CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 55729 of 2013

[Arising out of Order-in-Original No. 32/Commr./PKL/2012 dated 07.11.2012 passed by the Commissioner of Central Excise, Panchkula, Haryana]

M/s Clix Capital Services Pvt. Ltd. **......Appellant**
DLF Building No.7A, DLF Cyber City, DLF Phase-III,
Sector-25A, Gurugram, Haryana-122002

VERSUS

Commissioner of Central Excise and Service Tax, Panchkula **......Respondent**
SCO 407-408, Sector-8, Panchkula,
Haryana-134119

WITH

Service Tax Appeal No. 54344 of 2015

[Arising out of Order-in-Original No. 25-26/SG/ST/DL-IV/2015-16 dated 28.07.2015 passed by the Commissioner of Service Tax, Delhi-IV]

M/s Clix Capital Services Pvt. Ltd. **......Appellant**
DLF Building No.7A, DLF Cyber City, DLF Phase-III,
Sector-25A, Gurugram, Haryana-122002

VERSUS

Commissioner of Central Excise and Service Tax, Panchkula **......Respondent**
SCO 407-408, Sector-8, Panchkula,
Haryana-134119

APPEARANCE:

Shri B.L. Narasimhan, Ms. Krati Singh, Shri Aman Singh and Ms. Jashanpreet Kaur, Advocates for the Appellant

Shri Aniram Meena, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60567-60568/2025

DATE OF HEARING: 30.01.2025
DATE OF DECISION: 23.05.2025

S.S.GARG

These two appeals are filed against two different impugned orders dated 07.11.2012 and 28.07.2015 passed by the Commissioner of Central Excise, Panchkula whereby the Commissioner has confirmed the demand along with interest and also imposed penalties. As the most of the issues are common in both the appeals therefore both the appeals are taken up together for discussion and decision. The details of both the appeals are given herein below:

Appeal No.	**ST/55729/2013**	**ST/54344/2015**
Issue	Demand of service tax (i) Cheque Bouncing charges (Rs. 21,95,743/-) (ii) Foreclosure charges (Rs. 31,29,028/-) (iii) Operating lease rental (Rs. 35,47,359/-) (iv) Interest on wrongful availment of Cenvat Credit (Rs.1,56,247/-)	Demand of service tax (i) Cheque Bouncing charges (Rs. 42,500) (ii) Foreclosure charges (Rs. 9,64,777/-) (iii) Import of Services (Rs. 5,253/-)
Period of dispute	2006-07 and 2007-08	Oct 2007-June 2008 (cheque bouncing & foreclosure). 2007-08 to 2009-10 (import of services)
Impugned Order dated	07.11.2012	dated 28.07.2015
SCN dated	21.10.2011	22.04.2013
Demand	Rs. 88,72,130 under section 73 of the Finance Act, 1944 (**"the Act"**) along with interest	Rs. 18,66,403/- under Section 73 of the Act along with interest

Penalty	Rs.5,00,000 under rule 15 (2) of the Credit Rules; Rs.5,000 under section 77 of the Act & Rs. 88,72,130/- under Section 78 of the Act.	Rs 5,000 under section 77 of the Act & Rs.18,66,130/- under Section 78 of the Act.

2. Briefly the facts of the present case are that GE Capital Transportation Financial Services Ltd. are amalgamated with GE Capital Services India vide Order 03.09.2009 passed by the Hon'ble High Court. Subsequently, name of the Appellant was changed to Clix Capital Services Private Limited and the CESTAT vide Order dated 02.08.2023 and Order dated 27.04.2018 allowed the application seeking change of name in both the present appeals.

3. Appellant is a non-banking financial services company and is engaged in the business of providing various services to its customers like personal loans, sales finance, auto finance, lease and cash card services and registered under taxable service in the category of banking and many other financial service among other services. As regards the loan agreement executed between the Appellant and customer, the Appellant recovers principal amount along with interest and in certain cases also recovers cheque bouncing and fore-closure charges from the customer. The appellant also enters into separate agreement with customers for 'transfer of right to use' of the equipment such as laptop, desktop etc., under the operating lease agreement wherein the Appellant recovers the lease rentals pursuant to such agreement which does not involve any interest component. Further, during the relevant period, the Appellant provides lending services including the securitisation. The appellant was also availing CENVAT credit on various input and input

services used for providing the service of lending and has also incurred various expenditure in foreign currency for the purpose of import of services. The details of which are given herein below:

Nature of Service	**Taxable Amount**
Equity Shares purchased by the employees under Global Share Participation ('GSPP')	Rs. 34,21,009/-
Legal Advisory Services	Rs.18,66,977/-
Medical treatment of employee	Rs. 4,66,000/-
Amount with respect to services received prior to October 2007	Rs. 6,67,754/-

4. The Department conducted an audit and after that two SCNs were issued wherein demand of service tax was proposed by alleging that Cheque bouncing, Foreclosure charges and Operating lease rentals are leviable to service tax under category of BOFS; that there is a non-payment of service tax on import of services; and interest was sought to be levied on wrongful utilisation of CENVAT Credit to the extent of exempt output services of securitisation and lending in terms of Rule 6(3)(c) of CENVAT Credit Rules, 2004. After following the due process, the learned Commissioner adjudicated the show cause notices and passed the

impugned order wherein the following demands were upheld along with interest and penalties:

ST/55729/2013		ST/54344/2015	
Issue	**Demand of Service Tax**	**Issue**	**Demand of Service Tax**
Cheque Bouncing charges	Rs. 21,95,743/-	Cheque bouncing and foreclosure charges	Rs. 9,70,030/-
Foreclosure Charges	Rs.31,29,028/-	Import of services	Rs. 8,96,100/-
Operating lease rental	Rs.35,47,359/-		
Wrongful availment of Cenvat Credit (interest demand)	Rs. 1,56,247/-		

5. Heard both sides and perused the material on record.

6. Learned Counsel for the appellant submits that the impugned orders are not sustainable in law as the same have been passed without properly appreciating the facts and the law. As regards the first issue of Cheque Bouncing charging in both the appeals, learned Counsel submits that the issue is no more *res integra* and the same has been settled in favour of the appellant in their own case for the previous period and for some part of the relevant period also. He

further submits that this Tribunal in the appellant's own case in Appeal Nos. ST/881/2008 and ST/1915/2010 has decided the issue in favour of the appellant vide Final Order No.60102-60103/2023 dated 20.04.2023. He further submits that the Tribunal has held that the demand of service tax with respect to the amount collected as cheque bouncing and foreclosure charges from the customers is not sustainable under the heads BOFS and is not liable to service tax. He further submits that the demand with respect to foreclosure charges was also set aside by the Tribunal by relying upon the decision of the Larger Bench in the case of **Repco Home Finance Ltd. reported in 2020 (42) GSTL 104 (Tri.LB)** which categorically held that foreclosure charges cannot be viewed as alternative mode of performance of the contract because they arise upon repudiation of specified terms of contract and are intended to compensate the injured party i.e. banks and non-banking companies.

7. Learned Counsel further submits that the Revenue filed appeal against the judgment of the Tribunal before the Hon'ble Apex Court which was dismissed by the Hon'ble Apex Court vide its order dated 29.07.2024 in Civil Appeal No.8066-8067 of 2024 and the judgment of the Tribunal was upheld. He further submits that the demand pertaining to cheque bouncing and foreclosure charges is already settled in favour of the Appellant in their own case wherein the demand pertaining to these two are not sustainable under BOFS.

8. As regards the issue of demand of service tax on operating lease rental amounting to Rs.35,47,359/- in Appeal No.

ST/55729/2013, learned Counsel submits that during the relevant period, the appellant leased equipment such as laptops, computers, desktops for a period of 33 months and recovered lease rentals from the customers. He further submits that the lease charges in the present case are with respect to operating lease and not financial lease. It is evident from the title of the agreement between the appellant and its customers, the copy of which is also on record. He further submits that during the relevant period, it is only the financial lease which was taxable and not the operating lease. He referred to the definition of Financial Leasing as defined under Explanation to Section 65(12) of the Finance Act which provides that a transaction would be classifiable as financial leasing, only if the transaction satisfies all the four following conditions simultaneously:

(i) contract for lease is entered into between two parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment.

9. Learned Counsel further submits that in the present case, the third sub-clause of the Explanation is not satisfied whereas all the conditions need to be fulfilled collectively and therefore, according

to the learned Counsel the transaction will not amount to financial lease and will not be taxable under BOFS. Learned Counsel further placed reliance on the Notification No.4/2006-ST dated 01.03.2006 wherein the Government has exempted the service tax on the 90% of the amount representing as interest. He further submits that in the present case the demand of service tax has been confirmed on the entire income of the lease rentals, thus, the demand to this extent is not sustainable. He also submits that the present arrangement between the parties is, in fact, deemed sale in terms of Article 366(29A)(d) of the Constitution of India. He further submits that as per Article 366(29A)(d) of the Constitution, the transfer of the right to use any goods is treated as a 'deemed sale' and will be leviable to State sale tax and is not covered under service tax provisions. For this submission, he relied upon the decision of Hon'ble Apex Court in the case of **Bharat Sanchar Nigam Ltd. vs. Union of India reported as 2006 (2) STR 161 (SC).** He also submits that as per the agreement, for the leasing term, the possession and effective control of the equipment leased lies with the customer only and therefore, the transaction constitutes as a deemed sale as per Article 366(29A)(d) of the Constitution and Appellant has discharged the applicable VAT amount on the lease rentals .

10. Learned Counsel further submits that for the period 2007-2015, for another associated entity of the Appellant, the demand was raised against the entity for the equipment and machinery supplies on Operating lease under the category of 'supply of tangible

goods'. Vide Order-in-Original dated 31.01.2017 but the service tax demand was set aside against the entity on the basis that the said transaction amounts to deemed sale and therefore, the demand of service tax cannot sustain and the order dated 31.01.2017 has also placed on record. He further submits that even if there is non-payment of VAT still it cannot be concluded that the transaction does not amount to deemed sale. For this submission, he relied upon the following decisions:

- **Bharat Sanchar Nigam Limited Vs Union of India repored as 2006 (2) STR 161 (SC)**
- **GPL Polyfils vs. Commissioner (Audit) GST, Cus. & C. Ex., Kanpur 2019 (27) G.S.T.L. 395 (Tri. - All.)**
- **Heligo Charters Pvt. Ltd. vs. Commissioner of Service Tax, Mumbai-VI 2017-TIOL-2831-CESTAT-MUM**
- **Nath Industries Limited vs. C.C.E. & S.T.**
- **Valsad 2024-TIOL-541-CESTAT-AHM**

11. As regards the demand of service tax on import of services under Reverse Charge basis, learned Counsel submits that the demand has been confirmed without appreciation of facts and legal provisions. He further submits that the expenses incurred in foreign currency expenditure is with respect to the following activities as given in his written submissions which is reproduced herein below: This demand relates to only Appeal No. ST/54344/2015:

Nature of the service	**Taxable Amount**	**Submissions**
Equity Shares purchased by the employees under GSPP	Rs. 34,21,009/-	These shares are purchased by the employees and a contribution is made by the Appellant as per HR Policy. It is submitted this service was provided by the Appellant to its employees and was not taxable as it forms part of the remuneration of the employees. The said activity is not a service and is not classifiable under any of the clauses of Section 65(105). Hence, the same is not taxable.
Legal Advisory services	Rs.18,66,977/-	Legal Services were taxable w.e.f. 01.09.2009 under 65(105)(zzzzm). However, services in the present case were received prior to that, during FY 2007-2008 Hence, these will not be liable to service tax.
Medical treatment of employees	Rs. 4,66,000/-	This amount was for the medical treatment of employees. Thus, they were in the nature of reimbursement and not towards any service, thus, not taxable under any clauses of Section 65(105) of the Act.
Amount with respect to	Rs. 6,67,754/-	The SCN dt. 22.04.2013 has been issued to the Appellant for the period

services received prior to October 2007		of 2007 to 2010. However, the said amount pertains to the services received by the Appellant prior to Oct. 2007. It is submitted that the demand to this extent is not sustainable for the reason that these services were received in a period beyond the period of extended period of limitation also. Thus, demand cannot be sustained.

12. Learned Counsel further submits that the demand in the impugned order has been confirmed on the ground that no documentary evidence was provided by the Appellant. He further submits that it is wrong to say that the appellant did not provide the documents rather the documents were submitted along with reply to the SCN but the learned Commissioner has not considered the same while passing the impugned order. He further submits that in the Appeal No. ST/54344/2015, the SCN was issued raising the demand on import of services without specifying the specific category under which the service tax has been demanded. He also submits that in the impugned order also specific category under which the demand has been confirmed has not been specified and therefore, the demand is liable to be set aside on this ground alone. For this submission, he relied upon the following decisions:

- **Aircom International India Pvt. Ltd. vs. Commissioner of Service Tax, Delhi Final Order No. 60637/2024 dated 05.12.2024**
- **India Steamship vs. Commissioner Of Service Tax Audit, Kolkata and Shri K. Satish Chandra Executive President M/S. India Steamship vs. Commissioner Of Service Tax Audit, Kolkata Final Order No. 76064/76065/2024 dated 11.06.2024**
- **Hindustan Zinc Ltd. vs. Commissioner of Central Excise 2022-TIOL-975-CESTAT-DEL**
- **Nestle India Ltd. vs. CCE & ST, LTU, Delhi Final Order No. 63260-63263/2018 dated 28.08.2018**

13. As regards the demand of interest for wrongful availment of CENVAT credit in Appeal No. ST/55729/2013, the learned Counsel submits that the lending services provided by the appellant are taxable services, however, as per the service tax valuation provisions, the interest charged for the said activity will not form part of taxable value of services. He referred to Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 which clarifies that value of taxable services does not include interest on loans. He further submits that Rule 6(2)(iv) merely exempts the interest on loans, not the service of lending and therefore, the appellant has correctly availed and utilised the CENVAT credit and the activity of providing lending and securitisation services are not exempt. For this submission, he relied upon the following decisions:

- **Gautam Sahakari Bank Ltd. vs. Commr. Of C. Ex., Aurangabad 2019 (20) G.S.T.L. 584 (Tri. – Mumbai)**
- **Ahmednagar District Central Co-Op Bank Ltd. vs. C.S.T., Arungabad 2018 (364) E.L.T. 1098 (Tri.- Mumbai)**

- **Sundaram Finance Ltd vs. Commissioner of LTU Chennai 2018-TIOL-3288-CESTAT-MAD**

14. As regards the extended period of limitation, the learned Counsel submits that the demand has been confirmed by invoking extended period of limitation which is not sustainable because the appellant has not intentionally and wilfully suppressed the fact. He further submits that the Department has failed to bring in any evidence to establish the suppression on the part of the Appellant. He also submits that the similar issue in the case of **Repco Home Finance Ltd. reported in 2020 (42) GSTL 104 (Tri.LB)** was referred to the Larger Bench of the Tribunal which shows that the issue involves interpretation of law and it is a settled position of law that extended period cannot be invoked in interpretational cases. He also submits that the Department conducted audit and all the facts were in the knowledge of the Department and extended period of limitation cannot be invoked when the demand is proposed on the basis of audit. For this submission, he relied upon the following decisions:

- **Maruti Suzuki India Ltd. vs. Commissioner of Service Tax, Delhi Final Order No. 60175/2024 dt. 16.04.2024- CESTAT Chandigarh.**
- **Hoshiarpur Automobiles vs. Commissioner of Central Excise & Service Tax, Ludhiana Final Order No. 60168-60170/2024 dt.09.04.2024- CESTAT Chandigarh.**

15. Learned Counsel also submits that when the entire demand is time barred therefore the question of going into the merits of the case does not arise as held in the case of **Commissioner of Cus., C. Excise & Service Tax vs. Monsanto Manufacturer Pvt. Ltd. 2014 (35) S.T.R. 177 (All.).** As regards the demand of interest and penalty, learned Counsel submits that when the demand is not sustainable, the question of interest and penalty does not arise.

16. On the other hand, learned DR has filed his written submissions and reiterates the findings of the impugned orders.

17. We have considered the submissions of both the parties and perused the material on record and also gone through the various decisions submitted by the parties. Further, we find that as regard to the issue of demand of service tax on cheque bouncing and foreclosure charges involved in both the appeals are concerned, the demand of service tax has been confirmed on both the issues as shown in the table. Both these two issues have been decided by the Tribunal in favour of the appellant in their own case vide Final Order No. 60102-60103/2023 dated 20.04.2023 and the Tribunal held that the demand of service tax with respect to the amount collected as cheque bouncing and foreclosure charges from the customer is not taxable under the Head "BOFS" and is not liable to service tax. It is pertinent to note that the demand with respect to cheque bouncing charges, the demand has been set aside on the ground that the said charges are penal in nature and are not for the purpose of consideration of any service. As regards the demand with respect to foreclosure charges, the Tribunal set aside the same by relying upon

the decision of the Larger Bench in the case of **Repco Home Finance Ltd. (supra)** which has categorically held that foreclosure charges cannot be viewed as alternative mode of performance of the contract because they arise upon repudiation of specified terms of contract and are intended to compensate the injured party i.e. banks and non-banking companies. It is pertinent to mention that the Department filed appeal against the decision of the Tribunal and the Hon'ble Supreme Court, vide its Order dated 29th July, 2024, dismissed the appeal of the Department and upheld the order of the Tribunal. In view of the fact that the matter stands settled by the Hon'ble Apex Court, the demand on these two issues are set aside.

18. As regards the another demand of service tax on financial lease which is there in Appeal No. ST/55729/2013, we find that as per the sample agreement between the appellant and their customer, it is not the financial leasing as defined under Explanation to Section 65(12) of the Finance Act rather it is an operating lease which is different from the financial leasing as provided under Section 65(12)(a)(i) of the Act. Further, we find that financial leasing is defined under Explanation to Section 65(12) of the Finance Act which provides that a transaction would be classifiable as financial leasing only if the transaction satisfies all the four following conditions simultaneously:

(i) contract for lease is entered into between two parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment.

19. Further, we find that in the present case over the complete period of lease agreement the entire cost of the asset is not being recovered 'along with interest charges', as detailed in Annexure B to the agreement. Hence sub-clause (3) of the Explanation is not satisfied and therefore, the transaction will not amount to financial leasing and cannot be taxed under BOFS. Hence, we drop the demand under this category also. As regards the demand of service tax on import of services under reverse charge basis confirmed in the Appeal No. ST/54344/2015, we find that the impugned order has confirmed the demand under four categories viz. the demand of service tax on Equity Shares purchased by the employees under Global Share Participation (GSPP), Legal Advisory Services, Medical treatment of employees and amount with respect to services received prior to October 2007.

20. As far as the equity shares are concerned, we find that these shares are, in fact, purchased by the employees and contribution is made by the Appellant as per HR Policy and therefore, they are not taxable because they form part of the remuneration of the employees and this activity is not a service and is not classifiable under any of the clause of Section 65(105).

21. As regards the Legal Advisory Services, we find that the said services were taxable w.e.f. 01.09.2009 under Section 65(105)(zzzzm) but the services in the present case were received during financial years 2007-08 as per the sample invoices on record therefore they are not liable to service tax. Further, as regards the medical treatment of employees are concerned, they are in the nature of reimbursement and not towards any service hence not taxable under any clause of the Section 65(105). As regards the amount received in respect of the services received prior to October 2007, we find that the said amount pertains to the services received by the appellant prior to 2007 and the SCN was issued on 22.04.2012 therefore, the demand cannot sustain as the same is beyond the extended period of limitation. Further, we also find that in the SCN, demand has been raised on import of services without specifying the specific category under which the service tax has been demanded. Further, the impugned order has also not specified the category under which the demand has been confirmed. Therefore, in view of the decisions cited supra, the demand is liable to be set aside on this ground also. Therefore, we hold that the amount remitted in foreign currency outside India was not subject to service tax during the relevant period.

22. As regards the demand of interest on wrongful availment of CENVAT credit in Appeal No. ST/55729/2013 is concerned, we find that the demand of interest in the present case is not sustainable for the reason that the appellant had sufficient balance in its CENVAT credit register during the period from 2007-08 and it cannot be said

that the CENVAT credit has been utilized and hence demand of interest is not sustainable therefore we set aside the demand of interest. We also find that the entire demand has been confirmed by invoking extended period of limitation but the Department has failed to prove that there was suppression on the part of the appellant. Further, we find that some of the issues involved in the present case were referred to Larger Bench of the Tribunal in the case of **Repco Home Finance Ltd (supra)** which clearly shows that the issue involves interpretation of law and it is a settled position of law that extended period cannot be invoked in interpretational cases. Further, we also find that the entire demand has been raised on the basis of audit which cannot be done in view of the decisions cited supra. Therefore, we hold that in the present case, the entire demand is barred by limitation. As regards the question of interest and penalty is concerned, we find that when the demand itself is not sustainable, the question of interest and penalty does not arise.

23. Keeping in view our discussion above, we set aside the demand on merit as well as on limitation and allow both the appeals of the appellant with consequential relief, if any as per law.

(Order pronounced in the open court on 23/05/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK