

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

ST/27/2008

(Arising out of Order-in-Appeal No.46/2007 (M-ST) dated 30.10.2007 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Diebold Systems Pvt. Ltd.

Appellant

Vs.

Commissioner of Service Tax, Chennai

Respondent

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **16.08.2017**

Final Order No. 41666/2017

Per Bench

The appellants are engaged in marketing of Automatic Teller Machines (ATM). They are registered with the Service Tax Department and paying service tax on the annual maintenance contract charges (AMC) collected. Besides rendering such services, they are also leasing the ATMs to banks and are collecting leasing rental charges from them.



Department was of the view that such leasing rental charges collected would fall under the category of 'Banking and Other Financial Services' and that appellants are liable to pay service tax on such charges, for the period from 16.8.2002 to 31.10.2004. A show cause notice was issued raising the above allegations and after due process of law, the original authority confirmed the demand of service tax of Rs.2,32,158/- along with interest and imposed equal penalty besides imposing penalty under section 76 of the Act. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, learned counsel Ms. Minchu Mariam Punnose submitted that the activity of leasing of ATMs would not fall within the purview of banking and other financial services. The Finance Act was amended with effect from 1.5.2006 to specifically include ATM related service and thereafter the appellant has been discharging service tax under this category. The department has raised the demand on the lease rentals received by them under Equipment Leasing and Financial Services which is covered under ^{Banking} ~~Financial~~ and Other ^{Financial} ~~Banking~~ Services. The ATM operations and maintenance or management services have been introduced only from 1.5.2006 to cover all services provided in relation to ATM. The agreement entered into by the appellant with the banks would show the associated risks and rewards incidental to ownership



of the ATM has been retained by the appellant and not transferred to the customer bank. Further, the lease by the appellant to the customer bank for limited operation of ATM by customers, the same cannot be regarded as a financial leasing. The Board vide Circular dated 9.7.2001 has clarified regarding financial leasing including equipment leasing and hire purchase. The activity of the appellant for raising the leasing rentals would not fall within such clarification issued by the Board and therefore the appellant is not liable to pay service tax. She also relied upon the judgment in the case of India Switch Co. Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai – 2015 (39) STR 288 to contend that ATM related services have become taxable with effect from 1.5.2006 only and the leasing of ATM would not fall under Banking and Other Financial Services.

3. Against this, learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order. He referred to the various clauses in the agreement and submitted that the appellant has entered into an equipment lease agreement with the bank for five years. In the agreement, appellant is the lessor and the bank being the lessee, the bank has to pay to the appellant management fee which is equivalent to 1% of the lease transaction value and also monthly rental. That these would sufficiently show that the activities would fall under Equipment



Leasing and Financial Services which is taxable under the Banking and Other Financial Services.

4. Heard both sides.
5. The issue whether the activity of leasing ATM would fall under the category of Banking and Other Financial Services has been analysed by the coordinate Bench of the Tribunal in the case of India Switch Co. Pvt. Ltd. (supra). In the said judgment, Tribunal has specifically stated that ATM related services have been introduced with effect from 1.5.2006 only and the activities relating to ATM do not fall within the bank and other financial services prior to 1.5.2006. The relevant portion is as follows:-

"7. In the present case, the adjudicating authority demanded service tax under Clause (i) of Section 65 on Financial Leasing Services including equipment leasing plus hire-purchase and under clause (vii) provision and transfer of information and data processing under the BOF services category. We find that this issue of ATM Services has been disputed and each Commissionerate demanded service tax under BAS or BOF, etc. This Tribunal already discussed the identical issue in detail in the case of M/s. Diebold Systems (P) Ltd. v. CST, Chennai - 2008 (9) S.T.R. 546 (Tri.-Chen.) allowed the appeals. Similarly, the Tribunal Bangalore Bench in the case of NCR Corporation India Ltd. (supra) also held that no service tax chargeable prior to 1-5-2006. The relevant portion of the said decision is reproduced as under:-

6. On a very careful consideration of the issue, we find that the issue involved is the liability of Service Tax on the supply of ATM to the clients during the relevant period. Service Tax was also been charged on cash replenishment and customer care under the category of "Business Auxiliary Services". We find that the ATM service as a separate category of service has been



introduced only with effect from 1-5-2006. The definition of ATM services is as follows :

"Section 65(9b), "automated teller machine operations, maintenance or management service" means any service provided in relation to automated teller machines and includes site selection, contract of location, acquisition, financing, installation, certification, connection, maintenance, transaction processing, cash forecasting, replenishment, reconciliation and value-added services.

Section 65(105)(zzzk), for the purpose of ATM [operations, maintenance or management service], 'taxable service' means any service provided or to be provided to any person, by any other person, in relation to automated teller machine operations, maintenance or management service, in any manner."

6.1 On going through the definition of the automatic teller machine services, it is very clear that the service came into effect only with effect from 1-5-2006 and also the cash replenishment has also been included in the said services. The Tribunals have taken the view that once a particular service is introduced as separate category with effect from a particular date, then it will have only prospective effect and it cannot be said that it was liable to Service Tax for a prior period. This has been consistently followed by the Tribunal in several decisions, which have been quoted by the learned Chartered Accountant. Moreover, the same issue of Service Tax liability of ATM supplied was the subject matter in the Diebold case cited supra and very elaborate findings have been given by the Chennai Tribunal to show that the said services cannot be subjected to Service Tax for the period prior to 1-5-2006. Respectfully following the ratio of the above decisions, we do not find any merit in the impugned order. Hence, we allow the appeal with consequential relief."

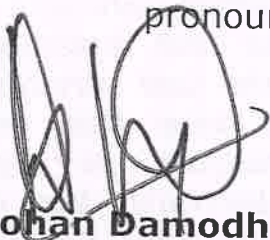
The above decision of the Tribunal squarely applicable to the present case and the very fact that the Govt. introduced specific and separate ATM Service in the Finance Act and w.e.f. 1-5-2006 and no service tax is leviable for ATM services prior to 1-5-2006.



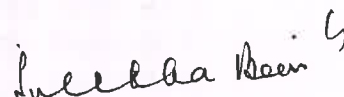

8. Further, we find that in the present case service tax demanded on the ATM Services provided by the appellants under BOF as Financial leasing services including equipment lease or under Transfer of information and data processing. We find on a similar issue, the Hon'ble Tribunal in the case of C.C.E. v. GE India Industries (P) Ltd. (supra), dismissed the Revenue appeal. In the above case, the respondent provided an extrusion machine on lease to other company and received amount as user charges and the Revenue confirmed the demand of Service Tax under BOF services. The Tribunal held that leasing of machine not chargeable to Service Tax under BOF."

6. Following the same, we find that the demand is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)



(Madhu Mohan Damodhar)
Member (Technical)

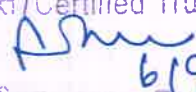


(Sulekha Beevi C.S.)
Member (Judicial)

Rex



प्रमाणित प्रति / Certified True Copy



सहायक पंजीकार / Asst. Registrar
सीमा शुल्क संपादन शुल्क एवं सेवा कर
अपील अधिकार्या (CESTAT)
चेन्नै / Chennai