CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/605/2011

[Arising out of Order-in-Appeal No.120/2011 (MST) dt. 27.07.2011 passed by Commissioner of Central Excise (Appeals), Chennai]

Commissioner of Service Tax,
Chennai — Appellant

Versus

DBS Cholamandalam Securities Ltd. — Respondent

Appearance :

Shri K. Veerabhadra Reddy, JC (AR)
For the Appellant

Shri N.K. Bharat Kumar, Consultant
For the Respondent

CORAM :

Hon'ble Ms.Archana Wadhwa, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 18.04.2018

FINAL ORDER No. 42238 / 2018

Per Madhu Mohan Damodhar

The facts of the matter are that assessees (respondents) are engaged in stock broking and registered with National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) for buying and selling of shares for their clients and are also engaged in Portfolio Management Services. They are registered with the department under the category of "Stock Broking Services" and "Banking and

Other Financial Services (BOFS)". During the period of accounts, for the period January to May 2008, it appeared that apart from collecting brokerage for all the transactions with their clients, they have also collected turnover charges or transaction charges @ 0.0035% / 0.0025% of total value of transaction which amount was paid to the stock exchange. Further, on verification of cenvat documents for the year 2004-05 to December 2008, it appeared that assessee had availed ineligible credit of service tax paid towards employees insurance, food charges and travelling expenses which are not used in providing the output services. It was also noticed that assessees were availing credit on debit notes raised by an associate company M/s.Cholamandalam DBS Finance Ltd. (CDFL, for short), who share the common expenses such as car parking expenses, water and electricity expenses, coffee and stationery expenses etc. with the assessee. Hence a show cause notice dt. 17.04.2009 was issued proposing demand of an amount of Rs.2,34,617/- with interest thereon in respect of turnover / transaction charges and recovery of alleged wrongly availed cenvat credit of Rs.11,36,704/- with interest thereon and imposition of penalties under various provisions of law. In adjudication, the original authority vide an order dt. 18.3.2010 confirmed the said proposals, however in appeal, the Commissioner (Appeals) vide the impugned order dt. 27.07.2011 set aside the adjudication order and allowed the appeal. Aggrieved, the Revenue is before this forum.

2. When the matter came up for hearing on 18.04.2018, on behalf of the Revenue, Ld. A.R Shri K.Veerabhadra Reddy reiterates the grounds of appeal. In particular, he submits that turnover charges paid to stock exchanges are only for getting Computer to Computer Link Connectivity (CTCL) without which the

business of trading cannot be conducted by the assessee. Hence the assessee is liable to pay service tax on such transaction charges. In respect of the dispute relating to input service credit, he submitted that the said services do not have direct nexus to the rendering of the output service and they could not have been availed by the assessee. He also submits that debit note is not a valid document for the purpose of availing credit.

3.1 On the other hand, we find that the assessee has argued that turnover charges / transaction charges are levied by respective stock exchanges on the traded value of the transaction; that the exchanges had imposed the obligation of collecting such transaction charges on the stock brokers; that only because of this the charges are passed on by the assessee and collected from their clients; that the bills are sent by the stock exchanges to the stock brokers on monthly basis and payments are debited electronically; that hence the transaction charges levied by stock exchanges cannot be taken as income of the stock broker; that the transaction charges has no relevance with the number of CTCL connections and are not levied on the basis of such activity.

3.2 In respect of the allegation of wrong availment, assessee has argued that all the impugned input services like employees insurance, travelling expenses etc. are having direct nexus with their output service of stock broking and Portfolio Management Services.

3.3 In respect of allegation of irregular availment of credit on debit notes, it is submitted that assessee is wholly owned subsidiary of CDFL in certain locations premises are shared between assessee and CDFL. The rental agreements are normally in the name of CDFL and the subsidiary companies like assessee are allowed to occupy the branches for effective control. Hence on common expenses, the providers of amenities raise bill of CDFL who in turn pays the entire amount including service tax. Later, CDFL appropriates the common expenses among the subsidiaries depending on the extent of space occupied and utilities received and service tax credit is also appropriated accordingly on debit notes.

4. Heard both sides and have gone through the facts of the case.

5.1 On the first issue of tax liability on transaction charges, we find that the matter has been addressed by the Tribunal in the case of *First Securities Pvt. Ltd. Vs CST Bangalore* – 2007 (7) STR 690 (Tri.-Bang.) wherein it was held that value of such taxable services in respect of stock brokers will not include transaction charges and handling charges. The relevant portion of the said decision is reproduced below :

> "The handling charges are the expenses incurred for handling shares on delivery. The appellants have clarified that prior to 2001, there used to be physical delivery of scrips and certificates and the appellants were charging towards 'handling' of scrips and certificates. The 'handling charges' were collected from certain investors/clients. In respect of speculative transactions, no handling charges were collected from the investors/clients as there was no handling of scrips and certificates. We are convinced that the handling charge is not in the nature of commission or brokerage for purchase of securities. They are incurred in connection with the delivery of scrips. In fine, we hold that the value of taxable services in respect of a stock broker will not include transaction charges and handling charges. Therefore there is no merit in the impugned order. Hence we allow the appeal with consequential relief."

The ratio of *First Securities Pvt. Ltd.* (supra) was followed by the Principal Bench of the Tribunal in the case of *LSE Securities Ltd. Vs CCE Ludhiana* – 2013 (29) STR 591 (Tri.-Del.) wherein the Tribunal has inter alia held as under :

> **"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."

The same ratio was followed by Tribunal in a recent decision in the case of *Mohak Commodities Pvt. Ltd. Vs CCE Jaipur* – 2018 (100 G.S.T.L. 316 (Tri.-Del).

5.2 In the circumstances, following the same ratio, we have no hesitation in upholding the decision of lower appellate authority and that such transaction charges cannot form part of the taxable value.

5.3 Coming to the second issue concerning eligibility of certain input service credit, though the disputed credits relate to input services like employees of the insurance, food charges, subscription, books / periodicals and travelling expenses, the lower appellate authority is correct in holding that this issue has already been settled by the Bombay High Court in the case of *CCE Nagpur Vs Ultratech Cement Ltd. - 2010 (20) STR 577 (Bom.)*. It is also to be noted that all these credits relate to the period prior to 01.04.2011, only after which date, the definition of 'input service' has been made narrowed and certain exclusions also included in the definition. Hence we do not find any infirmity with the decision of lower appellate authority on this score.

5.4 On the issue of credit taken on debit notes, we find that the Hon'ble High Court of Rajasthan in the case of *CCE Jaipur Vs Bharti Hexacom Ltd.* – 2018 (12) G.S.T.L 123 (Raj) has held that cenvat credit can be allowed even on debit notes. The Rajasthan High Court relied upon the judgement of Gujarat High Court in *CCE & C Vadodara Vs Eupec-Welspun Pipe Coatings India Ltd.* – 2010 (260) ELT 381 (Guj.).

6. In the event, we do not find any infirmity in the order of lower appellate authority for which reason, no merit is found in the appeal of Revenue for which reason, it is dismissed.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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