CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT - I

Service Tax Appeal No. 968 of 2009

[Arising out of the Order-in-Revision No. 09/2009/ST dated 12.10.2009 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin.]

Vertex Securities Limited **....Applicants**
Thottathil Towers
Market Road
Cochin – 682 018.

Vs.

The Commissioner of Central Excise and Service Tax **....Respondents**
C. R. Building,
I.S. Press Road,
Cochin – 682 018.

Appearance:

Mr. Aditya Venugopal, Advocate **....For Applicants**
Mr. Dyamappa Airani, Dy. Com. (AR) **... For respondents**

CORAM:

HON'BLE DR. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing : 05.04.2023
Date of Decision : 05.04.2023

FINAL ORDER NO. _20656 /2023

Per: D. M. MISRA

This is an appeal filed against the Order-in-Review No.9/2009/ST dated 12.10.2009 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin Commissionerate.

2. Briefly stated the facts of the case are that the appellants are registered as a stock broker in accordance with Rules and Regulations made under Securities Exchange Board of India Act,

1992 and engaged in the business of purchase and sale of securities for and behalf of its clients. On the basis of objections from the audit, the appellant was issued a show-cause notice on 17.4.2007 for recovery of a total amount of Rs.3,73,975/- for the period 2001-02 to 2005-06. The said demand comprises of two parts; an amount of Rs.1,25,719/- was demanded alleging short payment of service tax during the said period and an amount of Rs.2,48,256/- was demanded on the ground that they failed to discharge service tax on turnover charges paid to National Stock Exchange and in turn collected from their clients. On adjudication, the demands were dropped by the Assistant Commissioner. However, latter, the Commissioner on Review of the said order, under Section 84(1) of the Finance Act, 1994 issued notice with regard to dropping the demands relating to recovery of turnover charges paid to National Stock Exchange and collected from the clients. On adjudication, the said demands were confirmed and penalties under Section 76, 77 and 78 were imposed on the appellant. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that the issue has been covered by various judgments of this Tribunal viz., **LSE Securities Ltd. vs. Commissioner of Central Excise, Ludhiana: 2013 (29) STR 591 (Tri.-Del.)** and followed by CESTAT recently in the case of **Monarch Research and Brokerage Pvt. Ltd. Vs. Commissioner of Service Tax, Ahmedabad: 2021 (55) GSTL 357**.

4. Learned Authorised Representative reiterated the findings of the learned Commissioner.

5. We have considered the submissions of both sides. The short issue involved in the present appeal is whether turnover charges collected by the appellant-broker and paid to National Stock Exchange is leviable to service tax. We find that the issue is no more *res integra* and considered by the Tribunal in the case of **LSE Securities Ltd.** (supra) and followed subsequently by different benches of the Tribunal and recently followed by Ahmedabad Bench in the case of **Monarch Research and Brokerage Pvt. Ltd.** (supra). The Principal Bench in **LSE Securities Ltd.** laying down the principle observed as:

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

6. We do not see any reason in not following the principle of law settled in the aforesaid judgments. Therefore, the turnover charges

paid to NSE/BSE and collected from clients by the appellant is not leviable to service tax. Consequently, the impugned order is set aside and the appeal is allowed.

(Order pronounced in Open Court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv