

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

Appeal No.ST/166/2010

[Arising out of Order-in-Appeal No. 67/2009 dt. 14.12.2009 passed by the Commissioner (Appeals), Central Excise & Service Tax, LTU Chennai]

Commissioner of Central Excise &
Service Tax, LTU, Chennai

Appellant

Versus

Sundaram Finance Ltd.

Respondent

Appeal No.ST/560/2011

[Arising out of Order-in-Original No.LTUC/259/2011-(C) dt. 4.8.2011 passed by the Commissioner of Central Excise & Service Tax, LTU Chennai]

Sundaram Finance Ltd.

Appellant

Versus

Commissioner of Central Excise &
Service Tax, LTU,

Respondent

Appearance:

Shri P.C Anand, Consultant
For the Appellant-Assessee

Shri N.Rajagopalan, Special Counsel
Shri K.Veerabhadra Reddy, JC (AR)
For the Revenue

Shri P.C Anand



Shri N.Rajagopalan

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing / decision : 16.11.2017

FINAL ORDER No. 42948-42949/2017

Per B. Ravichandran

These two appeals are on common dispute regarding service tax liability of the appellant-assessee under the category of "Business Auxiliary Service" in terms of Section 65 (19) read with Section 65 (105) (zzb) of Finance Act, 1994. Both the Revenue as well as the assessee are in appeal in two different proceedings. We are considering the appeal filed by Revenue first.

Appeal ST/166/2010

2. The brief facts of the case are that the appellant-assessee is a non-banking financial company. They are in the business of extending loans to various clients for purchase of vehicle etc. The loans are paid back on regular EMI basis. The appellant-assessee entered into an agreement with another person viz. "Trust/Special Purpose Vehicle (SPV)" to whom they have sold the receivables

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towards these loans extended to various clients. On sale of such future receivables, appellant received a discounted consideration when compared to actual receivables, which included interest. Simultaneously, they have entered into an agreement with Trust / SPV which mandates the appellant-assessee to collect all these receivables on the fixed periodicity from the loan clients and deposit the same in return of the said consideration received on sale of receivables. For such operation of receiving EMI payments and remitting the same to SPV / Trust, the appellant-assessee is paid a consideration in percentage terms. This amount is named as "Securitization Service Fee". The Revenue held a view that this fee is liable to service tax under 'Business Auxiliary Service' as the appellant-assessee provided service to the SPV / Trust which will fall under clause (iv) of Section 65 (19) prior to 10.9.2004. Thereafter, it will under clause (vi) read with clause (vii) of the said tax entry. Accordingly, proceedings were initiated against the appellant-assessee which resulted in the confirmation of their tax liability by the original authority. On appeal, vide impugned order, the Commissioner (Appeals) set aside the demand against the appellant-assessee. The Revenue being aggrieved, filed this appeal.



3. Ld.A.R appearing for the Revenue elaborated the grounds of appeal. He submitted that the appellant-assessee sold future receivables as an asset to the SPV / Trust. They received consideration for the same. Similarly, in order to fulfil the arrangements of return of money they are obligated, in terms of separate agreement, to collect all the EMI payments and remit it to the Trust / SPV as per the schedule. These incidental activities which are mandated as per the agreement entitles the appellant-assessee certain consideration which is a percentage of payment. He submitted that it is clearly an activity which is incidental or auxiliary to the support service relating to billing, collection, recovery of cheque, remittance of amount and will be correctly liable to tax under the tax entries above mentioned. He contested the finding of the impugned order stating that there is a wrong appreciation of facts and the tax liability has been incorrect set aside. He further reiterated, more specifically, para-9 of the grounds of appeal which states that Trust / SPV have sold their shares through PTC to various stake holders and are being obligated to repay to the PTC holders as per the agreed schedule. Submitting that by the services of the appellant-assessee in collecting, depositing the cheques from the loan clients, they are

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enabling the Trust / SPV in such contractual obligation, Ld. A.R submitted that tax liability should be correctly upheld.

4. Ld. Consultant appearing for the appellant-assessee contested the appeal by the Revenue and submitted that they are transacting with the Trust / SPV on principal to principal basis and they are not rendering any collection agent's service to the Trust / SPV. In order to fulfil the contractual obligation of timely payment in pursuance of upfront sale of future receivables, they have undertaken the timely payment of the amount and one of the conditions is to collect the same as per the EMI schedule from various loan clients and deposit in the prescribed time schedule. This is nothing but a guaranteed obligation guarding against default. This cannot be categorized as auxiliary / support service of bill collection or deposit of cheque in pursuance of supporting or enabling an activity which is otherwise to be rendered by the Trust / SPV. The tax entry which is relied upon by Revenue has no application to the facts of the present case.

5. We have heard both sides and perused the appeal records. We note that the Revenue in the grounds of appeal contests the finding of the impugned order mainly on the ground that appellant-assessee was engaged in the activity of incidentally or auxiliarily support the services such as billing, collection of cheque, remittance etc.

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Accordingly, tax liability is sought to be upheld. We note the contractual arrangement between the appellant-assessee and the Trust / SPV is on principal to principal basis and the obligation to collect the cheque and deposit as per the schedule of agreement is nothing but an obligation in pursuance of the main agreement of upfront sale of future receivables which would be recouped on regular basis later. It is further submitted that the contention of the Revenue that obligation of the Trust to the PTC holders is connected to the cheque collection and deposit by the appellant-assessee is not factually correct. There is no linkage between these two obligations and the appellant-assessee has no privity to the obligation of Trust to PTC holders. We have perused the grounds of appeal and the impugned order carefully. We are in agreement with the findings in the impugned order and assertions made by the appellant-assessee in their submission before us. We note that Securitization Service Fee in fact which is sought to be taxed under BAS cannot be attributed to any of the services rendered under the categories mentioned under BAS as evident from the facts discussed in the impugned order as well as analyzed as above. For an activity of service which is incidental or auxiliary support service, the activity of the main person (service receiver) is to be identified. In the present case, the



obligation of the Trust for PTC holders is identified as the main activity which is incidentally or auxiliarily supported by the appellant-assessee. We find no reason for such inference. It is neither supported by contractual arrangements nor factually established. As such, we find no merit in the appeal by the Revenue against the impugned order.

Appeal ST/560/2011

6. The appeal by the assessee is almost on similar issue for a different period. However, the main difference in the present appeal is that instead of selling the asset of future receivables to a Trust, the same is given to ICICI bank. The bank and the appellant-assessee entered into another agreement which provided the appellant-assessee to collect various cheques from the identified obligors (loan clients) and to deposit in a prescribed schedule with the bank. For this, some fee is paid to the appellant-assessee. The Revenue entertained a view that the taxable services are clearly identified in terms of the agreement. However, the consideration is not manifestly emerging from the records. The Revenue's inference is that appellant-assessee by showing certain consideration which is, in fact, taxable under the Business Auxiliary Service as a profit on sale of

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receivables tried to evade tax liability. Based on this premise, service tax demand was confirmed against the appellant-assessee.

7. Ld.Consultant for the appellant-assessee submitted that the transactions between the ICICI bank and the appellant-assessee are on principal to principal and both the agreements are entered into and are executed on commercial consideration beneficial to both the parties. There is no service of incidental or auxiliary nature rendered to ICICI which will support the main services or activity of the ICICI bank to the obligors. In fact, the loan client / obligor is in no way connected or aware of the agreements between the appellant-assessee and the ICICI bank. In such situation, it is not legally tenable to hold the appellant-assessee as a collection agent for collection of cheques, remittance and for further payment to ICICI. Though the agreement refers the appellant-assessee as "collection agent", the appellant-assessee is not an agent for collecting payment to ICICI from a third party. He submits that in the present case it is a transaction through cheques received in their name from the obligors and deposited with the ICICI. The instruments and bills for which the appellant is acting as collection agent are not instruments or bills of ICICI bank. These are received as their payments from obligors. As



such, they are transacting business with ICICI bank as a principal to principal.

8. Ld. Special Counsel appearing for the Revenue contested the grounds of appeal of appellant-assessee and submitted that the wording of the agreement and the method of accounting followed by the appellant-assessee makes it clear that they are nothing but service providers incidental or auxiliary to bill collection by depositing the cheques of the obligors with the ICICI bank as per the predetermined obligation. The appellant-assessee changed the method of accounting after the dispute arose for service tax. They are showing very nominal amount as fee towards collection and deposit of receivables from the obligors into bank account and showing a substantial amount as profit on sale of receivables. This is nothing but a device arranged by the appellant-assessee to avoid tax liability. The service charges and expenses are shown out of such profit and this is only an accounting method to avoid tax.

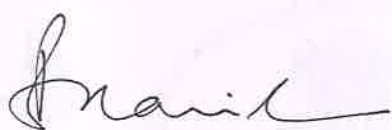
9. We have heard both sides and perused the appeal records. The dispute in the present appeal also is almost on similar footing as that of the above mentioned appeal by Revenue. The differences are mainly accounting and the status of service recipient. Instead of Trust, ICICI bank is involved in the transaction. Further, the

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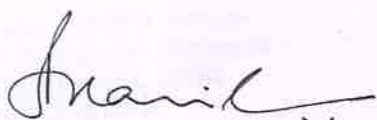
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justification of tax liability under BAS in the appeal by the Revenue is with reference to obligation of the Trust to PTC holders and in the present case, the allegation is that the appellant-assessee in providing service to ICICI bank which is incidental or auxiliary to the bill collection. We are not in agreement with the proposition to identify the appellant-assessee as collecting agent of ICICI for BAS. Such collection agents are generally dealing an amount or instrument which is due to an institution from a third party for which the agent acts as a middleman. The present facts of the case makes it clear that instrument or amount is intended and remitted to the appellant-assessee by way of cheque. The said amount has to be transmitted to ICICI bank as per the agreed schedule towards servicing of already obtained consideration by the appellant-assessee. Hence there is no tripartite arrangement. The role of the appellant-assessee is mainly with reference to discharging the obligation of servicing the amount already received. All these conditions are put by ICICI bank with reference to various loans extended to different identified obligors. This by itself does not make the appellant-assessee as a collection agent of the amount from the identified obligors to be paid to the ICICI bank. We may note here that even in case of non-collection of such amounts from obligors, the appellant-assessee has to discharge



the amount due to ICICI bank, from their resources. This will only indicate that the transaction is a financial arrangement on principal to principal basis between the appellant-assessee and ICICI bank. The conditionalities of such transaction between the two principals will not determine and make one of the contracting party a agent of the other. In any case, we note that the amount received by the appellant-assessee is inferred from the accounts maintained by them. The fee which is allocated for such work of depositing cheque is very nominal. The Revenue contends that substantial amount is accounted as profit on sale of receivables out of which some amount is allocated as expense for collecting services. We note that accounting as followed by the appellant-assessee has been statutorily audited and approved by the competent authorities. To consider certain portion of a receipt as other than profit or towards provision of service is not supported by such accounts. Revenue contends that as per the Certificate of Auditors dt. 3.8.2011, it is clear that a provision has been made for servicing and thereafter net profit is arrived at. It is contended that such provision is taxable consideration received for Business Auxiliary Service.

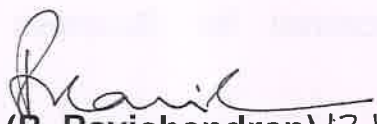
10. Countering the same, the Id. consultant for the appellant-assessee submits that the expenses towards their services are



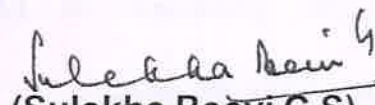
deducted from the profit as per the provisions made in the accounts. This is an accepted accounting procedure and nothing more can be read into the allocation of expenses which are rightly deducted from the accrued gross profit. The inference that such a provision should be considered as a taxable amount is not factually sustainable. On this aspect, we note that the tax entries relied upon by Revenue are not squarely covering the activity which are in any case between principal to principal. The cheques and other bills collected by the appellant-assessee are on their own account which are further passed on in terms of agreement with the ICICI bank. The conditions of transaction and schedule of payment will not influence the nature of activity as agreed upon between the two contracting parties. We find no element of Business Auxiliary Service in such arrangement.

11. In view of above discussions and analysis, the appeal by Revenue is dismissed and the appeal by appellant-assessee is allowed with consequential relief, if any, as per law.

(dictated and pronounced in court)



(B. Ravichandran) 17.11.17
Member (Technical)


(Sulekha Beevi C.S)
Member (Judicial)

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