CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No.40378 of 2016

(Arising out of Order-in-Appeal No. 329/2015 (STA-II) dated 26.11.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai)

M/s. Srivari Enterprises, **....Appellant**
No.3, 1st Floor,
Lakshimipuram 1st Street,
Royapettah,
Chennai-600 014.

Versus

Commissioner of GST & Central Excise **... Respondent**
Chennai North Commissionerate,
No.26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai-600 034.

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41306/2025

DATE OF HEARING: 29.08.2025
DATE OF DECISION: 13.11.2025

Per: Shri P. Dinesha

The present appeal is filed by M/s. Srivari Enterprises, aggrieved by the Order-in-Appeal No. 329/2015 (STA-II) dated 26.11.2015 passed by Commissioner of Service Tax (Appeals-II), Chennai.

2. Brief and relevant facts as could be gathered from the impugned order and upon hearing both sides are that, the Appellant are functioning as an outsourcing agency for various banks and financing companies. They assisted the Banks and Finance companies in evaluating the customers and collecting payments from defaulters on behalf of the Banks. It was thus contemplated that the said activity is covered under the taxable service of Business Auxiliary Service. Hence, periodical Show Cause Notices were issued for the period up to 2009-10. Further, another Show Cause Notice proposing to demand Service Tax of Rs.24,85,489/- on the charges collected for the above

said activity covering the period from April 2010 to March 2011 was issued and after due process, the above demand of Service Tax of Rs.24,85,489/- under Section 73 of the Act along with the interest under Section 75 of the Act, imposed penalty under Section 76 of the Act and also imposed penalty of Rs.5,000/- under Section 77 of the Act *vide* Order-in-Original No.13/2014 dated 28.03.2014. It appears that the Appellant preferred an Appeal before Commissioner (Appeals), Chennai against the above demands and after hearing, the First Appellate Authority having upheld the above demand *vide* Order-in-Appeal No.329/2015 (STA-II) dated 26.11.2015; the same has been assailed in this Appeal.

3. Heard Ms. Radhika Chandrasekhar, Ld. Advocate for the Appellant and Ms. Anandalakshmi Ganeshram, Ld. Assistant Commissioner for the Respondent-Revenue; we have carefully perused the both Order-in-Original and Order-in-Appeal and also the documents placed on record. After hearing both sides, we find the only issue to be decided is, "whether the Appellant is liable to Service Tax under BAS?"

4.1 Ld. Advocate contended that the Show Cause Notice merely states that the activity is liable to be taxed under BAS but does not identify the service under any specific sub-clause of BAS which covers the activity of the Appellant. Show Cause Notice being the foundation of the proceeding cannot be vague as it is in violation of principles of natural justice. Reliance is placed on the following decisions:-

- ***Gordon Woodroffe Logistics Pvt. Ltd Vs. CST*** *(2024) 17 Centax 352 (Tri.-Mad)*

- ***Kalpataru Power Transmission Ltd Vs. CCE*** *(2022) 1 Centax 56 (Tri.-Ahmd)*

- ***Sharma Travels Vs. CCE*** *(2017) 52 STR. 272 (Tri. - Del.)*

- ***TKM Global Logistics Ltd. Vs. CST*** *(2024) 17 Centax 35 (Tri.-Cal)*

4.2 Further, the Appellant does not provide any service to the customers of the bank on behalf of the bank. The verification of the customers' details and collection of payment are services provided to the bank and not to the bank customers. Therefore, the service cannot be classified under Section 65(19)(vi);

4.3 The Order-in-Original confirms the demand by classifying the service under **Section 65(19)(vii)** read with Section 65(19)(ii&vi) though the said clauses have not been mentioned in the SCN. Therefore the order is beyond the SCN. Reliance is placed on the decision of the Supreme Court in ***Saci Allied Product Ltd Vs. CCE*** 2005 (183) E.L.T. 225 (S.C.).

4.4 The Order-in-Appeal classifies the demand under **Section 65(19)(vi)**, however it confirmed the OIO where the classification was under Section 65(19)(vii) read with Section 65(19)(ii & vi); the Department cannot provide different classification in the various stages of the proceeding for the same activity;

4.5 Section 65(104c) of the Finance Act, 1994 defines Support Services of Business or Commerce which includes the service of 'evaluation of prospective customers' which covers the activity of the Appellant. Therefore, the classification under BAS is not sustainable. Reliance is placed on the following decisions:-

- ***S.R. Kalyanakrishnan Vs. CCE*** *(2008) 9 STR 255*

- ***Katiyal And Associates Vs. Commissioner of Central Excise, Indore*** *2016 (2) TMI 369-Cestat New Delhi***.***

4.6 Section 80 of Finance Act, 1994 states that no penalty shall be imposed if there is a reasonable cause for the failure to pay tax, therefore the benefit of the provision may be extended to the Appellant.

5. *Per contra*, Ld. AR defended the impugned order and relied upon the following decisions:-

- ***Bridgestone Financial Services vs. Commissioner of Service Tax, Bangalore*** *[2007 (8) STR 505 (Tri.-Bang.)*

- ***South City Motors Ltd. vs. Commissioner of Service Tax, Delhi*** *[2012 (25) STR 483 (Tri. –Del.)*

6. Heard both sides.

7. Perusal of Show Cause Notice reveals the following:-

> *2.3 Thus, in view of the above provisions, it appears that the said services of the assessee in evaluating the customers for Banks / Finance Companies and collection of payments from defaulters on behalf of the Banks & Financial Institutions is covered under the category of "Business Auxiliary Service" and*

therefore it appears that the assessee are liable to pay Service Tax on the service charges realized from such Banks and Financial Institutions.

In this connection, a reference is made to Section 65(19) of the Finance Act 1994, relating to Business Auxiliary Service, the authority has specifically omitted (i) to (vi) and extracted (vii) which means that to that extent of case being covered only under (vii). Hence, mere non-mentioning of specific (vii) does not absorb the liability. It is also useful to refer to Order-in-Original wherein, at para 7.4.3, it has been held as under:-

7.4.3 Hence, the aforesaid services as mentioned in Para 7.4.1 rendered by the assessee on behalf of their client i.e. the Bank/Finance Companies are incidental or auxiliary to the main activity of the Bank /Finance companies viz. lending of loans to their clients. In fine, I affirm that, the Bank / Finance Companies are the clients of the assessee and the assessee are providing services under Section 65(19) (vii) read with Section 65(19)(ii) and (vi) as illustrated supra.

8. In this context, we refer to the decision of this Bench in the Appellant's own case for an earlier period wherein under similar circumstances the Bench had disagreed with the similar contentions of the Appellant and thereby upheld the demand. Nothing is placed before us indicating any further Appeal being filed

against the above order and hence the same has attained finality. Further, insofar as the other decisions/orders relied upon by the Appellant are concerned, we find that the facts are different but however, in the Appellant's own case for an earlier period, involving the very same issue with no change in the factual circumstances, we choose to follow the very same ratio. We do not find any deviating circumstances being brought before us to take a different view. Following the above ratio decidendi, therefore, we dismiss the appeal.

(Order pronounced in open court on 13.11.2025)

(VASA SESHAGIRI RAO)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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