CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60572/2017 - [DB]

(Arising out of Order-in-Original No. 30-31/ST/CHD-II/2017 dated 25.04.2017 passed by the Commissioner, Central Excise, Chandigarh II)

M/s. State Bank of Patiala ......**Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Chandigarh II ......**Respondent**

APPEARANCE:
Shri Sanjay Khemani, Chartered Accountant for the Appellant
Shri A K Saini, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 61241/2019

DATE OF HEARING/ DECISION: 04.04.2019

PER C.L. MAHAR:

The brief facts of the matter are that the appellants are registered with the Department for providing various kinds of financial services such as Banking and other financial services, Business Auxiliary services etc. The appellants are regularly filing their service tax returns with the department as per the provisions of section 70 of the Finance Act, 1994. It is a matter of record that audit was conducted at the Mall Branch of the appellant by the Auditors of the Department and it was observed that despite reduction in the rate of service tax from 12.36% to 10.30% with effect from 24.02.2009, the Mall Road Branch did not reduce the service tax charges proportionately and continued to charge the old rate at the rate of 12.36% from its customers. It was, therefore, alleged that though the branch has collected the service tax at the rate of 12.36%, they only deposited at the rate of 10.30 %. Accordingly, a show cause notice dated 23.08.2013 was issued to the appellant by the Department whereunder service tax amounting to Rs.30,32,86,619/- has been demanded under the provisions of section 73A(1) of the Finance Act, 1994. Provisions of demanding interest as well as penal provisions under section 77 have also been invoked. The matter has been adjudicated by Order-in-Original No. 30-31/ST/CHD-II/2017 dated 25.04.2017 wherein all the charges as invoked in the impugned show cause notice has been confirmed by the adjudicating Commissioner of Central Excise and Service Tax. The appellants are before us against the above mentioned impugned Order-in-Original.

2. It has been the basic contention of the appellant that the appellant pays service tax on the commission earned by it by providing various kinds of services. The commission received by the appellant is inclusive of Service Tax as they do not charge service tax separately from its customers. It has vehemently been argued that the 'charges schedule' for various kinds of services notified by the appellant are all inclusive of service tax. During the course of hearing, the appellant have taken us through the copy of Circular dated 29 December, 2007 wherein it has been shown that all the charges as per the schedule, are inclusive of service tax. It has further been stressed that there is no allegation against the appellant in the show cause notice or in the impugned Order-in-Original that the they charge service tax separately from their customers. It has further been stated that Department while issuing show cause notice has not even verified the facts nor anywhere in the order they have pointed out that

appellant have charged service tax at the enhanced rate of 12.36% from their customers.

3. The learned advocate appearing for the appellant have cited a case law of this Tribunal in case of ***Commissioner of Central Excise & Customs, Patna vs. Advantage Media Consultant*** reported in ***[2008 (10) STR 449 (Tri-Kolkata)]*** wherein the Co-ordinate Bench of this Tribunal on the identical issue has held that when no tax is collected separately, the gross amount is to be quantified to tax liability treating it as the value of services as well as service tax payable and the assessee is eligible for cum duty benefit of the amount received from the service recipient. It has further been stressed by the learned advocate that the above decision of this Tribunal has also been upheld by Hon'ble Supreme Court in its decision in case of ***CCE vs. Advantage Media Consultant*** reported in ***2009 (14) STR J 49 (SC).***

4. We have also heard learned Departmental Representative who has generally reiterated the findings as given in the impugned Order-in-Original.

5. After hearing both the sides, we find that the matter is no longer res integra as it has already been decided by the co-ordinate Bench of this Tribunal in case of ***Commissioner of Central Excise and Customs, Patna vs. Advantage Media Consultant*** reported in ***2008 (10) STR 449 (Tri-Kolkata)*** which has also been endorsed by the Hon'ble Supreme Court as mentioned supra. The relevant extract of the above decisions are reproduced below:-

> "**3.** Service tax is an indirect tax. As per this system of taxation, tax borne by the consumer of goods/services is collected by the assessee (manufacturer/service provider) and remitted to the Government. When the amount is collected for the provision of services, the total compensation received should be treated as inclusive of service tax due to be paid by the ultimate customer of the services unless service tax is also paid by the customer separately. So considered, when no tax is collected separately, the gross amount has to be adopted to quantify the tax liability treating it as value of taxable service plus service tax payable. We find that this principle has been legislated in the following

> terms with effect from 18-4-2006 in Section 67(2) of the Finance Act, 1994 as amended :
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> > "67(2). Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged."
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> **4.** This principle has all along been relevant and had to be applied. In the circumstances, we find no reason to interfere with the impugned order and we reject both the appeals filed by the Revenue. The Cross Objection in respect of S.T. Appeal No. 55/06 is also disposed."

6. Since the issue involved in the matter at hand is similar to the one decided by the above decision of the Tribunal, we follow the same and hold that Order-in-Original is legally not sustainable and therefore, we set aside the same.

7. The appeal is accordingly, allowed.

(Operative part pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(C.L. MAHAR)
MEMBER (TECHNICAL)

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