CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Regional Bench COURT-2

Service Tax Appeal No. 871 of 2010

[Arising out of the Order-In-Original No. 7/2010/ST dated 29.01.2010 passed by the Commissioner of Central Excise & Customs, Cochin.]

Unimoni Financial Services Limited
(Formerly UAE Exchange & Financial Services Ltd)
First Floor, Airlines Building, MG Road,
Kochi, Kerala – 682011 **.......Appellant**

VERSUS

Commissioner of Central Excise,
C.R. Building, I.S. Press Road,
Cochin – 682018 **.... Respondent**

Appearance:
Shri Kurian Thomas, Advocate for Appellant
Shri M.A. Jithendra, Authorized Representative for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20578 of 2025

Date of Hearing: 16.10.2024
Date of Decision: 11.04.2025

Per: P.A. Augustian

The issues in the present appeal are;

(i) short payment of service tax under 'Business Auxiliary Service', on reimbursements of 'banking cash transaction tax'.
(ii) demand under 'Business Auxiliary Service'
(iii) and also, whether appellant had availed ineligible cenvat credit.

2. The brief facts are the Appellant is involved in providing various services, including banking and other financial services and registered

with the respondent under service tax. Alleging that the Appellant has not paid service tax on various accounts, Show Cause Notice was issued, and thereafter respondent as per the impugned order dated 29.01.2010 confirmed the demands under Section 73(2) along with interest under Section 75 and imposed penalties under Section 76 and 78 of the Finance Act, 1994. Aggrieved by said order, present appeal is filed before the Tribunal.

3. When the appeal came up of hearing, Learned Counsel for the appellant submits that adjudication authority issued the impugned order without appreciating the facts and circumstances of the case and also without considering the evidence on record. As regards the demand of service tax on reimbursement of Banking Cash Transaction Tax (BCTT) under 'Business Auxiliary Service', as per the impugned order, service tax of Rs. 60,71,290/- was confirmed for the period from April 2006 to March 2008. Banking Cash Transaction Tax (BCTT) is a statutory levy introduced by the provisions of Chapter VII of the Finance Act, 1994. The transaction which is subject matter of BCTT involves the appellant providing service to its principals in UAE, whereby the appellant would get consideration in convertible foreign exchange from the principals in UAE for rendering the service of money exchange. The customers of the principals in UAE would remit money for transfer to their relatives in India, which will be done through the appellant. In the process, there is no contract between the appellant and the customer abroad, the principal or the person who receives money in India. The service provided by the appellant is received by the principals of the appellant in UAE and consumed therein. Therefore, the activity of appellant would constitute export of service as per Export of Service Rules, 2005. Therefore, the amount charged thereon cannot be subject to service tax. Learned Counsel also draws our attention to the certificate of foreign inward remittance received which is issued by the concerned bank evidencing inward remittance of foreign currency and submits that the finding given by the adjudication authority regarding non receipt of foreign exchange is factually incorrect and unsustainable.

4. Learned Counsel also draws attention to Para 3 of the Show Cause Notice, where it is categorically stated that the demand of service tax is made on the reimbursement of 'Banking Cash Transaction Tax' amount paid by the appellant and subsequently collected from their clients for the relevant period. They had incurred this amount during the relevant period, and subsequently, these amounts were got reimbursed from their service recipient. Learned Counsel further submits that issue is no more *res-integra* and settled in favor of the appellant in the following decisions.

i. **Muthoot Fincorp Ltd. Vs. Commr. of C.Ex. Visakhapatnam, - 2010 (17) STR 303 (Tri.-Bang.)**

ii. **M/s. UAE Exchange and Financial Services Ltd. Vs. Commr. of Central Excise, Cochin – 2011-TIOL-1778-CESTAT-BANG**

iii. **Kerala State Financial Enterprises Ltd. Vs. Commr. of C. Ex. Calicut-2011 (24) STR 585 (Tri.-Bang.) as affirmed in Commr. of Kerala State Financial Enterprises Ltd.-2017 (49) STR 170 (Ker.)**

5. Learned Counsel also submits that the findings in the impugned order regarding service tax liability on the reimbursement of the expenditure of the BCTT under the provisions Rule 5(1) Service Tax (Determination of Value) Rules, 2006 prior to the amendment to Section 67 of the Finance Act, 2007 with effect from 14.05.2015 is unsustainable as per the judgment of the Hon'ble Supreme Court in the matter of **Union of India Vs. Intercontinental Consultants and Technocrats Private Limited-2018 (10) GSTL 401 (SC)**.

6. Learned Counsel submits that in view of the above judgment of the Hon'ble Supreme Court, reimbursement of expenses would not form part of valuation for the purpose of levy of service tax prior to the amendment to the Section 67 of the Finance Act, 2007 with effect from 14.05.2015. Thus, the said findings are unsustainable.

7. Learned Counsel as regards the demand for short payment of Rs. 7,80,642/- confirmed under 'Business Auxiliary Service', submits that as per Rule 6(4A) of Service Tax Rules, 1994 an assessee who has

opted for Centralized registration under Rule 4(2) Service Tax Rules, 1994 is mandated to adjust the excess amount paid against the liability of subsequent month or quarter. However, it is denied by the adjudication authority on the ground that there has never been any excess payment and hence no liability to make any adjustment by the appellant. In this regard, it is observed that in the month of September, appellant has wrongly remitted the Service Tax of Rs 5,57,509/- on Banking Cash Transaction Tax (BCTT), the taxable value being Rs. 45,54,815/-. Since it being a non-Taxable item, they have adjusted the same against the service tax liability for the month of December. Further it is observed that in September and October, there were payments on Mutual Fund of Rs. 3,770/- (taxable value Rs.30,799/-) and Rs. 12,118/- (taxable value Rs. 99,005/-). In relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, the asset management company is liable to pay the service tax. Thus, appellant was not liable to pay service tax on mutual fund distribution. For the above two months appellant had wrongly paid Rs. 15,888/-(Rs. 3,770+12,118) as service tax. These excess payments made also were adjusted during the month of December 2006. Thus, appellant totally adjusted Rs. 5,73,397/- (Rs.5,57,509+15,888) against Rs. 5,59,071/-. Further, there were short payments of Rs. 2,08,297/- for the months June 06, July 06, August 06, September 06, October 06 and January 07 and it was also adjusted towards payments of following months. But the adjudication authority confirmed short payment under 'Business Auxiliary Service' on the conclusion that all expenditure would form part of valuation for the purpose of payment of service tax. Therefore, BCTT and Commission of mutual fund cannot be put to levy of service tax as confirmed in the order-in-original. Thus, there would not be any short levy of Rs. 7,80,642/- as confirmed in the impugned order under the category of 'Business Auxiliary Service'.

8. As regarding demand of Rs. 1,99,687/- under 'banking and other financial services', Learned Counsel for the appellant submits that demand is confirmed against the amount, which is received from various fund houses for investment in mutual funds. The Learned

Counsel submits that the activity does not involve any advisory services to the customer, and it is outside the preview of 'banking and other financial services'. Learned Counsel further submits that since the appellant was not rendering service as registered mutual fund distributor and therefore, even if it is considered as service, as per Rule 2 (1)(d)(vi), distribution of mutual fund by a mutual fund distributor or an agent only can be considered as receiving such service. Thus, the receipt of commission cannot be classified only under 'Business Auxiliary Service'. Learned Counsel in this regard draws our attention to the decision of this Tribunal in the matter of **Ashok and Co. Pan Bahar Ltd Vs. Commr. of Service Tax, Delhi - 2016 (42) STR 691 (Tri.-Del)**. The learned counsel further submits that as per the decision of the Tribunal in the matter **Sunrise Traders Vs. Commissioner Customs, Mundra reported in 2022 (381) ELT 93 (Tri-Ahmd.)** when the classification adopted by the department is held to be wrong, the classification adopted by the assessee cannot be disturbed.

9. The Learned Counsel submits that as regards the ineligible Cenvat credit availed by the appellant, the adjudication authority has adopted a narrow finding, and they ought to have found that the definition of capital goods under Rule 2(a) of the Cenvat credit Rules, 2004 it is specifically stated that;

2. Unless the context otherwise requires:-

a) "capital goods" means:-

(A) the following goods, namely:-

(1) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90 [heading 6805, grinding wheels and the like, and parts thereof fallin under heading 6804] of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipment;

(iii) components, spares and accessories of the goods specified at (i) and (ii)

(iv) moulds and dies, jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used-

(1) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(2) for providing output service

10. In the Instant case, the office equipment, etc., is required for the activity undertaken by the appellant without which it cannot provide output services. Therefore, the adjudication authority ought to have taken a purposive interpretation on the eligibility of Cenvat credit. The Learned Counsel also draws our attention to the Circular No. 120/01/2010-ST dated 19.01.2010 and also, the decision of the Tribunal in the matters of **Semco Electric Private Limited Vs. Commr. of Central Excise, Pune-2013 (30) STR 572 (Tri.-Mumbai), Red Hat India Pvt Ltd. Vs. Pr. Commr. of S.T, Pune 2016 (44) STR 451 (Tri.-Mumbai)** and submits that the issue is settled and, therefore, the denial of Cenvat Credit and demand of the same by the adjudication authority is unsustainable.

11. As regarding invoking the extended period of limitation and penalty under section 78, Learned Counsel submits that there is no suppression on the part of appellant with an intention to evade the payment of tax. As regarding the non-taxability of the transactions on which service tax was confirmed by the adjudication authority, the appellant has no intention to evade payment of service tax, and the issue was in dispute over a period of time. The issue was settled in favor of the appellant vide ibid decisions relied by the appellant. Considering the above, invoking the extended period of limitation is unsustainable. Learned Counsel also draws attention to a large number of decisions and submits that when there is reasonable belief on the part of the appellant regarding non-taxability of the service, the adjudication authority ought to have invoked Section 80 of the Finance

Act, 1994 and should have refrained from imposing penalty under section 76 and 78 of the Finance Act, 1994.

12. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and also submits that the appellant is liable to pay service tax under the category of 'banking and other financial services' on the income from financial advisory service, during the period 2006-2007 and 2007-2008. The Learned AR also draws our attention to Section 65(12) of Finance Act, 1994. It relates to "Banking and Other Financial Services", which include (v). Asset management, including portfolio management, all forms of fund management, pension fund management, custodial, depository, and trust services. (vi) advisory and other auxiliary financial services, including investment and portfolio research, and advice, advice on mergers and acquisitions, and advice on corporate restructuring and strategy. Learned AR also draws our attention to the finding in the impugned order wherein the adjudication authority confirmed the demand on the ground that sub clause 6 of section 65(12) encompasses all advisory and auxiliary financial services, including investment, portfolio research, and advise, etc., and is wide enough to cover the services rendered by the appellant.

13. Learned Authorized Representative (AR) further draws our attention to Rule 3(2)(b) of Export of Service Rules, 2005 and submits that in the absence of any credible evidence to prove otherwise, assessee has failed to satisfy the second condition of the Export of Service Rules, 2005 for considering their service has been exported.

14. Heard both sides and perused the records.

15. As regarding Levy of service tax on' Banking Cash Transaction Tax' and whether it amount to export of service as claimed by the appellant, the issue is no more *res-integra* and issue is settled by the Tribunal in the matter of **Muthoot Fincorp Ltd. Vs. Commr. of C.Ex. Visakhapatnam, (Supra),** where it is held that:-

> *"8. It can be seen from the above reproduced clauses from the sub-representation agreement, though the sub-representation*

agreement is entered between WFL and the appellant, clauses 5, 14 and 15, very clearly indicate the ultimate beneficiary of the entire transaction is Western Union. It is undisputed in this case, that a person approaches Western Union situated outside India for transfer of fund to a beneficiary in India i.e. a person pays money in England to be given to his relative in India, the appellant herein by virtue of sub-representation agreement, arranges to deliver the said money to the beneficiary on verification of identity. It is undisputed that the appellant herein does not charge any amount as commission or fee from the recipients of the amount. The said Western Union charges fee from the person who is situated outside India and pays WFL some amount as commission and WFL pay current appellant a part of the amount as compensation. In the whole transaction it can be seen that the services rendered by the appellant of money transfer is directly to Western Union. If that be so, it can be said that the appellant is providing the services to Western Union whose beneficiaries are outside India."

16. While considering the above issue, Tribunal has also considered the Circular issued by the Board dated 24.02.2009 regarding applicability of provisions of the Export of Service Rules, 2005 and held that services rendered by the appellant cannot be taxed under the category of 'business auxiliary services'.

17. We further observe that the decision of this Tribunal in the matter of **Kerala State Financial Enterprises Vs. C.Ex. (Supra)** was upheld by the Hon'ble High Court of Kerala with the following orders;

"The Appellate Tribunal in its impugned order had held that appellant by agreement with agent of money transfer agency abroad, only paying that money to claimants in India which was deposited by relatives abroad. Since fee charged by company abroad from person outside India and services rendered by appellant directly to company abroad and benefit of services accruing to persons outside India, Service Tax was not payable under BAS. Tribunal relied on its earlier case in Muthoot FinCorp as reported in 2010 (17) S.T.R. 303 (Tri. - Bang.)."

18. Following the ratio of the above decisions, and also considering the evidence produced by the appellant as part of the appeal memorandum and reply to Show Cause Notice, the amount received by the appellant directly from client abroad, and benefit of services accruing to person outside India. Hence, service tax was not payable under 'Business Auxiliary Service'.

19. As regards demand under 'banking and other financial services', the issue was considered by the Tribunal in the matter **Ashok and Co. Pan Bahar Ltd versus Commr. of S.T (Supra)** where it is held that;

> *"5..........Thus, the appellant was not distributor of mutual fund or agent thereof. It was only promoting and marketing the services provided by M/s. Zealous Financial Services (P) Ltd. It was in no way involved in distribution of the said mutual fund. Thus, the service rendered by the appellant was covered under BAS [Section 65(19) of Finance Act, 1994]. CESTAT judgment in the case of Raj Ratan Castings Pvt. Ltd. v. CCE, Kanpur [2012 (25) S.T.R. 481 (Tri. - Del.)] is not applicable in the present case because in that case, the commission was earned by a mutual fund distributor while the appellant was not a mutual fund distributor." 20*8. Thus, as held by the Tribunal in the matter of **Sunrise Traders (Supra)** since the Revenue has not been able to discharge their burden of proof, the classification of service declared by the appellant cannot be disturbed.

20. As regards the demand of Rs. 7,80,642/- appellant had submitted that as per Rule 6(4A) of Service Tax Rules, 1994 an assessee who has opted for Centralized registration under Rule 4(2) Rule 4(2) Service Tax Rules, 1994 is mandated to adjust excess amount paid against the liability of subsequent month or quarter. Considering the details furnished by the appellants, and also as per Sub-rule (4A) of Rule 6 of Rule 4(2) Service Tax Rules, 1994 the excess amount paid to the Central Government towards service tax for a month or quarter was allowed to be adjusted as service tax against the service tax liability of subsequent month or quarter. Thus, there is no omission on the part of appellant to allege short payment of Rs. 7,80,642/-.

21. As regards demand against ineligible Cenvat credit of Rs. 3,26,997/-, following the ratio of the decision in the matter of **Semco Electric Pvt. Ltd., (supra),** the cenvat credit claimed by the appellant does not fall under the exclusion category as per the definition of input service and appellant is eligible for the same.

22. As regards invoking the extended period of limitation and imposition of penalty, we find that there is no suppression of facts to invoke the extended period of limitation, since the issue is on interpretation of an issue and not suppression of facts. It is well settled that where there is a dispute prevailing in the matter of classification of products, the appellant cannot be held guilty of suppression or misstatement and hence charge of suppression is not sustainable and extended period cannot be invoked. Similarly in the matter of **Jayaprakash Industries Ltd. Vs. Commissioner of Central Excise, Chandigarh reported in 2002 (146) E.L.T. 481 (S.C.),** the Apex Court held that when there is a *bona fide* doubt about the tax liability on the goods due to diverging views of the courts, extended period of limitation is not invocable.

23. In view of the above discussion, we find that the impugned order is unstainable, and is liable to be set aside.

24. Accordingly the impugned order is set aside and the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 11.04.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar