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

ST/MISC/40109/2017 and ST/00592/2009

[arising out of Order-in-Original No.LTUC/265/2009-C, dated 30.09.2009 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s. SUNDARAM FINANCE LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, LTU, CHENNAI RESPONDENT

ST/MISC/40110/2017 and ST/00272/2010

[arising out of Order-in-Original No.LTUC/57/2010-C, dated 18.02.2010 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s. SUNDARAM FINANCE LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, LTU, CHENNAI RESPONDENT

ST/MISC/40116/2017 and ST/00227/2012

[arising out of Order-in-Appeal No.08/2012, dated 27.01.2012 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, CHENNAI APPELLANT

Versus

M/s. SUNDARAM FINANCE LTD. RESPONDENT

ST/MISC/40111,40112/2017 and ST/40345,40346/2014

[arising out of Order-in-Appeal No.66 & 67/2013, dated 27.11.2013 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s. SUNDARAM FINANCE LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, LTU, CHENNAI RESPONDENT

ST/MISC/4013,40114/2017 and ST/40446,40447/2015

[arising out of Order-in-Original No.436 & 437/2014-C, dated 08.12.2014 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s. SUNDARAM FINANCE LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, LTU, CHENNAI] RESPONDENT

ST/MISC/40115/2017 and ST/40482/2016

[arising out of Order-in-Original NoLTUC/544/2015-C, dated 15.12.2015 passed by the Commissioner of Central Excise & Service Tax, LTU, Chennai]

M/s. SUNDARAM FINANCE LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, LTU, CHENNAI RESPONDENT

Appearance:

For the Appellant Shri J. Shankar Raman, Adv.

For the Respondent Shri N. Rajagopal, Special Counsel
Shri A. Cletus, ADC (AR)

CORAM:

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

Date of hearing **06-09-2017**
Date of pronouncement 14.09.2017.

FINAL ORDER NO.s. 42055 - 42062 / 2017

Per B. Ravichandran:

These eight appeals are on the common disputed issue and are accordingly taken-up together. Seven appeals are by appellant-assessee and one by Revenue. The appellant-assessee is engaged in finance operations as a Non Banking Financial Company [in short,

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"NBFC"]. They are registered with the department for payment of service tax under various categories of taxable services. During the verification of accounts maintained by appellant-assessee, the officers noted that certain part of income shown under the heading "Fleet Card Income" from their customers, is not included in the taxable income by the appellant. The Fleet Card issued by the appellant to the customer, who availed vehicle loan facilities from them, is for facilitating the customers to procure fuel from the outlets of petroleum companies, with whom the appellant-assessee had prior arrangement. These cards carry pre-paid facility as well credit facility. The creditworthiness of the customers verified and cards were issued by the appellant in their trademark as well as that of oil companies. The cards provide credit facilities for purchasing fuel for the vehicle of the customer. The appellant receive considerations from the customers under each category. They were discharging service tax on these income except in respect of "finance charges" and "additional finance charges" and "over due payments". The Revenue entertained a view that these incomes are liable to tax under the head "Banking and Other Financial Services", "Credit Card Services" with effect from 16.07.2001 under section 65 (12) and thereafter from 01.05.2006 under separate heading "Credit Card", "Debit Card" or "Other Payment Card Services" under section 65 (33 a) of the Finance Act, 1994. The show-cause notice dated 07.10.2008 was issued and covering the period Sept.'04 to Mar.'08 Thereafter, periodical show-cause notices were issued to the appellant-assessee on this ground to demand and recover service tax. The cases were adjudicated by the original authority and varying demands were confirmed along with penalty under section 76; in respect of first notice, penalty under section 78 equal to the tax dispute was imposed. The seven appeals by appellant-assessee are against such findings. In respect of appeal by the Revenue, though the original authority confirmed the tax liability on such charges, the Commissioner (Appeals) vide order dated 27.01.2012 set aside the said order and allowed the appeal by the appellant-assessee. Aggrieved, the Revenue is in appeal.

2. The learned counsel for the appellant-assesee submitted that the "additional finance charge" is nothing but interest. Circular, dated 17.09.2004 of the Board clearly specifies that Interest on Loans is excluded for payment of service tax. Notification No.12/2006-ST, dated 19.04.2006 stipulates that Interest on Loans is not to be included in the assessable value. The income now being subject to service tax is nothing but Interest on Loans given to the customers of the appellant. Referring to the definition in Black's dictionary, the learned counsel submitted that "finance charge" is nothing but an additional payment in the form of interest, paid by a retail buyer with the privilege of purchasing goods or services in instalments. The customer of the card issued by the appellant-assessee purchases fuel from petrol station and the appellant pays to the oil company on their behalf. Till the card holder pays up the money to the appellant, they are 'Debtors' and they stand in the shoes of borrowers. In other words, the amount transacted is a "loan" and interest must accrue to the appellant in the event of delay in repayment thereof.

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3. The learned counsel contested the demand for extended period and also penalty under section 78. He submitted that show-cause notice dated 28.01.2005 itself dealt with the question of service tax on certain elements of income with reference to these cards issued by the appellant. At that time, there was no question raised regarding tax liability on "finance charge". Now, the Revenue changed the view and issued show-cause notice dated 07.10.2008 invoking extended period to demand service tax on "finance charge'. He accordingly pleaded for setting aside the demand for extended period and also penalty equivalent to such demand.

4. The learned Special Counsel for Revenue Shri N. Rajagopal submitted that the "finance charge" and "additional finance charge" cannot be considered as interest, as they are not dealing with any loan transaction by the appellant to the customer. He referred to the arrangement, appellant had with oil companies to emphasis that the customer with card gets a host of facilities and the transaction of utilsing such credit for procuring fuel and settling the amount in terms of the agreement cannot be considered as a loan transaction. There is no pre-determined amount, though there may be ceiling for utilisation of the card. In a typical loan arrangement, the amount is known beforehand and the period of return along with terms of interest is also known. It is submitted that the present transaction is not a loan transaction.

5. On the appeal by the Revenue, learned Special Counsel Shri N. Rajagopalan submitted that the Commissioner (Appeals) fell in error in concluding that the transactions are loan transactions and what is

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accruing as "finance charge" to the appellant-assessee is nothing but interest. He submitted that upon such wrong reasoning, the appellate authority dropped the demand relying on Circular dated 17.09.2004 of the Board, which specified that Interest on loans are specifically excluded for valuation under section 67 of the Finance Act, 1994

6. We have heard both sides and perused the appeal records.

7. The dispute in the present case relates to certain income accruing to the appellant-assessee under the category of "finance charge" and "additional finance charge," from the customers, who are issued with "Fleet Card", which enabled them to procure fuel feom petrol stations of authorized oil companies. The appellant had arrangement by written agreement with oil company to facilitate supply of fuel on credit basis, which are recouped by the appellant-assessee and thereafter, recovered from the customers. We note that the original authority had elaborately examined the submissions of the appellant-assessee for separate treatment of "Fleet Card" and not to compare the same with normal credit card. On examining the basic materials and the conditions for issue of "Fleet Card" in appellant's own website as well oil company's web site, the original authority elaborately listed his reasons that "Fleet Cards" operates similar to credit card. We have also perused the agreement entered into by the appellant-assessee with the oil company. The appellant-assessee has to make payment of the bill to the oil companies within three working days of such utilization data reaching them in electronic format. Fortnightly, bills are raised, Fleet Card-wise on the card holder with the amounts spent by way of "Fleet Card", which are later on paid by

the customers or cardholders. This arrangement, the original authority concluded, cannot be treated as repayment of loan but only a payment against credit card utilisation. We are in agreement with such finding. As observed by the original authority, the loan is a pre-arranged specific amount given at one-time or in instalments. However, in "Fleet Card System", the same credit limit is extended every fortnight and sometimes even remains unutilised. Fleet Card function cannot, therefore, be treated on par with a loan transaction. As per clarification of the Board's Circular dated 09.07.2001, interest charges are also includible in the taxable value as payment for services rendered under Credit Card Services. Credit card services also specifically found entry in the Banking and Other Financial Services [in short "BOFS"] prior to 15.04.2006. Thereafter, a separate entry was created for such Credit Card Services. We perused the account statement of the appellant-assessee of one of the months during the material time. In May, 2009, the statement shows the amount charged by the appellant-assessee is exclusive of interest and other charges. However, interest for the month is also shown separately. Hence, the claim that "finance charge" and "additional finance charge" are interest is not correct. Such transaction between the appellant-assessee and the customer being not one of lending loan, the question of exclusion of Interest on Loan in terms of Board's Circular dated 17.09.2004 does not arise.

8. In terms of agreement between the oil companies and the appellant-assessee, it is clear that the Fleet Card holder enjoys various privileges. The card holder may select either "FCP or "no FCP" option.

If the card holder selects "no FCP" option, "finance charge" as per the policy of the appellant-assessee shall be charged from the card holder for the actual days of utilisation of credit. In case, the card holder has selected "FCP" option, the appellant-assessee shall offer the FCP option for a period determined by the appellant-assessee and oil company. In such cases, the oil company shall pay the appellant-assessee, an amount as determined in the agreement itself.

9. On a careful consideration of the arrangement made by the appellant-assessee with the oil companies and the Fleet Card Customer, we are of the considered view that the "finance charge" and "additional finance charge" are to form part of taxable value for taxable service of BOFS/Credit Card Services during the material period.

10. In view of our above discussion, holding that the original authority is correct in determining the tax liability against the appellant –assesseee, for the same reason, we hold that the Commissioner (Appeals) order is not sustainable. Accordingly, the appeal by Revenue is to be allowed by setting aside the impugned Commissioner (Appeals) order.

11. The appellant-assessee contested the first demand on limitation also, along with imposition of penalty under section 78. We note that the question involved in the present case is one of interpretation and as can be seen even by order of Commissioner (Appeals), the possibility of two views cannot be ruled out. Further, we note in the earlier proceedings through show-cause notice dated 28.01.2005, the Revenue dealt with the taxability of various income

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under the category of "Fleet Card Services". As such, we find merit in the submission of the appellant-assessee against invoking demand for extended period and also imposition of penalty under section 78. The original authority upheld the demand for a longer period only on the ground that the appellant-assessee did not include the full particulars of income in their statutory ER-1 returns. The appellant-assessee is contesting the nature of income and there are grounds for them to entertain a bonafide belief regarding non-liability to tax of such income. The impugned order did not bring out sustainable reasons for invoking willful suppression, mis-statement etc., against the appellant-assessee. Accordingly, we hold that while the appellant-assessee is liable to service tax on the income shown as "finance charges" and "additional finance charge", the demands are confirmed for normal period. On the same reasoning, the penalty imposed under section 78 is also not sustainable.

12. In view of our above discussion and analysis, we dismiss the appeals filed by the appellant-assessee except to the extent of setting aside the demand for extended period and penalty under section 78.

The appeal by Revenue is allowed.

(Pronounced in open court on 14.09.2017)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
13-09-2016

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