
| <b>Share Holder's Fund:</b>                                     |                 |                    |                     |                     |                     |
| Share Capital                                                   | 1               |                    |                     |                     |                     |
| Equity                                                          |                 | 930300000          | 930300000           | 930300000           | 980300000           |
| Preference                                                      |                 | 3000000000         | 3000000000          | 3000000000          | 3000000000          |
| Reserves & Surplus                                              | 2               | 2883388594         | 2931588992          | 3138424648          | 3304569564          |
| Loan funds                                                      |                 |                    |                     |                     |                     |
| Liability Towards Depositors                                    | 3               | 88035557912        | 115372586226        | 155612020135        | 181076117145        |
| Deferred Tax Liability                                          |                 | 259730754          | 334541833           | 385731258           | 344270887           |
| <b>Total</b>                                                    |                 | <b>95108977260</b> | <b>122569017051</b> | <b>163066476041</b> | <b>188705257596</b> |
| <b>APPLICATION OF FUNDS</b>                                     |                 |                    |                     |                     |                     |
| Fixed Assets                                                    |                 |                    |                     |                     |                     |
| Gross Block                                                     | 4               | 4491944298         | 6277573468          | 6339358032          | 6205280536          |
| Depreciation                                                    |                 | -984658566         | -1220748980         | -1481823472         | -1596270028         |
| Net Block                                                       |                 | 3507285732         | 5056824488          | 4857534560          | 4609010508          |
| <b>Capital Work In Progress</b>                                 |                 | 66043821           | 45762910            | 20863774            | 23742871            |
| <b>Investments</b>                                              | 5               | 78764478548        | 106482448687        | 136837877678        | 149117032547        |
| <b>Current Assets Loans &amp; Advances</b>                      |                 |                    |                     |                     |                     |
| Inventories                                                     |                 |                    |                     |                     | 36295834            |
| Sundry debtors                                                  | 6               | 2233193327         | 1308925760          | 1905277001          | 1003051703          |
| Cash, Bank & Money in Collection Account Including Working Fund | 7               | 2839065309         | 2882208018          | 3447645413          | 1097418516          |
| Secured Loans                                                   | 8               | 6566917339         | 6596565480          | 10379101930         | 15359194863         |
| Tax Deducted at Source                                          |                 |                    |                     | 947411209           |                     |

|                                            |   |                    |                     |                     |                     |
|--------------------------------------------|---|--------------------|---------------------|---------------------|---------------------|
| Other Current Assets                       | 9 | 1662429730         | 678041048           | 5329390623          | 20930766904         |
| Sub Total                                  |   | 13301605705        | 11465740306         | 22008826176         | 38426727820         |
| <b>Current Laiblities &amp; Provisions</b> |   | -530436546         | -481759340          | -658626147          | -3471256150         |
| <b>Net current assets</b>                  |   | 12771169159        | 10983980966         | 21350200029         | 34955471670         |
| <b>Total</b>                               |   | 95108977260        | 122569017051        | 163066476041        | 188705257596        |
| <b>SCHEDULE 3</b>                          |   |                    |                     |                     |                     |
| <b>Liability Toward Depositors</b>         |   |                    |                     |                     |                     |
| As per last balance Sheet                  |   | 72936347833        | 85106396262         | 110427525150        | 148237792325        |
| Collection during the year                 |   | 58818457487        | 63916457889         | 79226393605         | 69158971003         |
| Maturity during the year                   |   | -46648409058       | -38595329001        | -41416126430        | -46808537903        |
| <b>Net deposits (a)</b>                    |   | <b>85106396262</b> | <b>110427525150</b> | <b>148237792325</b> | <b>170588225425</b> |
| <b>Interest accrued on above</b>           |   |                    |                     |                     |                     |
| As per last balance Sheet                  |   | 3467354679         | 2929161650          | 4945061076          | 7374227810          |
| For the year                               |   | 5441426333         | 5720571563          | 6241682372          | 6518052084          |
| Interest paid during the year              |   | -5979619362        | -3704672137         | -3812515638         | -3404388174         |
| <b>Net Interest accrued (b)</b>            |   | <b>2929161650</b>  | <b>4945061076</b>   | <b>7374227810</b>   | <b>10487891720</b>  |
| <b>Aggregate deposit Liability</b>         |   | <b>88035557912</b> | <b>115372586226</b> | <b>155612020135</b> | <b>181076117145</b> |

| SAHARA INDIA FINANCIAL CORPORATION LIMITED |          |                   |                   |                    |                    |
|--------------------------------------------|----------|-------------------|-------------------|--------------------|--------------------|
| PROFIT & LOSS ACCOUNT                      |          |                   |                   |                    |                    |
|                                            | SCHEDULE | 2003-04           | 2004-05           | 2005-06            | 2006-07            |
| <b>INCOME</b>                              |          |                   |                   |                    |                    |
| Interest                                   | 11       | 7497350531        | 7188616796        | 9235691340         | 11555467069        |
| Dividend                                   | 12       | 322608583         | 87564291          | 11693627           | 2841124            |
| Rental Income                              |          | 815736235         | 882044915         | 1145979356         | 1062143231         |
| Income from joint venture                  |          | 7917701           | 8537807           | 671168             | 0                  |
| Income from sale of Securities             |          | 1010214949        | 1113803104        | 404405441          | 140106027          |
| Profit on sale of Assets                   |          | 0                 | 0                 | 19835399           | 1510541            |
| Other Income                               | 13       | 197685804         | 108968890         | 162897139          | 135363223          |
| <b>TOTAL</b>                               |          | <b>9851513803</b> | <b>9389535803</b> | <b>10981173470</b> | <b>12897431215</b> |
| <b>EXPENDITURE</b>                         |          |                   |                   |                    |                    |
| Operational & Other Expenses               | 14       | 3333310729        | 2899277022        | 3725676106         | 5301330585         |
| Interest                                   | 15       | 5453170525        | 5728037917        | 6245763435         | 6548939672         |
| Depreciation                               |          | 198600873         | 229984844         | 273986802          | 258188283          |
| Provisions, depreciation & Write off       | 16       | 213852490         | 99592118          | 215514577          | 575206838          |
| <b>TOTAL</b>                               |          | <b>9198934617</b> | <b>8956891901</b> | <b>10460940920</b> | <b>12683665378</b> |
| <b>Net Profit before Tax etc.</b>          |          | <b>652579186</b>  | <b>432643902</b>  | <b>520232550</b>   | <b>213765837</b>   |
| Current Income tax                         |          | 49558352          | 45232508          | 40792735           | 117294760          |
| Deferred Income Tax                        |          | 145797617         | 74811079          | 51189425           | -41460371          |
| Provision for Wealth tax                   |          | 2013459           | 2322513           | 2313101            | 2117600            |
| Provision for fringe benefit tax           |          | 0                 | 0                 | 7268869            | 13229349           |
| Prior Period Expenses                      |          | 5280527           | 7070932           | 7473710            | 6736569            |
| Prior Period Income                        |          | 58668742          | 2919300           | 415378             | 63832675           |
| Income tax of earlier years                |          | 0                 | 76940057          | 0                  | 0                  |

|                                                  |  |                   |                   |                   |                    |
|--------------------------------------------------|--|-------------------|-------------------|-------------------|--------------------|
| Loss form joint venture                          |  | 0                 | 0                 | 0                 | 2185755            |
| Net Profit after tax                             |  | 508597973         | 229186113         | 411610088         | 177494850          |
| Surplus in Profit & Loss Account                 |  | 147557466         | 402138969         | 415884732         | 557031552          |
| Dividend on Preference Share                     |  | 135000000         | 150000000         | 165000000         | 0                  |
| Corporate Dividend Tax                           |  | 17296875          | 19603125          | 23141250          | 0                  |
| Transfer to Special Reserve u/s 45 IC of RBI Act |  | 101719595         | 45837225          | 82322018          | 35498970           |
| Surplus in Profit & Loss Account c/f             |  | 402138969         | 415884732         | 557031552         | 699027432          |
|                                                  |  |                   |                   |                   |                    |
| <b>Schedule 11</b>                               |  |                   |                   |                   |                    |
| <b>INTEREST</b>                                  |  |                   |                   |                   |                    |
| On securities                                    |  | 5326750813        | 5564025007        | 6596335020        | 8410381283         |
| On Loans & Advances                              |  | <b>1166158682</b> | <b>854502147</b>  | 797685179         | <b>1162091738</b>  |
| On Fixed Deposits                                |  | 104613278         | 179605790         | 1297582145        | 1790194238         |
| On Certificate of Deposits                       |  | 384802481         | 189018925         | 108864386         | 192349964          |
| On Others                                        |  | 515025277         | 401464927         | 435224610         | 449846             |
| <b>Total</b>                                     |  | <b>7497350531</b> | <b>7188616796</b> | <b>9235691340</b> | <b>11555467069</b> |
|                                                  |  |                   |                   |                   |                    |
| <b>Schedule 15</b>                               |  |                   |                   |                   |                    |
| <b>INTEREST</b>                                  |  |                   |                   |                   |                    |
| Interest on deposit                              |  | 5453161339        | 5727859463        | 6245763365        | 6548902359         |
| Interest on Term Loan                            |  | 647               | 0                 |                   |                    |
| Interest on TDS/ Others                          |  | 8539              | 178454            | 70                | 37313              |
| <b>Total</b>                                     |  | 5453170525        | 5728037917        | 6245763435        | 6548939672         |

4.10 From the perusal of the balance sheet and profit and loss account of the appellant it is quite evident that main input for all the activities undertaken by M/s SIFCL is deposits received by them under various schemes. The profits made by M/s SIFCL are used to project the financial health of the company to the depositors and printed on the Forms for making deposit to gain the confidence of the depositors. One such form is reproduced below:



the depositor to generate capital for further use. We refer to schedule 11 which gives the details of the interest earned on the deposits made by the investors with Ms SIFCL and the Schedule 15 which gives the interest paid out by M/s SIFCL. Schedule 11 is in respect of the income of the appellants and schedule 15 is in respect of expenditure of the appellants in procuring these investments. The consideration in such a case can be well explained by application of principal of TANSTAAFL. Thus we do not agree with the submissions made by the appellant in this regard that there is no consideration received by M/s SIFCL for accepting the deposit. The deposit made is itself the consideration whereby the money of the depositor funds the activities of M/s SIFCL. The depositor in a way transfers the right to use the money deposited to M/s SIFCL for earning profits by application of those deposits. This transfer of right to use the funds of depositors in terms of various definitions referred above is consideration.

4.12 Mumbai Bench had categorically agreed to the submission of similar nature as made in the present case that the accepting deposits is without consideration and hence cannot be termed as service. In case of ICICI Bank Ltd [2019 TIOL 589 CESTAT Mumbai] following was observed:

*"37. It is a common knowledge that the customers deposit their money in the Banks and in turn receive interest as consideration from the Banks. The money received by the Bank from the customers is not kept idle but further invested by them in various manners in furtherance to their Banking business, one such way is by providing loans or advances, for which the Banks receive consideration as interest. The deposits kept in the Bank are in different forms like, saving bank deposit, current deposit, fixed deposit etc. The consideration received by the customers, in the form of interest, and such deposit per se is not a taxable service, since the consideration, in the form of interest, does not come under the Service Tax net. Thus,*

*the inference that could safely be drawn from the above analysis is that even though deposit is an activity relating to banking business but not a taxable service under the Finance Act, 1994, as the consideration for such service is exempted.*

*47.3 In para 32, Section 65B(44) definition of 'service' has been extracted. **It clearly shows that for an activity to be considered as a service, the said activity should be performed for a consideration. The word 'consideration' as used in the said section refers to the consideration by the service recipient of the service provided. Thus consideration is paid by recipient to the service provider. In the present case the deposits are being made by various depositors with the financial institutions/banks. Banks need these deposits for the purpose of conducting their business and in turn for receiving deposits, paid certain amounts as interest to the depositors. Thus banks are not receiving any consideration for deposits taken by them from the depositors. Even otherwise the DICGC Act provides for protection of the interest of the depositors and not the bank in case the bank goes worst. In absence of any consideration from the depositors to the bank for the activity of accepting deposits, the same cannot be considered as a service in terms of Section 65 B (44).***"

However the above has not been agreed to by the larger bench of Tribunal in case of South Indian Bank [2020 (41) G.S.T.L. 609 (Tri. - LB)] wherein following has been observed:

*"9. The banks claim that they are engaged in "accepting" deposits from the public, which deposits are used for the purpose of lending or investment and though no consideration is charged for making the deposits, but the banks thereafter provide number of services like discounting of cheques, minimum balance charges, handling charges for gold loans,*

*locker rent and similar services, which are in relation to "banking and other financial services" and are chargeable to service tax as consideration for providing such services are not received in the form of interest. The list of services on which the banks have to pay service tax under "banking and other financial services", can be bifurcated into two categories. The first category consists of services which have a direct nexus with the activity of "accepting" deposits, while the second category consists of those services which have a direct nexus with the "lending" activity of the banks. The services under the aforesaid two categories have been stated by the banks to be as follows :*

- (i) Direct nexus with the activity of accepting deposits.*
  - a. Charges towards issuance of Cheque book;*
  - b. Charges to maintain minimum balance;*
  - c. Debit Card charges;*
  - d. Duplicate Pass Book/Bank Statement charges.*
  - e. Stop payment charges*
  - f. Cheque return charges*
  - g. Demand Draft charges*
  - h. Charges for providing bank guarantee*
  - i. Safe deposit locker facilities; etc.*
- (ii) Direct nexus with the lending activity.*
  - a. Processing fee towards obtaining necessary sanctions/ approvals for lending money to customers;*
  - b. Documentation charges towards completing loan sanction with respect to preparing, printing and executing the various documents required post appropriate sanctions/approvals being taken.*
  - c. Inspection charges towards compensation for the time spent in visiting and inspecting the factory/godown/other assets of the borrowers.*

*44. The basic activity of a banking company, as contemplated under the definition of "banking", either*

*under the Deposit Insurance Act or the Banking Regulation Act, is to accept deposits from the public, which deposits are used for the purpose of lending or investment by the banks. Thus, the main activity of a banking company is to mobilise the resources received by the banks in the form of deposits from the public for the purpose of lending or investment. These deposits, thus generate returns for the banks. A part of the returns is given by the banks to the depositors as a consideration, which consideration is normally in the form of interest.*

*45. What also needs to be noticed is that the lending and investment portfolio of banks are required to be funded by deposits and the funds of the shareholders. The Credit Deposit ratio is the percentage of how much the banks lend out of the deposits they have mobilised and also indicates how much of the core funds of the banks are being utilised for lending. A higher ratio indicates more reliance on deposits for lending. In such circumstances, the raising of deposits is an important function of the banks. In other words, the acceptance of deposits is not only a pre-requisite for lending but is also necessary for the banks since the entire activity undertaken by the bank begins with the acceptance of deposits, without which the subsequent activities of lending or investment cannot be undertaken by the banks.*

*52. It is not in dispute that after accepting the deposits there are a number of services on which the banks have to pay service tax under "banking and other financial services". These services are in connection with both the "accepting" of deposits and "lending" activity of the banks. Banks would be able to lend only if they accept deposits. It has been seen that without payment of insurance premium on the outstanding deposits, banks will not be able to function or render any output service of "banking and*

*other financial services” and the licence granted to the banks by the Reserve Bank of India can be cancelled.*

*54. The contention of the Department is that “accepting” of deposits is covered under Section 66D(n) of the Finance Act which contains the negative list. As noticed above, the negative list comprises, under sub-clause (n) of Section 66D, services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. The issue is whether extending deposits would mean the activity of accepting deposits. The activity of accepting deposits would be an activity where the banks receive deposits from the customers in the form of savings account, recurring deposits, for which the banks pay interest to the customers. On the other hand, the extending of deposits would be an activity of a bank giving its surplus money in the form of deposit to another person, where the consideration received would be in the form of interest. This would be a case where in the course of banking activities, one bank makes a deposit with another bank for which it receives consideration in the form of interest. It is this consideration received by the banks in the form of interest which has been specified under Section 66D(n) of the Finance Act in the negative list of services. Thus, in case of accepting deposits, the banks have to pay interest to the customers, whereas while extending deposits, the banks receive interest from other banks. It is for this reason that inter-bank deposits are not included in the returns filed by the banks with the Deposit Insurance Corporation for calculating the premium payable. The banks cannot avail credit of service tax on any amount of interest earned on extending of deposits. It is, therefore, not possible to accept the contention of the Department that “accepting” of deposits is covered under Section 66D(n) of the Finance Act.*

**64.** *This view has been taken by the Tribunal in State Bank of Bikaner. However, in ICICI Bank a contrary view was taken. For "all the reasons stated above, it is not possible to accept the view taken by the Division Bench of the Tribunal in ICICI Bank."*

Thus in view of the above decision of the larger bench we are not in position to agree with the submissions made by the appellant in this regard.

4.13 The circular of 2003 was not quashed by the Hon'ble Andhra Pradesh High Court in case of Karvy Securities Ltd. [2006 (2) STR 481 (AP)] as argued by the appellant, holding that circular clarified contrary to legal provisions but has been quashed for the reason that Board was not having jurisdiction to interfere in the matters which need to be decided by the authorities in adequate proceedings. Hon'ble High Court has held as follows:

*"6. From bare perusal of the circular it would be emphatically known that the respondents raised two specific questions. First question is, Whether the commission received by distributors on mutual fund distribution as liable to Service Tax under the category of Business Auxiliary Services? Second one is, Whether the services provided is exempt from service tax in terms of Notification No. 13/2003, dated 20-6-2003?"*

*7. It appears that there is a notification granting exemptions and this notification has been categorically interpreted by the circular by saying that the activity does not get covered under exemption notification. We fail to understand whether the authorities would go against the directions given in the circular. Besides that, the circular is also, in our view, contrary to the proviso to Section 37B of the Central Excise Act, 1944 (for short 'the Act'). Section 37B reads as under :*

*"The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of*

*1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board :*

*PROVIDED that no such orders, instructions or directions shall be issued—*

*(a) so as to require any Central Excise Officer to make particular assessment or to dispose of a particular case in a particular manner; or*

*(b) so as to interfere with the discretion of the [Commissioner of Central Excise (Appeals)] in the exercise of his appellate functions."*

*8. If the circular is read along with clause (a) to proviso to Section 37B, it becomes abundantly clear that if circular is applied, the matters have to be decided in accordance with the directions given in the circular.*

*9. For these reasons, we feel that the circular is illegal, contrary to the proviso to Section 37B(a) of the Act and is accordingly quashed. Writ Petition is allowed. By allowing the writ petition, we have not expressed any opinion about the notification and applicability of it in a particular case or cases shall have to be determined by the appropriate authorities. No costs."*

Affirming the above order Hon'ble Supreme Court as reported at [2015 (39) STR 705 (SC)] has observed as follows:

*"The undisputed facts are that the Government had issued Notification No. 13 of 2003-S.T. whereby it exempted the 'Business Auxiliary Services provided by a commission agent' from the Service Tax leviable thereon under sub-section (2) of Section 66 of the Finance Act, 1994.*

*Thereafter, Circular dated 5-11-2003 was issued in which it is stated that having regard to some doubts that had arisen regarding application of Service Tax on the activity of mutual fund distribution, it was clarified that the commission received by distributors on mutual fund distribution would be liable to Service Tax as it would not fall within the expression 'Business Auxiliary Services'. This circular dated 5-11-2003 has been set aside by the High Court in the impugned judgment on the ground that it amounts to foreclosing discretion or judgment that may be exercised by the quasi-judicial authority while deciding a particular lies under particular circumstances. The High Court referred to the proviso to Section 37B of the Central Excise Act, 1944, which categorically states that such kind of circulars cannot be issued. We, thus, do not find any error in the impugned judgment. This appeal is accordingly dismissed."*

Thus by quashing this circular the issue has been left open by the Hon'ble Apex Court to be decided by the authorities in accordance with law. After quoting this circular Commissioner has in the impugned order examined the provision of law and the facts involved and arrived at her own findings in matter.

4.14 The issue with regards to applicability of Section 65 (19) needs to be considered in terms of the definition as it existed then. Commissioner has in the impugned order analyzing the definition as it existed during the relevant period vis a vis the facts of the present case observed as follows:

*"The noticee have contended that the allegation in the show cause notice is with reference to the promotion in marketing of the business of client and that the definition under Section 65 (19) of FA'94 relates to promotion and marketing of services by their client and not the business of the client. The very business of the Noticee is in nature of service as they are encouraging saving habits among public, facilitating successful launching/ running of saving*

*schemes. Indirectly they are engaged in mobilization of funds from public which tantamount to service. The word 'business' used in the notice in relation to 'promoting and marketing of the business of client' is with reference to sub clause (ii) of Clause 19 of Section 65 of the FA'94 which inter alia is 'promotion and marketing of service provided by the client'. In this connection it is observed that M/s SIFCL are not dealing with goods which implies that they are engaged in providing services i.e. their business comes under the purview of service sector. Therefore the term "promoting and marketing of business" of M/s SIFCL by the noticee shall be construed accordingly i.e. promoting and marketing of service. Hence the contention of the Noticee is not acceptable and the service provided by the Noticee is well covered under clause (ii) of the definition of "BAS" w.e.f 01.07.2003.*

*From the perusal of the Show Cause Notice it is seen that the notice proposes that the activities of the noticee is very much covered under sub-clause (ii) and (iv) of clause 19 of Section 65 of the FA'94 and further, since 10.9.04, in sub clause (vi) of Clause 19 of Section 65 of the FA 94. The SCN, nowhere alleges the noticee of providing services as defined in sub-clause (1) and (i) of the Clause 19 of Section 65 of the FA'94 and after 10.9.04 does not allege the noticee of providing services in sub clause (iv) and (v) of the Clause 19 of Section 65 of the FA'94. Therefore noticee's contention in their defence reply needs no further discussion.*

*Regarding noticee's contention that since they are not providing services under subclause (i), (ii) and (iii) of "Business Auxiliary Services", as it existed upto 9.9.04, the provisions of sub-clause (iv) and later sub-clause (vii) is not applicable in their case, it is seen from the definition of BAS during 01.07.03 to 09.09.04 that Sub clause-(iv) is independent of sub clause (i), (ii) and (iii). There is*

*nothing in the Section to suggest that the definition of "BAS" is to be interpreted the way as made by the noticee. The use of the word "or" at the end of each sub-clause is more than sufficient to understand as to how the definition is to be interpreted. On perusal of the Sub clause (iv) of the definition it is clear that "Business Auxiliary Services" includes any incidental or auxiliary support service such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services.*

*Now I refer to the judicial pronouncements of Apex Court with regards to the interpretation of statute.*

***(i) Hon'ble Supreme Court in the case of Doypack Systems Pvt. Ltd, Vs UOI,1988(36)ELT 201, in para 56 has held:***

*"The words in the statute must, prima facie, be given its ordinary meaning. Where the grammatical construction is clear and manifest and without doubt, the construction ought to prevail unless there are some strong and obvious reasons to the contrary."*

***Further to quote Para 57 of the same case:***

*".....The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand."*

*(ii) In Hemraj Gordhandas Vs Assistant Collector of Customs and Central Excise, AIR 1970SC 755, the Hon'ble Supreme Court held that in a taxing statute, there was no room for intendment.*

*(ii) In Tata Consultancy Service Vs State of Andhra Pradesh, 2004(178) ELT 22, the Hon'ble Supreme Court*

*held that ordinarily statute had to be literally construed and same cannot be denied merely because consequences of such interpretation may lead to penalty.*

*(iv) In the case of Commissioner of Central Excise, Chandigarh-II Vs. Bhalla Enterprises, 2004(173) ELT 225 (S.C), it was held that the principle of strict/liberal interpretation applies only in case of ambiguity, otherwise plain words of the statute must be given effect.*

*In all the pronouncements it is, therefore, clearly held that the taxing statute has to be implemented literally in the plain words as mentioned in the statute. There is no ambiguity in the words used in the aforesaid provisions of Service Tax Laws regarding the definition of "BAS" and the plea of the noticee that they were not providing "BAS" during 01.07.03 to 09.09.04 is not acceptable. The name of the service itself suggests that all auxiliary activities which support business must be brought into the ambit of BAS.*

*After 10.9.04, the noticee is covered under sub-clause (vi) of Clause 19 of Section 65 of the FA'94. The submission of the noticee is that SIFCL (Principal) is not providing any taxable service, accordingly noticee would not be covered under "BAS" The noticee has also pleaded that their activities promote business of the clients but the services are not rendered to the client, therefore, they do not come under purview of "BAS".*

*The provision of service by noticee on behalf of M/S SIFCL in the nature of deployment of manpower and paraphernalia in implementing the scheme devised by M/s SIFCL is evident. Therefore, noticee has provided services falling under Sub clause (vi) of the definition of BAS (Auxiliary and Support Service) incidental service. The plea advanced by the noticee in this regard that there is no provision of service is not correct and hence unacceptable.*

22. On perusal of MOU effective from 01.04.01 and 20.09.2003 entered between the Noticee and M/S SIFCL, it is observed that the Noticee is having well equipped infrastructure facilities, having more than 1500 offices with the required manpower at various places and in different part of the country. The staff and officers of the Noticee have sufficient expertise for running business of savings and finance by deploying their field staff and field force like Agents, Field Officers etc. The field workers of the Noticee contract to the perspective customers and apprise about various schemes of savings launched by M/S SIFCL, to persuade depositors/customers in promoting the business of M/S SIFCL. The MOU dated 20.09.03 states that "Sahara India shall continue to work **as Agent to Sahara India Financial Corporation Limited to conduct, promote introduce and secure business on behalf of Sahara India Financial Corporation Limited** under all its scheme - which may be changed varied, suspended and modified from time to time as per instruction of Sahara India Financial Corporation Limited."

The definition of BAS include the services provided by a commercial concern in relation to not only promotion, marketing of services, provided by a client, but also any incidental or auxiliary service commission such as billing, collection or recovery of cheques, accounts and remittance, evaluation of prospective customer and public relation services. The use of the term "such as clearly indicates the definition provided is only illustrative and not exhaustive. There can be other service / services though not specified in definition which can be classified as auxiliary services and therefore will be liable to service tax under this category of service.

The word "Service" as defined in Legal Glossary of Government of India (2001) means "the action of serving,

*helping or befitting, conduct tending to the welfare or advantage of another.....*

*The dictionary (Oxford Modern English Dictionary) meaning of word 'Service' is the act of helping or doing the work for another.*

*Hence the definition of Business Auxiliary Services as provided under Section 65 of Finance Act, 1994 has to be construed in much wider sense encompassing other activities under the clause of 'service incidental or auxiliary similar to the nature of define services in other different clauses of the definition.*

*It is seen that the noticee is acting as agent of M/s SIFCL as per clause (1) of MOU effective from 1.4.2001 and they are paid commission for provision of services as mentioned in the MOU between both the commercial concerns. The nature of work performed by the noticee is purely incidental or auxiliary service on commission basis to M/S SIFCL provided to customer, issuing receipt of payments from the depositors under various scheme of SIFCL, accountal of the money received and the payments on maturity for M/S SIFCL. In the facts of the case there is no doubt about the provision of service by the noticee to M/S SIFCL which are taxable under the provisions of Service Tax and they fall within the BAS. It can therefore be concluded that the noticee are service provider and M/S SIFCL are service receiver and the relationship between the two is that of service provider and client.*

*22.1 On careful examination of the memorandum of undertaking between the partners it is seen that the noticee is an agent of M/S SIFCL in every reasonable way including the provision of the services as agent rendered under agreement for which the commission is paid to them. It is not in dispute that M/S SIFCL shall pay the noticee towards expenses incurred in running of its office, branches and noticee is rendering all services as agent.*

*The agreement which is a part of MOU, elaborate the system of working and covers different aspects of the functioning by the noticee. The nature of services provided by the noticee have also been mentioned in the said agreement which states collection of requisite amount from members under different saving schemes and arrangement of payment of maturity, pre-maturity and loans to the depositors etc. The nature of the services provided by the noticee is corroborated in the statements as detailed supra in the brief facts of the case. All the office bearers of the noticee firm have categorically admitted the fact of provision of the services to their principal M/S SIFCL. The nature of the services is apparently covered under conducting, promoting, introducing and securing business on behalf of M/S SIFCL and the noticee has all infrastructure and work force available with them for enhancing the business of their client for set of consideration as stipulated in MOU's entered during relevant period. The activities of the noticee are to be covered under BAS defined under clause 19 of the Sec.65 of the FA'94 as amended from time to time since 01.07.2003, Thus it is seen that the noticee has rendered auxiliary services to M/S SIFCL and for which the receipt of money as commission as agreed upon and thus there is a service provider - client (service receiver), relationship between noticee and SIFCL.*

*The Noticee had pleaded that in their case there was no client and accordingly no service tax could be leviable on them. They have submitted that the existence of a client, Service provider and payment for the service are three parameters for levy Service Tax. In their case there is no client and they are not liable to pay service tax.*

*However the noticee has understood the meaning of the word 'client' in a very narrow sense on the basis of the meanings given in different dictionaries. In Service Tax law*

*it is receiver of the service who is referred different names i.e. client, subscriber, person etc. as per the Section 65 of FA'94 covering the definitions of different terms which ultimately demote the service receiver. The three parameters to qualify to cover under service tax law or (i) Service recipient, (ii) service provider & (iii) payments made (consideration) which are satisfied in the present case.*

*On the basis of the facts of the case, the inference drawn is that all three prerequisite for coverage under Service Tax, namely, event of provision of service tax, presence of taxable service provider and service receiver and the act of rendering taxable services against commission are present in the instant case.*

*In the present case, SIFCL (entity) have employed noticee (professional) for supporting in their "para banking operations" service relating to collection of money from the investors, preparing bills, collecting them and accounting the same etc., which otherwise would have carried by the SIFCL and the noticee is paid commission on such services, thus establishing service provider - client relationship with the SIFCL. The said activity, carried out by the noticee, is that of "Service Provider" and the "Service Receiver is SIFCL. The Service Tax is, therefore leviable as per law.*

*In the net analysis I find that w.e.f. 10.09.2004 the provision of service on behalf of the client is covered under "Business Auxiliary Services". I, therefore, hold that during 10.09.2004 to 31.07.2006 there was provision of "Business Auxiliary Services" by the noticee was liable to service tax as per the provision of Service Tax law."*

4.15 From the perusal of the definition as per Section 65 (19), for the period prior to its amendment with effect from 10.09.2004, it is evident that (iv) is an independent entry and is not linked with any of the entries at (i), (ii) & (iii) all the entries

are separated by 'or'. Even at the cost of repetition we reproduce the entry at (iv) below:

***(iv) any incidental or auxiliary support service such as billing, collection or recovery of cheques, accounts and remittances, evaluation of prospective customer and public relation services,”***

Even if the activity of accepting deposits by SIFCL, during this period is held to be no service as claimed by the appellant, the activities of appellant will qualify as incidental and auxiliary support services, provided by the appellant to the business of the M/s SIFCL. Hon'ble Supreme Court has in the case of M/s Good Year India Ltd [1997 (95) ELT 450 (SC)] held as follows:

***“2. .... The words “such as stainless steel, nickel monel, incoloy, hastelloy” in sub-heading (2) are only illustrative of the various metals from which valves can be made but the said description is not exhaustive of the metals. If the material from which the valves are made is a corrosion-resisting material then the valves would fall under sub-heading (2) of Heading 84.61. ....”***

Relying on this decision Hon'ble Bombay High Court has in the case of Coca Cola India Pvt Ltd [2009 (15) STR 657 (Bom)] held as follows:

*24. The next expression to be considered from the definition is 'such as'. A few dictionary meanings of the term 'such as' are reproduced. Concise Oxford Dictionary, Such as means for example or of a kind that; Chambers Dictionary, such as means for example :*

*In Good Year India Ltd. v. Collector of Customs - 1997 (95) E.L.T. 450 the Supreme Court observed as under :*

*....*

*The words such as therefore are illustrative and not exhaustive. In the context of business, those are services,*

*related to the business. They may not be exhaustive, but are illustrative.*

*25. The expression Business is an integrated/continuous activity and is not confined restricted to mere manufacture of the product. Therefore, activities in relation to business can cover all the activities that are related to the functioning of a business. The term business therefore, in our opinion cannot be given a restricted definition to say that business of a manufacturer is to manufacture final products only. In a case like the present, business of assessee being an integrated activity comprising of manufacture of concentrate, entering in to franchise agreement with bottlers permitting use of brand name by bottlers promotion of brand name, etc. the expression will have to be seen in that context See (i) Pepsi Foods Ltd. v. Collector - 1996 (82) E.L.T. 33, (ii) Pepsi Foods Ltd. v. Collector - 2003 (158) E.L.T. 552 (S.C.).*

*The Hon'ble Supreme Court in State of Karnataka v. Shreyas Paper Pvt. Ltd. 2006 SCC affirmed the view taken by the Hon'ble Karnataka High Court reported at 2001 (121) STC 738, which, inter alia, held as under :*

*Business comprises of the regular and systematic activity with an object of earning of profits. The machinery, plant, building and the land over which they have erected or constructed are only the tools of such business. Assets and liabilities including goodwill are the necessary ingredients to constitute a business, besides the stocks and other movable and immovable items connected with the said business.*

*In Mazgaon Dock Ltd. v. Commissioner of Income tax and Excess Profits Tax - AIR 1958 SC 861 the Hon'ble Supreme Court held as follows :*

*14. The word "business" is, as has often been said, one of the wide import and in fiscal statutes, it must be construed in a broad rather than a restricted sense.*

15. *"The word 'business connotes", it was observed by this court in Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax, 1955 1 SCR 952 "some real, substantial and systematic or organized course of activity or conduct with a set purpose."*

*The term "business" therefore, particularly in fiscal, statutes is of wide import.*

Agreeing with the above decision Hon'ble Bombay High Court has in case of Ultratech Cement [2010 (260) E.L.T. 369 (Bom.)] held as follows:

*"35. The argument of the Revenue, that the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of 'input service' as well as the inclusive part of the definition of 'input service' purport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing..... etc. Thus the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression 'such as' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is nothing in the definition of 'input service' to suggest that the Legislature intended to define that expression restrictively. Therefore, in the absence of any intention of the Legislature to restrict the definition of 'input service' to any particular class or category of services used in the business, it would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in*

*relation to the business of manufacturing the final product are covered under the definition of 'input service' and in the present case, the outdoor catering services being integrally connected with the business of the manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal.*

*36. The argument of the Revenue that the expression "such as" in Rule 2(I) of 2004 Rules is restricted to the categories specified therein, runs counter to the C.B.E.C. Circular No. 97, dated 23rd August, 2007. In that Circular the C.B.E.C. (vide para 8.3) has held that the credit of service tax paid in respect of mobile phone service is admissible provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods. Mobile phone service is neither used in the manufacture of final product nor it is specifically included in the definition of input service. Even then, the C.B.E.C. has construed the definition of input service widely so as to cover not only the services specifically enumerated in the definition of 'input service' but also cover all services which are used in relation to the business of manufacturing the final products. Therefore, the argument of the revenue which runs counter to stand taken by the C.B.E.C. cannot be accepted.*

*37. In the case of Coca Cola India Pvt. Ltd. (supra) a Division Bench of this Court has considered scope of the expression "input service" as defined in Rule 2(I) of 2004 Rules. In that case, the question for consideration was, whether a manufacturer of non-alcoholic beverage bases (concentrates) is eligible to avail credit of service tax paid on advertisement, sales promotion, market research etc. The argument of the revenue in that case was that the advertisements are not relatable to the concentrate manufactured by Coca Cola India Pvt. Ltd. (supra) and hence, the credit in respect thereof cannot be allowed.*

*Considering the Finance Minister's Budget Speech for 2004-05, press note issued by the Ministry of finance along with the Draft 2004 Rules and various decisions of the Apex Court, this Court held that the expression 'activities in relation to business' in the inclusive part of the definition of 'input service' further widens the scope of input service so as to cover all services used in the business of manufacturing the final products and that the said definition is not restricted to the services enumerated in the definition of input service itself. The Court rejected the contention of the revenue that a service to qualify as an input service must be used in or in relation to the manufacture of the final products and held that any service used in relation to the business of manufacturing the final product would be an eligible input service.*

*38. We concur with the above decision of this Court in the case of Coca Cola India Pvt. Ltd. (supra)..."*

4.16 It is the submission of the appellants that by Finance Act, 2006, the sub section 104(c) was inserted in the Section 65 of the Finance Act, 1994 defining the business support services as follows:

*"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.*

*Explanation.—For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception*

*with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security; ‘;*

As they are covered by the definition as introduced by the Finance Act, 2006 they took the registration under this category and started paying service tax under this category. It is the submission of the appellant thus that they are providing support services to the business of M/s SIFCL and hence they are not covered by the scope of any clause Section 65 (19). They rely on the following decisions of to buttress their arguments:

- Indian national Ship-owners Association [2009 (14) STR 289 (Bom)]
- CBRE South Asia Pvt Ltd [2020-TIOL-197-CESTAT-Del
- CBRE South Asia Pvt Ltd [2021-TIOL-06-SC-ST-LB]
- Malviya National Institute of Technology [2019 (6) TMI 127-CESTAT New Delhi]
- Global Coal & Mining Pvt Ltd [2020 (36) GSTL 77 (T-Del)]
- Capital Transport Convoy Contractor [2016 (2) TMI 546 CESTAT New Delhi]

4.17 These decisions do not support the case of appellant as in all the cases the court/ tribunal concluded that the services provided were not classifiable under the earlier entry and became taxable only after introduction of new entry. In the present case when we conclude that the services provided by the appellant were classifiable under the taxable category of Business Auxiliary Services, subsequent introduction of new service will not alter the classification of service. The crux of the issue is that classification of the service is to be considered in terms of the definition as it existed at the relevant time. Our view is strengthened by the provisions contained in Section 65 A of Finance Act, 1994 and reproduced below:

**"65A Classification of Taxable Services,-**

- (1) *For the purposes of this Chapter, classification of taxable services shall be determined according to the terms of the sub clauses of clause (10% of Section 65.*
- (2) *When for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause 9105) of section 65 classification shall be effected as follows:*
  - (a) *The sub clause which provides the most specific description shall be preferred to sub clauses providing a more general description.*
  - (b) *.....*
  - (c) *...."*

4.18 It is also noted that the appellant had never before raised this ground either before the adjudicating authority or in their appeal memo. Hence this ground which has been urged for first time at the time of hearing of appeal cannot be admitted in view of the observations as follows made by the Ahmedabad Bench in the case of DLF Limited [2014 (302) ELT 303 (T-Ahmd)]:

**"6.***So far as the issues outlined at para 2(iv) an (v) above are concerned it is observed that the same were not raised by the appellant before the lower authorities and have also not been raised in the grounds of appeal before us, therefore, the same cannot allowed to be raised at the time of final hearing before CESTAT for the first time."*

4.19 Appellant have relied upon the decision of tribunal in case of Jetlite (India) Ltd [2011 (21) STR 119 (T-Del)] and Steria India Limited [2017-TIOL-3837-CESTAT-ALL to argue that for holding the services rendered by them to the service recipient, to be taxable under these clauses of Section 65 (19), it is necessary to show that the service recipient was providing taxable services to the third party. However on perusal we do not find any such averment made in any of these orders. In case of Jetlite, tribunal has observed:

**"61.** *The Finance Act, 1994 does not define the term "Service". It merely describes the expression "Taxable Service". As far as the matter in hand is concerned the liability of the appellants is said to be in terms of Section 65(19)(ii) read with Section 65(105)(zzb) of the said Act.*

**62.** *Section 65(19) of the said Act defines the "Business Auxiliary Services" and under clause (ii) thereof it provides that Business Auxiliary Service means, any service in relation to promotion or marketing of service provided by the client. Section 65(105)(zzb) defines the "Taxable Service" means, any service provided or to be provided to a client by any person in relation to Business Auxiliary Service. In fact, the expression "any person" was substituted for the earlier expression "a commercial concern" since 18th April, 2006, consequent to the amendment to Finance Act.*

**63.** *Perusal of the above provisions of law, therefore, would disclose that a person can be said to have rendered Business Auxiliary Service in terms of the provisions of law in force, on being established that he has rendered service in relation to either promotion or marketing of some service provided by the client. The fact, that the service provider has rendered the service of promotion or marketing of the service provided to others by the service recipient, has to be established before such person can be said to have rendered the taxable service which can be classified under the said clause. Unless the service recipient is shown to have been engaged in rendering some service to others and the service provider is shown to have rendered his service for promotion or marketing of such service provided by the service recipient to others, the question of creating liability under the said Act in terms of Section 65(19)(ii) read with 65(105) (zzb) of the said Act does not arise.*

**65.** *As already stated above, the term "Service" has not been defined under the said Act. In Black's Law Dictionary the term "service" has been defined to be an act of doing something useful for a person or a company for a fee. The expression "service charges" is defined therein to mean charge assessed for performing of service, such as charges assessed by bank against the expenses of maintaining or servicing a customer checking account. Even while defining the term taxable service under the said Act, the definition specifies the taxable service to mean any service provided or to be provided to any person whereas the business auxiliary service has been defined to mean any service in relation to the service provided by the client. Being so, taking into consideration the common understanding of the definition of the term "service" as well as the definition of the term "taxable service" under the said Act, it is evident that the service contemplated under Section 65(19) is the one which relates to service rendered by the service recipient. It may be taxable service or may not be so. However, the situation invariably contemplates existence of two entities in order to bring the case within the scope of definition of business auxiliary service. One entity which provides service to others is called a service recipient. Another entity is one which provides service to the service recipient in relation to the service rendered by such service recipient to others, and such entity is called the service provider.*

*77. The discussion on the point in issue would be incomplete without reference to some more decisions of the Apex Court, and they are Tamilnadu Kalyan Mandapam Association v. Union of India reported in 2006 (3) S.T.R. 260 = 2004 (167) E.L.T. 3, Fakir Chand Gulati v. Uppal Agencies Private Limited reported in 2008 (12) S.T.R. 401, Home Solutions Retail India Limited v. Union of India reported in 2009 (14) S.T.R. 433 = 2009 (237) E.L.T. 209*

*(Del.), Association of Leasing & Financial Service Companies (supra), All India Federation of Tax Practitioners v. Union of India reported in 2007-TIOL-149-SC-ST = 2007 (7) S.T.R. 625 (S.C.), Bharat Sanchar Nigam (supra) and Gannon Dunkerley's case.*

78. *In Tamilnadu Kalyana Mandapam Association case, the Apex Court while dealing with the issue as to whether the High Court was correct in coming to the conclusion that the provisions in the Finance Act, 1994 imposing Service tax on the services rendered by the Mandap Keeper were intra virus of the Constitution of India or not. After going through the scheme of the said Act and various judgements relevant for the decision in the matter, it was observed that the Mandap Keeper provide a wide variety of services apart from the service of allowing temporary occupation of mandap. Apart from proper maintenance of the mandap, they were providing the necessary paraphernalia for holding function, besides providing condition and ambience required by the customers which included provision for lighting arrangements, furniture and fixtures, floor covering etc, decoration and organizing catering services in the mandap. In fact, the logistic of setting up, selection and maintenance was the responsibility of the Mandap Keeper. The services of Mandap Keeper could not possibly be termed as a higher purchase agreement of a right to use goods or property. The services provided by Mandap Keeper are professional services which he alone by virtue of his experience as the wherewithal to provide. However, temporary occupation of mandap does not involve transfer of the property either under Transfer of Property Act or otherwise. The nature and character of the Service tax levied on Mandap Keeper is in relation to transaction between the Mandap Keeper and his customer which is essentially that of providing a service.*

79. *In Fakir Chand Gulati case, the point for consideration before the Apex Court was whether a land owner who enters into agreement with a builder for construction of an apartment building and for sharing of the constructed area is a consumer entitled to maintain a complaint against the builder as a service provider under the Consumer Protection Act, 1986. It was held therein that the basic underlying purpose of such agreement is the construction of a house or an apartment in accordance with the specification by builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct two or more floors. Apart from consideration flowing from the land owner to the builder in the form of sale of undivided share in the land and permission to construct and sell other floors of the building is to adjust the value to the extent of land to be transferred to the builder, the important aspect is the availment of services of the builder by the land owner for house construction for a consideration. To that extent, the land owner would be a consumer and the builder to be a service provider.*

80. *In Home Solution case, the point for consideration before the Apex Court was whether the Finance Act, 1994 envisages the levy of Service tax on letting out/renting out of immovable property per se. The Apex Court after referring to various relevant provisions of the said Act as well as taking into consideration the various reported decisions including Kalyan Mandapam Association case held that the Supreme Court in Kalyan Mandapam case had held that the service of a Mandap Keeper does not involve transfer of movable property nor does it involve a transfer of any immovable property of any kind known to law either under the Transfer of Property Act or otherwise and therefore, the said activity could be only classified as a service. It was further held that the observation of the*

*Supreme Court in Kalyan Mandapal case that the utilization of the premises as a mandap by itself would constitute a service was required to be distinguished from the kind of activity that is contemplated under Section 65(105)(zzzz) of the said Act. The case of a mandap and service provided by Mandap Keeper would not be applicable to a case of renting of immovable property simplicitor. It was further held that the Service tax is a value added tax. It is a tax on value addition provided by a service provider. It is, therefore, obvious that it must have connection with a service and there must be some value addition by that service. If there is no value addition then there is no service. In so far as renting of immovable property for use in the course of or furtherance of the business or commerce is concerned by itself does not entail any value addition and, therefore, cannot be regarded as a service.*

*81. In Association of Leasing & Financial Service Companies the Apex Court was dealing with the matter of an association of lending and financial companies. The Finance Act provided for levy of Service tax for banking and other financial services. Section 137 of the Finance Act, 2001 substituted Section 65 which defined banking and other financial services. Subsequently the definition underwent changes which were introduced by way of Section 90 of the Finance Act, 2004 and Section 135 of the Finance Act, 2007. The appellant filed writ petition in the High Court challenging the levy of Service tax imposed by Section 65(12)(a)(i) of the said Act. During the pendency of the writ petition, the government issued a Notification dated 1-3-2006 exempting 90% of the amount payable under higher purchase/equipment leasing agreements from Service tax on the ground that the said 90% represented interest income earned by the service provider. By virtue of the amended definition of the expression banking and other financial services, the*

*transactions in the nature of financial leasing, equipment leasing and hire-purchase had been sought to be brought within the Service tax net. The Apex court after taking note of various provisions of law observed that the Reserve Bank of India was constituted under RBI Act, 1934 inter alia to regulate the country's monetary system. Chapter III-B of the RBI Act deals with the provision relating to non-banking financial companies and financial institutions. Section 45-I(c ) of RBI Act treats financing as an activity. Those activities are regulated by Reserve Bank of India. The expression financial institution means any non banking institution which carries on as its business and activity inter alia of financing, whether by way of making loans or advances or otherwise. Under notification dated 2-1-1998, the deposit taking activities of non-banking financial companies were also sought to be regulated. Similarly, under RBI guidelines dealing with the accounting for investments, the non-banking financial companies having not less than 60% of the total assets in lease and higher purchase and deriving not less than 60% of their total income from such activities can be classified as higher purchase/equipment leasing companies. The Apex Court further observed that the significance of the said circulars and guidelines is to show that the activities undertaken by non-banking financial companies of equipment leasing and hire-purchase finance are facilities extended by non-banking financial companies to their customers. They are financial services rendered by such non-banking financial companies to their customers and they fall within the meaning of the words banking and other financial services which were sought to be brought within the Service tax net under Section 66 of the said Act. Referring to the Sale of Goods Act and commentary of the said statute by Mulla, the Apex Court specifically observed that :*

*"a common method of selling goods is by means of an agreement commonly known as a hire-purchase agreement which is more aptly described as a hiring agreement coupled with an option or purchase, i.e. To say that the owner lets out the chattel on hire and undertakes to sell it to the hirer on his making certain number of payments. If that is the real effect of the agreement there is no contract of sale until the hirer has made the required number of payments and he remains a bailee till then. But some so-called hire-purchase agreements are in reality contracts to purchase, the price to be paid by installments and in those cases the contract is a contract of sale and not of hiring. It depends on the terms of the contract whether it is to be regarded as a contract of hiring or a contract of sale".*

82. The Apex Court further observed that in *All India Federation of Tax Practitioners'* the Apex Court had explained the concept of Service tax and had held that the Service tax is a valued added tax which in turn is destination based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but on the consumer. And that the Service tax is an economic concept based on the principle of equivalence in a sense that consumption of goods and consumption of services are similar as they both satisfy human needs. It was further held by the Apex Court that :-

*"Today with the technological advancement there is a very thin line which divides a "sale" from "service". That, applying the principle of equivalence, there is no difference between production or manufacture of saleable goods and production of marketable/saleable services in the form of an activity undertaken by the service provider for consideration, which correspondingly stands consumed by the service receiver. It is this principle of equivalence*

*which inbuilt into the concept of Service tax under the Finance Act, 1994. That Service tax is, therefore, a tax on an activity. That, Service tax is a value added tax. The value addition is on account of the activity which provides value addition, for example, an activity undertaken by a Chartered Accountant or a broker is an activity undertaken by him based on his performance and skill. This is from the point of view of the professional. However, from the point of view of his client, the Chartered Accountant/broker is his service provider. The value addition comes in on account of the activity undertaken by the professional like tax planning, advising, consultation etc. It gives value addition to the goods manufactured or produced or sold. Thus, Service tax is imposed every time service is rendered to the customer/client".*

*The Apex Court further held that "every tax may be levied on an object or on the event of taxation. Service tax is, thus, a tax on activity whereas sales tax is a tax on sale of a thing or goods".*

*Having held so, it was also ruled that :*

*"A contract of sale is different from an agreement to sell and unlike other contracts, operates by itself and without delivery to transfer the property in the goods sold. The word "sale" connotes both a contract and a conveyance or transfer of property. The law relating to building contracts was well known when Gannon Dunkerley's case was decided and under that law the supply of goods as part of the works contract was not a sale. Thus, the essential ingredients of the "sale" are agreement to sell movables for a price and property passing therein pursuant to an agreement".*

83. Referring to the facts of the case of Association of Leasing & Financial Service Companies, the Apex Court held that :

*"the impugned levy relates to or is with respect to the particular topic of "banking and other financial services" which includes within it one of the several enumerated services, viz, financial leasing services. These include long time financing by banks and other financial institutions (including NBFCs). These are services rendered to their customers which comes within the meaning of the expression "taxable services" as defined in Section 65(105)(zm). The taxable event under the impugned law is the rendition of service. The impugned tax is not on material or sale. It is on activity/service rendered by the service provider to its customer. Equipment Leasing/Hire-Purchase finance are long term financing activities rendered. Such amount is credited to the capital account of the lessor/hire-purchase service provider. It is the interest/finance charge which is treated as income or revenue and which is credited to the revenue account, Such interest or finance charges together with the lease management fee/processing fee/documentation charges are treated as considerations for the services rendered and accordingly they constitute the value of taxable services on which Service tax is made payable".*

84. In Bharat Sanchar Nigam's case the matter related to the state Legislative competency to levy sale tax on the transaction, by which mobile phone connections are enjoyed by the customers, under Entry 54 List-II of the Seventh Schedule to the Constitution. After taking note of the consensus amongst the parties on the point that the "goods" element in telecommunication were the electromagnetic waves by which data generated by the subscriber was transmitted to the desired destination and proceeding on the basis that incorporeal rights may be

*"goods" for the purpose of levying sale tax, it was held that electromagnetic waves are neither abstracted nor are they consumed in the sense that they are not extinguished by their user. They are not delivered, stored or possessed. Nor are they marketable. They are merely the medium of communication, what is transmitted is not an electromagnetic wave but the signal through such means. The signals are generated by the subscribers themselves. In telecommunication what is transmitted is the message by means of the telegraph. No part of the telegraph itself is transferable or deliverable to the subscribers. It was ruled that "the electromagnetic waves are not 'goods' within the meaning of the word either in Article 366(12) or in the State Legislation". It was further observed that "it is not in the circumstances necessary for us to determine whether telephone system including the telephone exchange was not goods but immovable property as contended by some of the petitioners". It was further held that "a telephone service is nothing but a service. There is no sale element apart from obvious one relating to the hand set if any. That and any other accessory supplied by the service provider in our opinion remain to be taxed under the State Sales Tax Laws". It was also held that the nature of the transaction involved in providing the telephone connection may be a composite contract of service and sale. It is possible for the State to tax the sale element provided there is a discernible sale and only to the extent relatable to such sale.*

*85. In Gannon Dunkerley case it was held that if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service and impose*

*the tax on sale. However, the said finding was preceded by the reasoning that "we are concerned herewith a building contract, and in the case of such a contract, the theory that it can be broken up into its component parts and as regards one of them it can be said that there is a sale must fail both on the grounds that there is no agreement to sell materials as such, and that property in them does not pose as movables".*

*86. Plain reading of the decisions of the Apex Court would disclose that the Apex Court clearly brought out the difference between sale and services. Besides it has been clearly clarified that the taxable event under the said Act is the rendition of service. It is on the activity conducted or service rendered by the service provider to its customer that attracts the provisions of the said Act. The tax under the said Act cannot be levied on materials or on sale. Undoubtedly, in case of sale, if any services are rendered in the nature of processing fee or documentation charges, etc., that could form part of the services rendered and may constitute the value of taxable service on which the Service tax may be leviable. In other words, sale, by itself, of immovable property, either developed or undeveloped, or even alongwith construction therein, would not amount to rendering any service, either taxable or otherwise. But at the same time, any service rendered in the form of documentation or the like, certainly the same could amount to rendering service and would attract the provisions of the said Act. It is, therefore, necessary for the department before classifying an activity of service provider to be taxable service, to establish the factum of rendering of any such service by the service recipient to others in the course of sale of the immovable property by such service recipient, and only then it could be said that the service provider had provided Business Auxiliary Service by promoting or marketing such services of the*

*service recipient. Needless to say that to establish such facts, it is primarily necessary to have a clear charge in that regard with the factual foundation in the show cause notice to give proper and fair opportunity to the assessee to meet the case of the department and thereupon to establish such charge in the course of adjudication proceedings. As far as the case in hand is concerned, as already seen above in relation to the service aspect is concerned, the allegation or charge in that regard relates to the sale of immovable properties or the developed properties or the constructed project by Sahara Corporation. It does not relate to any service rendered by Sahara Corporation to others in relation to the sale of such properties or projects.”*

4.20 From the observations made in the said decision it is quite evident that the issue under consideration of the tribunal in this case was making distinction between sale and service. Tribunal has in the above decision nowhere concluded that the service rendered by the service recipient should have been taxable service. Similarly we do not find any such finding recorded by the tribunal in the case of Steria also. Therefore the submissions made by the appellant on the basis of these decisions cannot be accepted. We have referred to the memorandum of understanding, balance sheet and other documents in the earlier part of our order, and have concluded that the client of appellant was engaged in the business of providing services to his clients.

4.21 Appellant has relied upon the decision of Federal Bank Limited [2008 (10) STR 320 (T-Bang)] and the decision in case of Atlas Documentary Facilitators Company (P) Ltd [2017 (50) STR 22 (T-Mum)] to argue that for the purpose of classifying the services as ancillary or incidental service as per clause (iv) for the period prior to 09.10.2004 the services should fall in one of the principal clause i.e. (i), (ii) or (iii). These decisions also do not support the case of the appellant. In case of Federal bank the observations made by the tribunal were in respect of the

amended Section 65 (19) as is evident from the decision of Hon'ble Kerala High Court as reported at [2013 (29) S.T.R. 554 (Ker.)] and the decision of Hon'ble Apex Court as reported at [2016 (42) S.T.R. 418 (S.C.)] affirming the above decision of Tribunal. We do not dispute that post the amendments made from 09.10.2004, the sub clause (vii) linked the incidental and ancillary activities with the activities specified in clause (i) to (vi).

4.22 With effect from 09.10.2004 Section 65 (19) was amended substituting the existing section by new section wherein sub clauses (iv) was replaced by (iv), (v), (vi) and (vii) which are reproduced below:

- (iv) *procurement of goods or services, which are inputs for the client; or*
- (v) *production of goods on behalf of the client; or*
- (vi) *provision of service on behalf of the client; or*
- (vii) *a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittances, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision;*

Impugned order holds that the services provided by the appellant to his client are covered by (vi). From the terms of the Memorandum of understanding referred earlier it is evident that the appellant is providing the service of accepting deposit on the behalf of his client. We have also held that the activity of accepting deposits is a service. From the perusal of the definition of the clauses as above we find that the word used in clauses (iv), (v) (vi) and (vii) is "service" and not taxable service. It is settled principle in law that the taxing statute need to be considered on the basis of the words used by the legislature and there is no room for intendment etc. reliance is placed on the decisions of the Hon'ble apex Court in the case of Dilip Kumar &

Company [2019 (361) ELT 577 (SC)] wherein following has been held:

*18. It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. In this connection, the following observations made by this Court in District Mining Officer v. Tata Iron and Steel Co., (2001) 7 SCC 358, may be noticed :*

*"... A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on*

*information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed...”*

19. *The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

20. *In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which*

*it is used keeping in view the legislative purpose [Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa, 1995 (6) SCC 355]. Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.*

21. *In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution [265. Taxes not to be imposed save by authority of law - No tax shall be levied or collected except by authority of law.] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.*

22. *At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum in verbis nulla ambiguitas est, non debet admitti voluntatis quaestio".*

*Following such maxim, the Courts sometimes have made strict interpretation subordinate to the plain meaning rule [Mangalore Chemicals case (Infra para 37).], though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory.*

*23. Next, we may consider the meaning and scope of 'strict interpretation', as evolved in Indian law and how the higher Courts have made a distinction while interpreting a taxation statute on one hand and tax exemption notification on the other. In Black's Law Dictionary (10th Edn.) 'strict interpretation' is described as under :*

*Strict interpretation. (16c) 1. An interpretation according to the narrowest, most literal meaning of the words without regard for context and other permissible meanings. 2. An interpretation according to what the interpreter narrowly believes to have been the specific intentions or understandings of the text's authors or ratifiers, and no more. - Also termed (in senses 1 & 2) strict construction, literal interpretation; literal construction; restricted interpretation; interpretatio stricta; interpretatio restricta; interpretatio verbalis. 3. The philosophy underlying strict interpretation of statutes. - Also termed as close interpretation; interpretatio restrictive.*

*See strict constructionism under constructionism. Cf. large interpretation; liberal interpretation (2).*

*"Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular*

*case.’ Wiliam M. Lile et al., Brief Making and the use of Law Books 343 (Roger W. Cooley & Charles Lesly Ames eds., 3d ed. 1914).*

*"Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meaning may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense." John Salmond, Jurisprudence 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).*

24. *As contended by Ms. Pinky Anand, Learned Additional Solicitor General, the principle of literal interpretation and the principle of strict interpretation are sometimes used interchangeably. This principle, however, may not be sustainable in all contexts and situations. There is certainly scope to sustain an argument that all cases of literal interpretation would involve strict rule of interpretation, but strict rule may not necessarily involve the former, especially in the area of taxation. The decision of this Court in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court Chandigarh and Ors., (1990) 3 SCC 682, made the said distinction, and explained the literal rule-*

*"The literal rules of construction require the wording of the Act to be construed according to its literal and grammatical meaning whatever the result may be. Unless otherwise provided, the same word must normally be construed throughout the Act in the same sense, and in the case of old statutes regard must be had to its contemporary meaning if there has been no change with the passage of time."*

*That strict interpretation does not encompass strict - literalism into its fold. It may be relevant to note that simply juxtaposing 'strict interpretation' with literal rule' would result in ignoring an important aspect that is*

*'apparent legislative intent'. We are alive to the fact that there may be overlapping in some cases between the aforesaid two rules. With certainty, we can observe that, 'strict interpretation' does not encompass such literalism, which lead to absurdity and go against the legislative intent. As noted above, if literalism is at the far end of the spectrum, wherein it accepts no implications or inferences, then 'strict interpretation' can be implied to accept some form of essential inferences which literal rule may not accept.*

*25. We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between 'strict interpretation' and 'literal interpretation'. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.*

*26. Justice G.P. Singh, in his treatise 'Principles of Statutory Interpretation' (14th ed. 2016 p.-879) after referring to Re, Micklethwait, (1885) 11 Ex 452; Partington v. A.G., (1869) LR 4 HL 100; Rajasthan Rajya Sahakari Spinning & Ginning Mills Federation Ltd. v. Deputy CIT, Jaipur, (2014) 11 SCC 672, State Bank of Travancore v.*

*Commissioner of Income Tax, (1986) 2 SCC 11 and Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, summed up the law in the following manner -*

*"A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY AND LORD SIMONDS, means : 'The subject is not to be taxed without clear words for that purpose : and also that every Act of Parliament must be read according to the natural construction of its words. In a classic passage LORD CAIRNS stated the principle thus : "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words : "In a taxing Act one has to look merely at what is clearly said. This is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

*It was further observed :*

*"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation...."*

*Yet again, it was observed :*

*"It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that, "the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him", [Russel v. Scott, (1948) 2 All ER 1]. The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co. v. Betts, (1928) AC 143]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram, (1969) 3 All ER 215]. It has also been said that if taxing provision is "so wanting in clarity that no meaning is reasonably clear, the Courts will be unable to regard it as of any effect [IRC v. Ross and Coutler, (1948) 1 All ER 616]."*

*Further elaborating on this aspect, the Learned author stated as follows :*

*"Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Express Mill v. Municipal Committee, Wardha, AIR 1958 SC 341]. If the Legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co., AIR 1960 SC 1182]. But equitable considerations are not relevant in construing a taxing statute, [CIT, W.B. v. Central India Industries, AIR 1972 SC 397], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jha v. Expenditure Tax Officer, Hyderabad, AIR 1972 SC 2319].*

*It is well-settled that in the field of taxation, hardship or equity has no role to play in determining eligibility to tax and it is for the Legislature to determine the same [Kapil Mohan v. Commr. of Income Tax, Delhi, AIR 1999 SC 573]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the Court should not concern itself with the intention of the Legislature when the language expressing such intention is plain and unambiguous [State of Madhya Pradesh v. Rakesh Kohli & Anr., (2012) 6 SCC 312]. But just as reliance upon equity does not avail an assessee, so it does not avail the Revenue.”*

*The passages extracted above, were quoted with approval by this Court in at least two decisions being Commissioner of Income Tax v. Kasturi Sons Ltd., (1999) 3 SCC 346 and State of West Bengal v. Kesoram Industries Limited, (2004) 10 SCC 201 [hereinafter referred as 'Kesoram Industries case' for brevity]. In the later decision, a Bench of seven-Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute :*

*“(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute 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 and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of Legislature's failure to express itself clearly”.*

4.23 Relying on the decision of Hon'ble Supreme Court as referred above Hon'ble Madras High Court has in the case of Premier Garment Process [2022 (67) G.S.T.L. 514 (Mad.)] held as follows:

9. *Prior to the aforesaid period, the appellant was liable to pay tax service provider as "Business Auxiliary Service" as defined under Section 65(19) of the Finance Act, 1994, which reads as under:*

*"(iii) for clause (19) the following clauses shall be substituted, namely :-*

*(19) "business auxiliary service" means any service in relation to -*

*(i) ....."*

10. *The appellant was liable to pay tax, as the service provided by the appellant squarely falls within the ambit of Clause (iii) of Section 65(19) of Finance Act, 1994, which reads as under :*

*(iii) any customer care service provided on behalf of the client.*

11. *For the period after 1-7-2012, the service provided by the appellant fall within the definition of 'service' as under Section 65(b)(44) of the Finance Act, 1994 w.e.f. 1-7-2012, which reads as follows :*

*.....*

12. *The reliance placed on Section 99 of the Finance Act, 2013 by the appellant in this appeal, at this stage, **is of no relevance as it applies only to taxable service provided by the Indian Railways.** The service provided by the appellant to the Railways cannot be construed as the service provided by the Railways. What is provided by the appellant is the service of supply of bed rolls alone for the passengers travelling in AC compartments. Therefore, the appellant cannot claim any exemption in terms of the aforesaid provisions of the Finance Act, 2013. That apart,*

*while claiming exemption, the Hon'ble Supreme Court in Union of India v. Wood Papers Ltd. 1991 taxmann.com 77 (SC) = 1990 (47) E.L.T. 500 (S.C.) has held as under :*

*"...Literally exemption is freedom from liability, tax or duty. Fiscally, it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principles requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject, but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction....."*

*13. This view has been followed repeatedly by the Hon'ble Supreme Court and recently in Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)], the law has been summarised by the Hon'ble Supreme Court as follows :*

*"(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within*

*the parameters of the exemption clause or exemption notification.*

*(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*

*(3) The ratio in Sun Export case is not correct and all the decisions which took similar view as in Sun Export Case stands overruled."*

*14. Once the language in taxing statute is clear, there is no scope in interpreting the same as the tax provisions has to be read as it is and nothing is to be intended. In this connection, the decision of the Privy Council in Cape Brandy Syndicate v. Inland Revenue Commissioner [(1921) 1KB 64] wherein it is held as follows :*

*"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

*15. This view has also been followed by the Hon'ble Supreme Court repeatedly in several cases dealing with taxing enactment. Therefore, we are not inclined to interfere with the order passed by the Central Excise Service Tax Appellate Tribunal. Accordingly, these Civil Miscellaneous Appeals are dismissed. We, however, give liberty to the appellant to work out their remedy in terms of Section 64A of the Sale of Goods Act, 1930."*

4.24 Thus in view of the discussions as above we hold that the services provided by the Appellant to M/s SIFCL were correctly classifiable under the taxable category of Business Auxiliary Service as defined by Section 65 (19) and amended from time to time during the relevant period.

4.25 On the issue of reimbursable expenses, adjudicating authority has observed as follows:

*"22.5 Reimbursement of Expenses: At the time of hearing on 31.7.08, the Noticee submitted a copy of various clarifications in support of their stand that they should get the benefit of reimbursement. The Noticee has made reference to DGST letter F No V/DGST/Misc-7/98/Mumbai dt 11<sup>th</sup> Feb 1999 which states; "As regards charges billed to the client on account of out of pocket expenses which are reimbursable on actual basis, such as traveling, boarding and lodging expenses is concerned, the same are not subject to service tax. In this respect, the service tax assessee may be required by the jurisdictional Commissioner of Central Excise to provide documentary evidence substantiating his claim for abatement from the gross amount received from the client for services rendered.*

*The noticee has also relied on various clarifications in respect of various services like custom house agent, market research agency, security agency and manpower recruitment agency in which reimbursement on actual basis is kept out of the service tax net.*

*Here the principle of keeping reimbursement on actual expenses outside the service tax net is not disputed. But as DGST letter, documentary evidence is a must for considering reimbursement on actual basis to be kept outside the service tax net. The Noticee has submitted certificate dt 11.8.2009 by M/s CPS & Company Chartered Accountants, that direct expenses incurred by M/s Sahara India, during the relevant period, has been reimbursed by M/s SIFCL. They also submitted some copies of Debit notes and details period wise direct expenses and uncertified copy of general ledger of M/s Sahara India for the relevant period. The Noticee has not submitted any clinching evidence as to how these expenses have accrued to be*

*reimbursed by M/s SIFCL nor they have submitted any detailed breakup of said expenses. Thus the documents provided by the Noticee are not sufficient to substantiate Noticees claim that the said amount has been received by them as reimbursement on actual basis and hence should be outside the service tax net."*

From the above it is evident that impugned order in no way disputes that reimbursable expenses need to be deducted from the gross amount for determining the taxable value. However have denied the same only for the reason that appellant has failed to provide the documents and evidence in respect of these expenses. We are inclined to accept the submissions made by the appellant relying on the decision of Hon'ble Delhi High Court in the case of Intercontinental Consultants and Technocrats P Ltd [2012-TIOL-966-HC-ST-Del] and affirmed by the Hon'ble Apex Court as reported at [2018 (10) GSTL 401 (SC)], subject to production of documents and evidences in this regard before the adjudicating authority for re-determination of the taxable value. Thus matter to this extent needs to be remanded to the adjudicating authority.

4.26 On the claim of CENVAT Credit, Commissioner has observed as follows:

*"22.4 Whether CENVAT Credit to the noticee was admissible during the period of demand:*

*It has been pleaded by the noticee that in the case of confirmation of demand in respect of business Auxiliary Services they should be extended benefit of CENVAT service tax paid on input service used in relation to output service provided by them.*

*In this connection, for consideration of the plea of the noticee, it is pertinent to examine the relevant provisions of the CENVAT Credit Rules, 2004. Sub Rule 7 of Rule 4 of the CXENVAT Credit Rules, 2004 which prescribes the condition for allowing Cenvat Credit in respect of Service provider of output service is as under:*

*"The Cenvat Credit in respect of input services shall be allowed, on or after the day which payment is made of the value of input service and the service tax paid or payable as indicated in invoice, bill or as the case may be challan referred to in Rule, 9."*

*It is seen that the condition prescribed for availment of CENVAT by service tax provider in the instant case has not been fulfilled. As the Noticee has neither obtained registration under service tax nor has submitted relevant documents as specified under Rule 4 and Rule 9 of the CENVAT Credit Rules, 2004, therefore they are not eligible to take the benefit of CENVAT credit.*

*It is also pertinent to point out that the burden of proof that they are entitled for availment of CENVAT Credit is on the noticee in terms of Rule 9 (5) of the CENVAT Credit Rules, 2004. In absence of such proof from the Noticee the plea cannot be as per Service tax Law. The question at this stage is theoretical. CENVAT Credit is governed by various stipulations and it is for the assessee to follow the prescribed procedure to claim the credit on input services.*

*It is seen that during the course of investigations by DHGCEI and thereafter during substantial submission of reply by the noticee has not brought on records the documents maintained by them and to the availment of input services under the provisions of "Business Auxiliary Services". It is also seen that the noticee has not submitted any documentary evidences for consideration of CENVAT Credit of input services or any other compliance of provisions relating TO Cenvat Credit.*

*I therefore, hold that CENVAT Credit of input service and documentary evidences in respect of payment of Service tax on input service the compliance of Service tax Rules for availment of Cenvat Credit has not been done. The noticee is not entitled to benefit of CENVAT Credit at this stage of proceedings.*

**Limitation and Penalties:**

4.27 On the issue of limitation and imposition of penalties, adjudicating authority has in the impugned order observed as follows:

*"22.2.2 The noticee had contended that they had enquired vide their letter dt 19.07.03 to Superintendent, Central Range –II, Lal Imli, Kanpur mentioning therein that they had been providing service to M/s SIFCL in promotion of their work as an agent. They have pleaded that because all the facts had been brought to in the notice of the department about their activities and therefore the extended period therefore the extended period invoked in the show cause notice was not proper.*

*I have perused the referred letter dt 19.07.03 by the noticee. It is addressed to Superintendent, Central Range –II, Lal Imli, Kanpur and signed by Regional Manager of M/s Sahara India located at Kanpur. The question of relying of this letter does not arise even if was in fact sent to some officer in Kanpur in light of Hon'ble High Court's judgment in the case of Commissioner of Customs and Central Excise, Meerut Vs Kushal Fertilizers (P) Ltd [2008 (229) ELT 652 (Uttarakhand)] wherein it has been held that information given to Inspector of range with regard to which he had no jurisdiction in the matter, cannot be said to information to Office of Assistant Collector I.e. the concerned Central Excise Officer.*

*It is seen that the head office of the Noticee was at Bombay and the Noticee itself is located at Lucknow. The Noticee was well in position to write / approach Bombay/ Lucknow Service Tax offices to ascertain the position of the taxable service and its classification. As per the case record it was not done. Moreover, this fact was not brought to the notice of DGCEI Officers at the time of investigation. This indicates that the noticee had not supplied the material facts to the department or DGCEI*

*Officers at the time of investigation. I do not find any reason to give any weightage to the submission of the noticee at this belated stage. Accordingly, I conclude that the letter dt 19.07.03 is of no relevance and rather it would support the view taken by the Department that inspite of having an idea that service tax is payable, the Noticee adopted evasioneing tactics to willfully avoid the tax and follow the required procedure.*

*22.2.3 The party has relied upon the following case laws in their defence to plead that the demand was time barred and extended period was not applicable on them. They have cited following judgment in their defence:*

*(a) Cosmic Dye Chemical Vs Collector of Central Excise Bombay 1995 (75) ELT 721 (SC): .....*

*(b) CCE Vs Cemphar Drug and Liniments 1989 (40) ELT 276 (SC) "...."*

*(c) Pushpam Pharmaceuticals Company 1995 (78) ELT 401 9SC) "...."*

*(d) Continental Foundation Jt Venture Vs Commissioner of Central Excise Chandigarh 2007 (216) ELT 177 (SC) "..."*

*(e) Bhayalakshmi Poha Industries "...."*

*Thus it is seen that the ratio of the above cases is not applicable in the present case.*

*22.2.4 Under the provisions of Section 69 of FA'94 any service tax provider providing taxable service and liable to pay service tax has to obtain registration from the jurisdictional Superintendent of Central Excise. The relevant provision of the Finance Act, 1994 is as under:*

*"Section 69: - Registration*

*(1) Every person liable to pay the service tax under this Chapter or the rules made thereunder shall, within such time and in such manner and in such form as may be*

*prescribed, make an application for registration to the Superintendent of Central Excise."*

*It is admitted fact that the noticee did not obtain registration from the Central Excise Department for which they were statutorily required.*

22.2.5 *The noticee under the provision of Section 70 of the Finance Act was under statutory obligation to file service tax return. The relevant extract of Section 70 is as under:*

*"Section 70: - Furnishing of returns:*

- a) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for delayed furnishing of return, as may be prescribed.*

*It is evident from the ace records that the noticee had not furnished any return to the Superintendent of Central Excise during the relevant period.*

22.2.6 *It is evident from the Para 20.2.3 and para 20.2.4 that the noticee did not obtain any registration from the department under the provisions of Section 69 of the Act, ibid, did not furnish any return to the department under the provisions for the provision of Section 70 of the Act, ibid; they did not pay any Service tax. It simply implies that the noticee did not discharge his statutory obligations and liability of payment of service tax under Service tax law. The contention of the noticee that the service Tax was not paid on bonafide belief that they were not liable to pay service tax is not established. The services provided by the noticee are clearly and unambiguously within the purview of the definition of*

*"Business Auxiliary Service" as defined in Section 65 (19) of the Finance Act, 1994. Keeping in view the status of the noticee and paraphernalia of the noticee the submission of ignorance and that of ambiguity in the interpretation of definition of "Business Auxiliary service" is not acceptable from the facts of the case on record. The material facts were suppressed by the noticee from the department in as much as the registration was not taken, returns were not filed and the service tax was not paid and with the clear intention to evade it. The noticee deliberately did not comply with the provisions of service tax law with intent to evade Service tax due to the Govt. exchequer. The noticee has however obtained registration under business support service on 10.11.06.*

*I therefore, hold that the noticee consciously suppressed material facts from the Department with intent to evade Service Tax by not taking registration and not filing returns as per the Service Tax Law. Furthermore, the noticee did not discharge its statutory obligation of Service Tax payment. The provision of taxable service and evasion of service tax by the noticee was detected by the Department. After taking into all the facts and circumstances of the case, I hold that the extended period for demand of Service tax under Section 73 (1) of the Finance Act, 1994 is invokable."*

*23. Whether the noticee is liable to Penalty under Section 76, 77 and &8 of Finance Act, 1994.*

- a) The submission of the noticee is that there was ambiguity regarding the scope of "Business Auxiliary Services" during the relevant period as the noticee was not sure whether the services provided by them are taxable in light of discussion held herein before.*

- b) *The noticee did not obtain any registration under the provisions of FA'94. More so the noticee did not furnish any return to the department.*
- c) *The noticee did not file and discharge service tax liability on them under Service Tax law during the relevant period.*
- d) *The noticee deliberately with intent to evade service tax did not supply correct and true information and suppress material facts during the relevant period from the Department and the investigating officers of DGCEI.*

*The noticee has relied upon the following decisions of the Hon'ble Tribunal in their defence that penalty is not impossible:*

*In the instant case, the noticee has never approached the department for taking registration and discharging its service tax liability. The noticee by action of omission or failure to make a return under Section 70 for the period 1.7.03 to 31.7.06 to disclose wholly or truly all material facts viz, nature of a service provided by them and the gross amount of pay out/ commission received by them, necessary for their assessment for the said period, the value of taxable service had escaped assessment. The noticee did so with intent to evade payment of service tax. Thus Noticee has rendered themselves liable to penal action under Section 76, 77 and 78 of FA' 94".*

4.28 The sole reliance for arguing against invocation of the extended period of limitation by the appellant in the present case is on the letter dated 19.07.2003 which the some regional office of the appellant has written to some unconcerned range officer. The Commissioner has rightly stated that nothing was communicated to the concerned officers which can be said to be the jurisdictional officers in the matter. Further this letter do not establish any bonafides on the behalf of the appellant as nothing

has been placed on record to show that they had even pursued for the response to the said letter. However this letter clearly establishes that the appellant was aware of the fact that the services provided by them are liable to be taxed under the category of Business Auxiliary Services but with the intention to evade the payment of tax they avoided approaching the jurisdictional officers, with all the relevant facts. Hon'ble Supreme Court has in the case of Gujarat Industries [2015 (326) E.L.T. 625 (S.C.)] held as follows:

**"13.** *Once, we keep the aforesaid facts in mind, it is difficult to accept that the assessee was under bona fide belief that Excise duty was not payable and that it was not permissible for the Department to avail the larger period of limitation by invoking proviso to Section 11A of the Act. All the Authorities below have rejected this argument of the assessee. The Tribunal while upholding the view of the Commissioner agreed with the reasons given by the Commissioner in the following manner :*

*"The Commissioner has also for valid reasons held that the extended period of limitation was applicable and that the Department's record did not show the receipt of any letter allegedly written on 28-9-1996. The assessee, dealing with several similar manufacturing units who paid excise duty on identical processes, and doing job work on their behalf would have obviously known that excise registration was required for the cold rolling mills in its factory for the purpose of manufacturing cold-rolled pattas/pattis. The partner of the assessee was fully aware that such activity was dutiable, in view of the fact that four out of six units from which the goods were received by M/s. Gujarat Industries were paying duty on similar manufacturing activity. Thus, the Commissioner is right in issuing the show cause notice by invoking the extended period of limitation and also holding that the assessee had connived and deliberately acted in a manner to defraud the Revenue. The Division Bench of this Tribunal in Indian Strips v. CCE, Ahmedabad - 2004 (173) E.L.T. 265 took note of the Chapter*

*Note 4 of Chapter 72 for holding that cold-rolling process on flat rolled product would amount to manufacture. This decision was rendered after considering the decision of Hon. Supreme Court in Steel Strips Ltd. - 1995 (77) E.L.T. 248 (S.C.), which was rendered prior to the enactment of the said Chapter Note 4 which had the effect of including the process of hardening or tempering in relation to flat-rolled products in the definition of 'manufacture'. The subsequent decision in Lalit Engineering Works v. CCE, Ahmedabad could not have taken a view contrary to the earlier binding decision in Indian Strips v. CCE, Aurangabad (supra) is required to be followed in a subsequent decision of the Division Bench. The assessee M/s. Gujarat Industries removed the goods without any cover of excise invoices and the other assessees received the cold-worked goods without cover of such excise invoices."*

4.29 In the case of L.R. Brothers Indo Flora Ltd [2020 (373) E.L.T. 721 (S.C.)] Hon'ble Supreme Court has held as follows:

**"34.** *In the fact situation of the present case, the appellant was issued a show cause notice mentioning that it had suppressed the DTA sales of cut flowers to evade payment of duty. Had the appellant in good faith believed that no duty was payable upon the DTA sales of cut flowers, it would have sought prior approval of the Development Commissioner, which it failed to do. Even in the letter seeking ex post facto approval, the appellant claimed that they had not used any imported input such as fertilizer, plant growth regulations, etc. in growing flowers sold in DTA, despite having imported green house equipment, raw materials like Live Rose Plants and consumables like planting materials and fertilizers. Therefore, it prima facie appeared that suppression by the appellant was "wilful". The burden of proving to the contrary rested upon the appellant, which the appellant failed to discharge by failing to establish that the imported inputs were not used in the production of the cut flowers sold in DTA. In view thereof, the authorities below have rightly invoked Section 28 of the 1962 Act and allied provisions."*

4.30 In case of Kitply Industries [2011 (264) E.L.T. 481 (S.C.)] Hon'ble Supreme Court has held as follows:

**"22.** *Consequently, we propose to look into the first issue in the light of the background facts as stated hereinbefore. The specific case of the appellant is that the respondent having manufactured the excisable goods covered under different chapter headings, removed them without payment of proper duty of excise and that from the aforesaid action it is explicit that there was an intention on the part of the respondent to evade payment of duty particularly when the contract clause between the respondent and M/s. Adyar Gate Hotel Ltd. clearly mentioned that the contractors quoted rate would also include excise duty.*

**23.** *Although, the respondent has pleaded that it was done out of ignorance, but in our considered opinion there appears to be an intention to evade excise duty and contravention of the provisions of the Act. Therefore, proviso of Section 11A(i) of the Act would get attracted to the facts and circumstances of the present case.*

**24.** *The cause of action, i.e., date of knowledge could be attributed to the appellant in the year 1997 when in compliance of the memo issued by the appellant and also the summons issued, the hotel furnished its reply setting out the details of the work done by the appellant amounting to Rs. 991.66 lakhs and at that stage only the department came to know that the work order was to carry out the job for furniture also. A bare perusal of the records shows that the aforesaid reply was sent by the respondent on receipt of a letter issued by the Commissioner of Central Excise on 27-2-1997. If the period of limitation of five years is computed from the aforesaid date, the show cause notice having been issued on 15-5-2000, the demand made was clearly within the period of limitation as prescribed, which is five years."*

4.31 In case of Bombay Dyeing & Mfg Co Pvt Ltd [1999 (113) ELT 331 (T)] following has been held:

*"9. Where this situation prevails, the assessee who is in the knowledge that the inputs so received are less than those shown in the covering documents, it is for him to voluntarily take the less credit. Where the assessee is in such knowledge and where the department have no knowledge of the situation, the department can allege suppression of facts. Weighment sheets are not the documents prescribed in the legislature. The assessee was working under the self removal procedure and therefore, there is no reason or cause for the jurisdictional officer to know about the existence of the weighment sheets and the shortages in the weighment of inputs that they indicated. In this situation, we do not see any reason to agree with the submission on limitation."*

4.32 Similarly tribunal has in case of Tech Mahindra [2015 (38) STR 1200 (T)] has held as follows:

*"6.4 As regards the contention raised by the appellant that the appellant in their annual balance sheets provided the relevant information, we have perused the balance sheets and the balance sheets do not reflect the payments made for the various transactions separately. It only gives the gross amount of the expenditure incurred, in terms of foreign currency. From that information it cannot be gathered, for what purpose the expenditure was incurred, whether it was for a taxable service or otherwise. Therefore, unless the details of the expenditure incurred are given, it is not possible to make any conclusion one way or the other. It is on record that the appellant had not provided copy of the agreement to the department in respect of the services received from abroad and these were provided only in 2010 when the investigation commenced. Further, the exact details of the payments made in respect of the marketing promotion activities were*

*given to the department for the first time only in January, 2011 vide letters dated 5-1-2011 and 7-1-2011. The show cause notice has been issued on 20-4-2011 and, therefore, it cannot be said that the show cause notice is barred by limitation of time.*

4.33 In the case of Mehta & Co. [2011 (264) E.L.T. 481 (S.C.)] Hon'ble Apex Court held as follows:

*"The cause of action, i.e., date of knowledge could be attributed to the appellant in the year 1997 when in compliance of the memo issued by the appellant and also the summons issued; the hotel furnished its reply setting out the details of the work done by the appellant amounting to Rs. 991.66 lakhs and at that stage only the department came to know that the work order was to carry out the job for furniture also. A bare perusal of the records shows that the aforesaid reply was sent by the respondent on receipt of a letter issued by the Commissioner of Central Excise on 27-2-1997. If the period of limitation of five years is computed from the aforesaid date, the show cause notice having been issued on 15-5-2000, the demand made was clearly within the period of limitation as prescribed, which is five years."*

*In our considered view, the ratio of the aforesaid decision squarely applies to the facts of the present case. Since the copy of the agreement and relevant information were provided to the department only in 2011 the show cause notice issued in April, 2011 is clearly within the period of limitation and therefore, the demands confirmed as above for the period on or after 18-4-2006 cannot be said to be time-barred at all."*

4.34 In case of Usha Rectifier Corpn (I) Ltd [2011 (263) E.L.T. 655 (S.C.)] where appellant had failed to take registration and discharge the duty liability, Hon'ble Supreme Court has held as follows:

**"12.** *Submission was also made regarding use of the extended period limitation contending inter alia that such extended period of limitation could not have been used by the respondent. The aforesaid contention is also found to be without any merit as the appellant has not obtained L-4 licence nor they had disclosed the fact of manufacturing of the aforesaid goods to the department. The aforesaid knowledge of manufacture came to be acquired by the department only subsequently and in view of non-disclosure of such information by the appellant and suppression of relevant facts, the extended period of limitation was rightly invoked by the department."*

4.35 In view of the discussions as above we do not find any merits in the submissions of the appellant that an extended period should not have been invoked for making this demand. The issue of limitation has to be considered on the facts of case in hand and the conduct of the assessee/ appellant. There cannot be application of the decisions in determining the issue of limitation on the basis of the law laid down therein ignoring the facts of case in hand. We do not find that decisions relied upon by the appellants will advance their case any further in the facts of the present case. In case of Bajaj Travels Co [2012 (25) S.T.R. 417 (Del.)] Hon'ble Delhi High Court held as follows:

*13. We have given our due considerations to the aforesaid submissions made by the learned counsel for both the parties. The service tax was introduced by the Finance Act, 1994 and the relevant provisions are contained in Chapter-V of the said Act, Section 66 is the charging Section and Section 67 provides the manner of valuation of taxable services for charging service tax. Section 68 of the Act, cast an obligation on every person providing taxable service to any person to collect the service tax at the rate specified in Section 66 of the Act. From Section 76 to Section 80 of the Act, different kinds of penalties are provided for varying default/failure on the*

*part of those who are liable to pay service tax. Since in the instance case the penalties are levied under Section 76 and 78 of the Act, we reproduce these two Sections hereunder :-*

*"76. Penalty for failure to pay service tax -*

*Any person, liable to pay service tax in accordance with the provisions of Section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of Section 75, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent. of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax :*

*Provided that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable."*

*"78. Penalty for suppressing value of taxable service :*

*[Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of -*

- (a) fraud; or*
- (b) collusion; or*
- (c) Wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.*

*the person, liable, to pay such service tax or erroneous refund, as determined under sub-section (2) of Section 73, shall also be liable to pay a penalty, in addition to such*

*service tax and interest thereon; if any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded]*

*[Provided that where such service tax as determined under sub-section (2) of Section 73, and the interest payable thereon under Section 75 is paid within thirty days from the date of communication of order of the [Central Excise Officer] determining such service tax, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent of the service tax so determined :*

*Provided further that the benefit of reduced penalty under the first proviso shall be available only if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

*Provided also that where the service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account :*

*Provided also that in case where the service tax determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of service tax so increased, the interest payable thereon and twenty five per cent of the consequential increase of penalty have also been paid within thirty days of communication of the order by which such increase in service tax takes effect."*

*A perusal of the provisions would show that Section 76 provides for penalty for failure to pay service tax. In such a case, in addition to the tax and interest on that tax*

*amount to be calculated in accordance with the provision of Section 75, penalty is also leviable on the defaulter which shall not be less than ` 200 for every day during which such failure continues or at the rate of two per cent of such tax per month whichever is higher. There is, however, a cap on this penalty stipulated in the proviso to this Section which states that penalty payable is not to exceed the service tax payable.*

*14. On the other hand, as per Section 78, penalty can be imposed for suppressing the value of taxable service. This provision applies where the service tax has not been levied or paid or where it has been short-levied or short-paid or where the service tax has been erroneously refunded by reasons of circumstances stipulated therein which are fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder. Such fraud, collusion etc. has to be with intent to evade payment of service tax. Thus, provision of Section 78 are attracted when not only a case of fraud, collusion etc. is made out but it is also established that the defaulter did not pay or short-paid or got refund of the tax paid with intent to evade the payment of service tax. In such a case, the person who is liable to pay such service tax or is erroneously refunded the tax can be levied the penalty which shall not be less than the amount of service tax evaded/refunded subject to maximum of the twice the said amount of the non-levy/non-payment/short-levied/ short-payment/erroneous refund. However, in case the service tax as determined under Section 72(2) of the Act is paid along with the interest payable under Section 75, within 30 days from the date of communication of the order, this penalty is to be reduced to 25% of the service tax so determined.*

15. *By their very nature, Sections 76 and 78 of the Act operate in two different fields. In the case of Assistant Commissioner of Central Excise v. Krishna Poduval - (2005) 199 CTR 58 = 2006 (1) S.T.R. 185 (Ker.) the Kerala High Court has categorically held that instances of imposition of penalty under Section 76 and 78 of the Act are distinct and separate under two provisions and even if the offences are committed in the course of same transactions or arise out of the same Act, penalty would be imposable both under Section 76 and 78 of the Act. We are in agreement with the aforesaid rule.*

16. *No doubt, Section 78 of the Act has been amended by the Finance Act, 2008 and the amendment provides that in case where penalty for suppressing the value of taxable service under Section 78 is imposed, the penalty for failure to pay service tax under Section 76 shall not apply. With this amendment the legal position now is that simultaneous penalties under both Section 76 and 78 of the Act would not be levied. However, since this amendment has come into force w.e.f. 16th May, 2008, it cannot have retrospective operation in the absence of any specific stipulation to this effect. Going by the nature of the amendment, it also cannot be said that this amendment is only clarificatory in nature. We may mention that Punjab and Haryana High Court in its decision dated 12th July, 2010 in STA 13/2010, entitled Commissioner of Central Excise v. M/s. Pannu Property Dealers, Ludhiana [2011 (24) S.T.R. 173 (P & H)] has taken the view that even if the scope of two sections of the Act may be different, the fact that penalty has been levied under Section 78 could be taken into account for levying or not levying penalty under Section 76 of the Act. However, that was a case where the appellate authority had exercised its discretion not to levy the penalty under Section 76 of the Act, when the larger penalty had already been imposed under Section 78 of the Act. In this*

*scenario, the appeal of the Revenue against the said view taken by the appellate authority was dismissed holding that "appellate authority was within its jurisdiction not to levy the penalty under Section 76 of the Act having regard to the fact that penalty equal to service tax had already been imposed under Section 78 of the Act. This thinking was also in consonance with the amendment now incorporated though the said amendment may not have been applicable at the relevant time. Moreover, the amount involved is ` 51,026/- only." The Court, thus, chose not to interfere with the aforesaid discretion of the Tribunal.*

*17. However, in the instant case, the appellate authority, including the Tribunal, has chosen to impose the penalty under both the Sections. Since the penalty under both the Sections is imposable as rightly held by Kerala High Court in Krishna Poduval (supra), the appellant cannot contend that once penalty is imposed under Section 78, there should not have been any penalty under Section 76 of the Finance Act.*

*18. We, thus, answer question no. 3 against the assessee and in favour of the Revenue holding that the aforesaid amendment to Section 78 by Finance Act, 2008 shall operate prospectively.*

*19. Coming to questions Nos. 1 & 2, the case of the appellant is that having regard to the provisions of Section 80, there was no reason to impose the penalty under Section 76 and 78 of the Finance Act. Section 80 is couched in the following language :-*

*"80. Penalty not to be imposed in certain cases :*

*Notwithstanding anything contained in the provisions of Section 76 {Section 77 or Section 78}, no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure."*

20. *The facts narrated above, clearly disclose, and there is no dispute about the same, that there was failure on the part of the appellant to pay full service tax. It was argued by the learned counsel for the appellant that this provision has no application as tax was paid though short-paid. Section 76 applies only when no tax is paid at all as it deals with "failure to pay service tax" and not when tax is paid but short-paid. However, the defence of the appellant is that this failure was due to reasonable cause and, therefore, Section 80 becomes applicable. A bare reading of this provision would show that the onus is upon the appellant to prove "reasonable cause" for this failure. The moot question is as to whether the appellant has been able to discharge this onus? Before we advert to this issue, it is necessary to understand the meaning which is to be assigned to expression "reasonable cause". It would mean, in common parlance a cause or ground which was not unreasonable. To put it otherwise, in the context of this case the appellant has to show that there was sufficient and proper reasons which occasioned the appellant to make short deposits of service tax than required under the provisions of the Act. If the appellant can show that the manner in which he was making the deposits of the service tax was bona fide i.e., in good faith, it would amount to 'reasonable cause'. Bona fide implies in the absence of fraud or unfair dealing. The equivalent of this phrase is "honestly". The correct province of this phrase is, therefore, to qualify things or actions that have relation to the mind or motive of the individual. Chambers 20th Century Dictionary defines bona fide to mean 'in good faith : genuine'. The word 'genuine' means 'natural : not spurious; real; pure; sincere'. In Law Dictionary Mozley and Whitley define bona fide to mean 'good faith, without fraud or deceit'. Thus the term bona fide or genuinely refers to a state of mind."*

4.36 With regards to the penalty imposed under Section 78 we find that once the extended period of limitation has been invoked the penalty under this section is mandatory. In case of Rajasthan Spinning & Weaving Mills Ltd [2009 (238) ELT 3 (SC)], Hon'ble Supreme Court has held as follows:

*"16. The other provision with which we are concerned in this case is Section 11AC relating to penalty. It is as follows :*

*[11AC. Penalty for short-levy or non-levy of duty in certain cases.- where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the person who is liable to pay duty as determined under subsection (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined :*

*[Provided that where such duty as determined under subsection (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty so determined :*

*Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

*Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purpose of this section, the duty as*

*reduced or increased, as the case may be, shall be taken into account :*

*Provided also that in case where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect -*

*Explanation. - For the removal of doubts, it is hereby declared that -*

*(1) the provisions of this section shall also apply to cases in which the order determining the duty under sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

*(1) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]*

*17. The main body of Section 11AC lays down the conditions and circumstances that would attract penalty and the various provisos enumerate the conditions, subject to which and the extent to which the penalty may be reduced.*

*18. One cannot fail to notice that both the proviso to sub-section 1 of Section 11A and Section 11AC use the same expressions : "...by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of*

*duty,...". In other words the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty. It, therefore, follows that if the notice under Section 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed under Section 11A(2) there is a legally tenable finding to that effect then the provision of Section 11AC would also get attracted. The converse of this, equally true, is that in the absence of such an allegation in the notice the period for which the escaped duty may be reclaimed would be confined to one year and in the absence of such a finding in the order passed under Section 11A(2) there would be no application of the penalty provision in Section 11AC of the Act. On behalf of the assesseees it was also submitted that Sections 11A and 11AC not only operate in different fields but the two provisions are also separated by time. The penalty provision of Section 11AC would come into play only after an order is passed under Section 11A(2) with the finding that the escaped duty was the result of deception by the assessee by adopting a means as indicated in Section 11AC.*

*19. From the aforesaid discussion it is clear that penalty under Section 11AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section.*

*20. At this stage, we need to examine the recent decision of this Court in Dharamendra Textile (supra). In almost every case relating to penalty, the decision is referred to on behalf of the Revenue as if it laid down that in every case of non-payment or short payment of duty the penalty clause would automatically get attracted and the authority had no discretion in the matter. One of us (Aftab Alam, J.) was a party to the decision in Dharamendra Textile and we*

*see no reason to understand or read that decision in that manner. In Dharamendra Textile the court framed the issues before it, in paragraph 2 of the decision, as follows :*

*"2. A Division Bench of this Court has referred the controversy involved in these appeals to a larger Bench doubting the correctness of the view expressed in Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai & Anr. [2007 (8) SCALE 304]. The question which arises for determination in all these appeals is whether Section 11AC of the Central Excise Act, 1944 (in short the "Act") inserted by Finance Act, 1996 with the intention of imposing mandatory penalty on persons who evaded payment of tax should be read to contain mens rea as an essential ingredient and whether there is a scope for levying penalty below the prescribed minimum. Before the Division Bench, stand of the revenue was that said section should be read as penalty for statutory offence and the authority imposing penalty has no discretion in the matter of imposition of penalty and the adjudicating authority in such cases was duty bound to impose penalty equal to the duties so determined. The assessee on the other hand referred to Section 271(1)(c) of the Income Tax Act, 1961 (in short the IT Act) taking the stand that Section 11AC of the Act is identically worded and in a given case it was open to the assessing officer not to impose any penalty. The Division Bench made reference to Rule 96ZQ and Rule 96ZO of the Central Excise Rules, 1944 (in short the "Rules") and a decision of this Court in Chairman, SEBI v. Shriram Mutual Fund & Anr. [2006 (5) SCC 361] and was of the view that the basic scheme for imposition of penalty under section 271(1)(c) of IT Act, Section 11AC of the Act and Rule 96ZQ(5) of the Rules is common. According to the Division Bench the correct position in law was laid down in Chairman, SEBI's case (supra) and not in Dilip Shroff's case (supra). Therefore, the matter was referred to a larger Bench."*

*After referring to a number of decisions on interpretation and construction of statutory provisions, in paragraphs 26 and 27 of the decision, the court observed and held as follows :*

*"26. In Union Budget of 1996-97, Section 11AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given.*

*"27. Above being the position, the plea that the Rules 96ZQ and 96ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff's case (supra) was not correctly decided but Chairman, SEBI's case (supra) has analysed the legal position in the correct perspectives. The reference is answered.....".*

*21. From the above, we fail to see how the decision in Dharamendra Textile can be said to hold that Section 11AC would apply to every case of non-payment or short payment of duty regardless of the conditions expressly mentioned in the section for its application.*

*22. There is another very strong reason for holding that Dharamendra Textile could not have interpreted Section 11AC in the manner as suggested because in that case that was not even the stand of the revenue. In paragraph 5 of the decision the court noted the submission made on behalf of the revenue as follows :*

*"5. Mr. Chandrashekharan, Additional Solicitor General submitted that in Rules 96ZQ and 96ZO there is no reference to any mens rea as in section 11AC where mens rea is prescribed statutorily. This is clear from the extended period of limitation permissible under Section 11A of the Act. It is in essence submitted that the penalty is for statutory offence. It is pointed out that the proviso to*

*Section 11A deals with the time for initiation of action. Section 11AC is only a mechanism for computation and the quantum of penalty. It is stated that the consequences of fraud etc. relate to the extended period of limitation and the onus is on the revenue to establish that the extended period of limitation is applicable. Once that hurdle is crossed by the revenue, the assessee is exposed to penalty and the quantum of penalty is fixed. It is pointed out that even if in some statutes mens rea is specifically provided for, so is the limit or imposition of penalty, that is the maximum fixed or the quantum has to be between two limits fixed. In the cases at hand, there is no variable and, therefore, no discretion. It is pointed out that prior to insertion of Section 11AC, Rule 173Q was in vogue in which no mens rea was provided for. It only stated "which he knows or has reason to believe". The said clause referred to wilful action. According to learned counsel what was inferentially provided in some respects in Rule 173Q, now stands explicitly provided in Section 11AC. Where the outer limit of penalty is fixed and the statute provides that it should not exceed a particular limit, that itself indicates scope for discretion but that is not the case here."*

*23. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-section (2) of Section 11A. That is what Dharamendra Textile decides."*

Thus the penalty imposed under this section cannot be faulted with. However the same needs to be modified to the extent of quantum of tax evaded to be determined in the remand proceedings.

4.38 Penalties under section 76 and 77 are not for the contumacious conduct but for the contravention of the provisions of statute and hence cannot be faulted. In case of Gujarat Travancore Agency [1989 (42) E.L.T. 350 (S.C.)] Hon'ble Supreme Court has held as follow:

*"4. Learned Counsel for the assessee has addressed an exhaustive argument before us on the question whether a penalty imposed under Section 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the proceedings by way of penalty under Section 271(1)(a) of the Act are quasi criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed under Section 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what it intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the*

*intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by Statute proceeds on the assumption that society suffers injury by and the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of Revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision. We are supported by the statement in Corpus Juris Secundum Volume 85, page 580, Paragraph 1023 :*

*"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."*

**5.** *Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income Tax Officer under Section 271(1)(a) of the Income-tax Act against the assessee for the assessment years 1965-66 and 1966-67."*

4.39 Hon'ble Delhi High Court has in the case of N & N Chopra Consultants Pvt. Ltd [2019 (24) G.S.T.L. 550 (Del.)] has upheld the penalties imposed simultaneously under Section 76 and

Section 78, for the period prior to amendments made in Section 78 in 2008, observing as follows:

*"4. The facts of this case, in the opinion of this court, notes that the assessee was aware about its service tax liability; despite this knowledge, it filed its returns claiming that no liabilities were attracted. When it smelt investigation and adverse orders, it apparently approached the service tax authorities and deposited the amounts which they were admittedly liable to pay. Such being the case of foreknowledge, in the opinion of the court, itself is an important factor that ought to have been and was taken into account by the lower revenue authorities. Hence, foreknowledge lead to the imposition of recovery of dues assessed as well as imposition of the penalty under Section 78. The court is of the opinion that the invocation of Section 78 cannot be faulted with having regard to the facts of this case. Depositing the amount due, by the appellant, before issuance of show cause notice per se does not absolve the appellant of its responsibility to file the returns, since the option of imposing other penalty under Section 76 was exercised. Being a matter of discretion, its judicious exercise, is all that is in question. Having regard to the fact of concurrent findings, we are of the opinion that the exercise of such discretion reserving imposition of Section 76 in the circumstances, does not call for interference.*

*5. The appellant's contention with respect to retrospective effect of the amendment of Section 78 (which makes the imposition of penalties under Section 76 and 78 mutually exclusively) are unsubstantial as this court in M/s. Bajaj Travels Limited v. Commissioner of Service Tax, (CEAC 6/2009, decided on 3-8-2011), 2012 (25) S.T.R. 417 held that the amendments are prospective in nature and cannot come to the aid of an assessee for past period."*

4.40 Thus we do not find any reason to interfere with the penalties imposed under Section 76 and 77 of Finance Act, 1994.

## **INTEREST**

4.41 Issue in respect of interest is settled by the Bombay High Court in case of Padmashree V V Patil SSK [2007 (215) ELT 23 (Bom)] wherein it has been held:-

*"12. Learned Counsel Shri Kolte has also placed reliance upon the tail piece of Explanation (2) to sub-section (2B) reading "but for this sub-section". According to him, "but" is a conjunction used to indicate the intention of those who use it to limit or restrain the sense or effect of something, which had before been said. He has obtained this meaning from Law Lexicon by P. Ramnatha Aiyar. In order to examine the submission by learned Counsel as to whether this terminal part of Explanation (2) gives the explanation so much strength as to mean that the party, which has utilised the facility of sub-section (2B) of payment of short duty as ascertained by the assessee himself, is not liable to pay the interest as u/s. 11AB, we have tried to search for the meaning of phrase "but for". As per Concise Oxford Dictionary, 11th Edition, "but for" means "except for", "if it were not for". In view of these meanings obtained from the Law Lexicon and the Oxford Dictionary attached to the word "but" and to the phrase "but for", the Advocate pleaded that it should be interpreted that had sub-section (2B) not been in existence or rather the facility to pay the short duty was not available, the party would have been required to pay interest u/s. 11AB and if the facility is available, on compliance of the same, the party would not be liable to pay interest.*

*Taking into consideration that the tail piece relied upon by learned Counsel is included in the Explanation to particular sub-section (2B), we are unable to accept the interpretation as tried to be attributed by the learned*

*Counsel for one simple reason that an explanation ought to be therefore the purpose of explaining the main provision, it cannot nullify the effect of main provision. If Explanation (2) interprets as attempted by learned Counsel due to the phrase with which it ends "but for this sub-section", the explanation will have to be ignored being in conflict with sub-section (2B), which it explains. However, the meaning of this clause "but for this sub-section" can be enlightened when we refer to Section 11AB (1), we have reproduced two portions of this provision (in parts) in the earlier part of this judgment and for the sake of convenience, now we are quoting entire sub-section (1) of Section 11AB, which reads :*

*"11AB. Interest on delayed payment of duty-(1) where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded, the person, who is liable to pay duty as determined under sub-section (2), or has paid the duty under sub-section (2B) of Section 11A, shall in addition to duty be liable to pay interest at such rate, not below 10% ....from the first date of the month succeeding the month in which the duty ought to have been paid under this Act or from the date of such erroneous refund as the case may be, but for the provisions contained in sub-section (2) or sub-section (2B) of Section 11A, till the date of payment of such duty."*

*Thus, why the clause "but for" is used, is evident from the tail piece of Section 11AB(1). Ordinarily, the interest is payable till payment of short duty as adjudicated, but in view of sub-section (2B), which gives liberty to the party to pay the short duty even before determination or without determination by the officer of Central Excise, the interest would stop to run to the extent of amount deposited by self ascertainment and on the date such amount is so deposited.*

*If the tail piece of Explanation (2) was to be so strong as to nullify the effect of sub-section (2B), Section 11AB would not have incorporated within it the clause "or has paid the duty under sub-section (2B)". Reading Section 11AB together with Section 11A (2B) and Explanation (2), we are unable to accede to the interpretation tried to be attributed by Advocate Shri A.P. Kolte to Explanation in question.*

*13. For all these reasons discussed, we are unable to agree with the proposition that interest u/s. 11AB is also not chargeable in case the short duty or unpaid duty is deposited with the Government before issuance of show cause notice."*

### **Summary of our findings**

4.42 Commissioner has in the impugned order recorded the findings as follows:

*"1. Under the facts and circumstances narrated above, the Notice must succeed. Impugned Services provided by the Noticee during the relevant period are BAS to evade Service Tax the Noticee had willfully suppressed material facts and evidences during relevant period from the jurisdictional Central Excise Authorities. The Noticee has also contravened various provisions of FA'1994 and Service Tax Rules. There is willful suppression and contravention of Service Tax law by not informing the Department about the nature of Services and related facts therein. The intent of evasion of service tax is evident from conduct of the noticee. The Noticee did not obtain registration and did not file returns as per the statutory provisions of FA1994 and STR-1994*

*2. In the facts and circumstances of his case and in view of above foregoing discussions and analysis hold that during the relevant period the Noticee had provided BAS of taxable value Rs.9,18,01,58,795 inclusive of service tax*

*but the service tax payable thereon has not been paid. The liability of Service Tax is to be calculated hereunder in the light of various decisions of the Cour/Tribunal given in GOI Vs. MRF Ltd. 1995(97)ELT 433(SC) and K.R.Choksey and Company vs Commissioner of Central Excise, Mumbai-I 1996 (88) ELT S66. The value of taxable service shall be calculated as under:*

*Assessable value = (Cum duty price - Permissible deductions)/ (1+ R/100).*

*Here in the instant case, the formula will be as under:*

*Assessable Value = Gross amount inclusive of Service Tax/ (1+R/100)*

| Sl. No | Period               | Assessable Value (In Rs....) |            | ServiceTax (In Rs....) |           | Ed. Cess (In Rs...) |          |
|--------|----------------------|------------------------------|------------|------------------------|-----------|---------------------|----------|
|        |                      | As per SCN                   | Revised    | As per SCN             | Revised   | As per SCN          | Revised  |
| 1      | 01.07.03 to 09.09.04 | 3234886034                   | 2995264846 | 258790883 (@ 8%)       | 239621188 | Nil                 | 0        |
| 2      | 10.09.04 to 17.04.06 | 4729661669                   | 4291889010 | 472966169 (@10%)       | 429188900 | 9459323 (@2%)       | 8583778  |
| 3      | 18.04.06 to 31.07.06 | 1215611072                   | 1083046215 | 145873329 (@ 12%)      | 129965546 | 2917466 1 (@2%)     | 2599311  |
|        |                      | 9180158775                   | 8370200071 | 877630381              | 798775634 | 12376789            | 11183089 |

*The Notice has therefore, rightly sought to demand and recover Service Tax which would be amounting to Rs. 809958723.00 (Service Tax Rs. 798775634.00 + Ed. Cess Rs. 11183089,00) as calculated above on the Services rendered by them during relevant period under Sec.73 of the FA'1994*

*3. I also hold that the Notice has rightly invoked the provision of Section 73 of finance Act, 1994 that they had wilfully suppressed material information and evidences from jurisdictional Central Excise Authorities with intent to evade Service Tax during the relevant period*

*4. The Noticee was liable to pay the demanded and determined amount of Service Tax during the relevant*

*period. They would also liable to pay interest at the appropriate rate in terms of Section 75 of Finance Act, 1994*

*5. The Noticee was liable to discharge their service tax liability within stipulated time which they failed to do so and therefore they have rendered themselves liable for penalty under Section 76 ibid.*

*6. This leads to issue of imposition of penalty upon Noticee under Section 78 of FA'1944. As has been brought out, the act of willful suppression of the material facts and evidences from jurisdictional Central Excise authorities, for evading the demanded and determined Service Tax. There was no explicable reasons on the part of the Noticee to suppress the information, which they were statutory required to make under the law. These acts show contumacious conduct on the part of the Noticee. The penal consequences, accordingly, must visit them*

*7. The discussions and findings, supra, consequently also answer all arguments advanced by the Noticee before me in this case."*

4.43 We concur with the above findings except for the finding recorded in the impugned order with regards to the disallowance of reimbursable expenses, as observed by us in para 4.25 above. For the purpose of determination of reimbursable expenses and allowing the deduction on the account of such expenses matter needs to be remanded back to the original authority.

5.1 Appeal is partly allowed to the extent indicated in para above. Commissioner should recompute the demand and penalties imposable on the appellant after allowing the appellant to produce their claim to reimbursable expenses and allowing the same if admissible.

5.2 Needless to say as the matter is sufficiently old in the remand proceedings Commissioner should finalize the issue with

regards to determination of duties and penalties as per para 5.1 within a period of three months from the date of receipt of this order.

(Pronounced in open court on-29 January, 2024)

Sd/-  
**(P.K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

Sd/-  
**(SANJIV SRIVASTAVA)**  
**MEMBER (TECHNICAL)**

*akp*