IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.296 of 2011

(Arising out of Order-in-Original No. 26/2010 dated 27.12.2010 passed by the Commissioner of Central Excise, Chennai – III Commissionerate)

M/s. State Bank of India **Appellant**
Anna Salai Branch
157, Anna Salai
Chennai – 600 002.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri Joseph Prabhakar, Advocate for the Appellant
Shri Harendra Singh Pal, AC (AR) for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40852/2023

Date of Hearing : 12.09.2023
Date of Decision: 26.09.2023

Per M. Ajit Kumar,

This appeal is filed by State Bank of India against Order in Original No. 26/2010 dated 27.12.2010 passed by the Commissioner of Central Excise, Chennai (impugned order).

2. Brief facts of the case are that the appellant is registered with the Service Tax Department and is engaged in providing Banking and Other Financial Services. On intelligence that the appellant is not paying service tax on the commission amount received from Employees Provident Fund Organisation (EPF), the officers of Survey, Intelligence and Research Unit of the Service Tax Commissionerate,

Chennai initiated investigations. On verification of the records, it was noticed that the appellant is inter alia engaged in providing services to various organisations viz. Factories, offices, other establishments in connection with EPF accounts. The appellant operates the client's accounts in totality which includes services provided in relation to deposits, withdrawals, availability of balance, periodic updates etc. for all such services, appellant receives commission from the client organizations. Thus, it appeared that the definition of 'Banking and other Financial Services' as per section 65(12) read with section 65(105)(zm) of the Finance Act 1994 includes the services provided by the appellant in relation to operation of EPF accounts and is leviable to service tax. Hence Show Cause Notice was issued to the appellant proposing to demand service tax of Rs.1,19,85,582/- payable during the period 10.9.2004 to 31.3.2009 along with interest and penalties under sections 76, 77 and 78 of the Finance Act, 1994. After due process of law, the adjudicating authority confirmed the proposals in the Show Cause Notice and adjusted the amount already paid by the appellant towards demand. Equal penalty under sec. 78 of the Finance Act, 1994 was also imposed. Aggrieved against the said order, the appellant is before this Tribunal.

3. Shri Joseph Prabhakar, learned counsel appeared for the appellant and Shri Harendra Singh Pal, learned Assistant Commissioner (AR) appeared for the Revenue.

4. Learned Counsel for the appellant submitted that the appellants with respect to servicing EPF accounts was performing the activities as a statutory agent of the Reserve Bank of India under section 45 of the

Reserve Bank of India Act, 1934, for which they were receiving a commission. The same is not liable to pay any tax since the principal itself is exempt from paying tax. On a similar set of facts, a Coordinate Bench of this Tribunal in the case of **Canara Bank Vs. Commissioner of Service Tax, Bangalore** reported in [2012 (28) STR 369] held that the schedule bank performing activities as a statutory agent of the Reserve Bank of India is not liable to pay any tax since the principal itself is exempt from paying tax. The same was affirmed by the Hon'ble Supreme Court in Civil Appeal No. 6149/2013 dated 25.1.2023 in the case of **CST, Bangalore Vs. Canara Bank.** He prayed that the impugned order may be set aside and appeal be allowed with consequential relief.

4.1 The learned AR submitted on behalf of Revenue that the appellant has accepted the levy of service tax before the lower authority and could not change their stand at this stage. He reiterated the findings in the impugned order.

5. We have heard both sides and perused the case records and the judgments relied upon by the learned counsel for the appellant. We find that the appellant both before the Original Authority and in the appeal filed before us have not contested the taxability of the commission amount received from Employees Provident Fund Organization. The appeal was filed due to non-consideration by the Original Authority of Audited Final Accounts in arriving at the final tax liability. Their change in stand is occasioned by the judgement of a Coordinate Bench of this Tribunal in the case of ‘Canara Bank’ (supra) which came to be delivered after the issue of the impugned order. We

hence deem it proper to remand the matter back to the Original Authority to examine all the issues involved on facts and law and pass a speaking order afresh.

6. The learned Commissioner shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellant should also co-operate with the Original Authority and submit facts/ law to show that they were acting as a statutory agent of the Reserve Bank of India in the matter and that their principal, if it performed this activity, was exempt from paying service tax. Since the matter is long pending the process should be completed expeditiously and orders issued in any case within ninety days of receipt of this order.

7. Accordingly, the impugned order is set aside, and the appeal is restored before the learned Commissioner for a decision on merits. The appeal is disposed of accordingly.

(Pronounced in open court on 26.09.2023)

(**M. AJIT KUMAR**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex