CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 40272 of 2022

(Arising out of Order-in-Original No. 13&14/2022-CH.N.GST dated 31.01.2022 passed by Commissioner of CGST and Central Excise, No. 26/1, Mahatma Gandhi Road, Chennai – 600 034)

Commissioner of GST and Central Excise **...Appellant**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

Versus

M/s. Sundaram Finance Ltd. **...Respondent**
No. 21, Pattulos Road,
Chennai – 600 002.

APPEARANCE:

For the Appellant : Mr. Anoop Singh, Authorised Representative
For the Respondent : Ms. G. Vardini Karthick, Advocate

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 41530 / 2025

DATE OF HEARING : 26.06.2025
DATE OF DECISION : 18.12.2025

Per Mr. VASA SESHAGIRI RAO

This appeal is preferred by the Appellant-Revenue on the dispute regarding service tax liability of the M/s. Sundaram Finance Ltd. (hereinafter referred to as 'Respondent') on securitization/ sell-down of future

receivables under the category of “Business Support Service” in terms of Section 65(104)(C) of Finance Act 1994.

2.1 The Respondent enters into loan/hire purchase/ leasing transactions with their customers and receives the principal and interest amounts in equated monthly instalments (EMI) and securitizes/sells-down the 'receivables' whereby the future EMI’s to be received from the customers are sold to a trust or assigned to a buyer as per the guidelines of Reserve Bank of India relating to 'Priority Sector Lending’. The Respondent undertakes to collect the debts from various borrowers and remit the same besides rendering certain other services to the trust or assigned Banks. The Respondent is paid an agreed specified percentage of the Principal and/or interest on such transfer or assignment of receivables. The buyers were mostly banks which buy the future receivable in order to fulfil the legal obligation cast upon them by the Reserve Bank of India to lend to priority sector including lending in rural areas.

2.2 As it appeared that the activity performed by the Respondent in helping the Banks to fulfil their legal obligation of 'Rural Lending' and 'Lending to Priority Sector' as stipulated by the Reserve Bank of India, would be covered by the category of services provided in relation to business or

commerce and would fall under the broad category of ‘Business Support Services' prior to 01.07.2012 and would also constitute a service as per the definition of 'service' laid down under Section 65B(44) of the Finance Act, 1994, from 01.07.2012 onwards, the Show Cause Notice dated 09.06.2016 was issued demanding service tax of Rs.31,75,36,640/- covering the period from 2011-12 to 2014-15 along with interest as also seeking to impose penalty under Sections 76/77/78 of Finance Act, 1994. The notice also sought to charge interest for the delay in payment of service tax on 'Sell-down Servicing Fee' during the years 2011-12 and 2013-14.

2.3 Subsequently, the second SCN No. 7/2020 (C) dated 15.10.2020 for the period April, 2015 to June, 2017, dated 15.10.2020 invoking the extended period was issued proposing to demand service tax on Profit on Securitization, Profit on Sell-down and Excess Spread Income Sell-Down, amounting to a total service tax of Rs.32,95,51,059/- along with proposals for penalties under Section 76/77/78 *ibid*.

3. After due process of Law, the Commissioner of Central Excise and Service Tax, Chennai *vide* OIO Nos. 13 & 14/2022 dated 31.01.2022 (hereinafter referred to as ‘Impugned Order’) dropped the demands raised in both the

SCN's and confirmed the interest only on delayed payment of Service Tax on Sell Down Servicing Fee. The second SCN was dropped on the grounds of limitation.

4. On review, the Review Committee of Chief Commissioners vide Order No 13-14 R/2022 dated 24.05.2022, has questioned the legality of the above Impugned Order in dropping the demand as not legal and proper and directed the principal Commissioner of GST & Central Excise, Chennai North to file an appeal to the CESTAT, Chennai for determination of the following points arising out of the said order: -

i. Whether the said order passed dropping the demand of service tax raised against Profit on Securitization and Profit on Sell Down and Excess Spread Income on Sell Down is legal and proper in the light of the grounds mentioned in para 4.0 to 5.0; and

ii. Pass such order as deemed fit.

5. Heard Mr. Anoop Singh, Ld. Authorized Representative for the Appellant/ Revenue and the Ld. Advocate, Ms. G. Vardhini Karthick for the Respondent.

6.1 The Ld. Authorized Representative argued and submitted that the decision of the Adjudicating Authority to

drop the demand against Profit on Securitization, Profit on Sell Down and Excess Spread Income Sell Down is found to be not legal and proper on the following grounds:

6.2 There is no dispute with regard to the receipt of upfront fees while securitization of receivables. The said amount has been paid by the Bank as a consideration for the securitized loan assigned to them. The said fact is evident from the accounting entry of the Respondent that it is made as a profit while providing the supporting service to the Bank. Therefore, the demand of tax on upfront fees by the Department is legal and proper.

6.3 The Ld. Authorized Representative has submitted that the Assessee enters into service agreement alongside the agreement for sale of future receivables. The sale of future receivables is determined only on the basis of the efficient performance given by the Respondent in collecting the receivables. Hence the upfront fee is linked to the performance of collection of the receivables.

6.4 Further, it is submitted that for the demand post 2012, with the introduction of definition of 'Service' under Section 65B(44), receipt of consideration while providing the service is the only requirement provided is that the service

should not fall under the purview of Section 66 E, ibid. Therefore, the demand is legal.

6.5 The Excess Spread Income on Sell Down arises in view of the difference between the interest amount collected by the Respondent/Assessee from their borrowers while providing service to the assignee in the post securitization period and the interest amount paid by the Respondent at a lesser rate to the Banks. Admittedly, the Respondent would earn the difference in interest only if the Respondent/Assessee continue to collect the receivables on behalf of the Bank. Hence, this transaction also has a link with the servicing that the assessee undertakes on behalf of the Banks. In this case, the assessee collects higher interest while fulfilling their obligation as per the Assignment/Service Contract. Therefore, the profit on interest is earned only while undertaking the activity of collection as per the agreement between the banks and the Respondent/Assessee. Hence, service tax is payable on the Excess Spread Income on Sell Down.

6.6 In view of the above, the Adjudicating Authority ought to have taken cognizance of the aforementioned facts and ought to have confirmed the demand pertaining to

upfront fees and Excess Spread Income on Sell Down along with interest and appropriate penalty.

7.1 *Per contra*, Ms. G. Vardhini Karthick the Ld. Advocate made submissions on behalf of the Respondent which are summarized as below: -

7.2 Both Securitization/Sell-down and Direct Assignment are all transactions where the loan receivables are sold/transferred for a consideration which is explained below:

Securitization/Sell Down transaction is a process by which the assets are sold by the Respondent/NBFC to a Special Purpose Vehicle (SPV) in the form of a Trust in return for a consideration. And there will be a consortium of bankers, and each one will be interested to purchase/invest a portion of the loan receivables. In the case of Direct Assignment, it involves only one Bank who is interested in purchasing the securitized receivables and the entire receivables will be sold/assigned by the Respondent/NBFC directly to such bank at the agreed discounted rate and the difference between the interest receivable from the underlying assets from the end customer of the Respondent NBFC/Seller and that of the interest rate negotiated with the Bank is booked as profit upfront. The difference between the actual interest collected

from the receivables sold to the Trust and is retained by the Trust for disbursement to the investors/consortium of banks who had purchased the debtors covered under the pool from the Respondent /NBFC is booked as "excess spread income" every month which is nothing but profit on sale and it doesn't form part of "Service" and hence not considered for Service Tax by the Respondent/NBFC.

7.3 She further submits that the appellant failed to follow the timelines of completing adjudication process as laid down in Section 73(4B) of Finance Act 1994.The Central Excise Officer shall determine the amount of service tax due under sub-section (2)----

(a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1)

(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A)

7.4 That the dropping of demands covered under Order-in-Original Nos. 13 & 14/2022-CH-N GST dated 31.01.2022 is legal and absolutely in order.

7.5 The Appellant department was already aware of transactions of this nature i.e., the business activity of securitization and sell down of receivables of the Respondent as early as the year 2010 when the issue reached Tribunal which was decided in favour of the Respondent and hence there is no suppression of facts and therefore the extended period of limitation cannot be applied.

7.6 Finally to sum it up it was contended that: -

i. The profit on sale of current assets i.e., secured loan receivables is outside the ambit of service tax.

ii. Section 65B (44) which defines service, excludes transaction in money and actionable claims as also, sale, purchase, acquisition, or assignment of a Secured debt.

iii. The department's guidelines on "unsecured debts" and "secured debt" in the form of Guidance TRU Circular, dated 20.06.2012 issued by CBEC during introduction of "Negative List" of services had clarified that these transactions are not subjected to Service Tax.

The Respondent therefore prayed for dismissal of the appeal both on merits and on limitation with consequential relief.

8. We have heard the Rival submissions of both the sides and perused the appeal records including the case law

relied upon especially Tribunal Chennai's decision in the Respondent's own case *vide* Final Order Nos. 42948-42949/2017 dated 16.11.2017 Commissioner of Central Excise and Service Tax, Chennai LTU Vs. Sundaram Finance Ltd. reported in *2018 (10) GSTL 580-Tribunal, Chennai*.

9. The issues that arise for determination and for consideration before us are: -

i. Whether the Respondent is liable to pay service tax under the categories of profit on securitization or Profit on Sell Down and Excess Spread Income on Sell Down? and,

ii. Whether two demands covered in the impugned Order are hit by limitation of time.

10.1 We take up the discussion on the questions framed by us in seriatim. For a better appreciation of the issue, we have to understand what securitization is all about. Securitization and its related banking/mortgage terms are not defined in the Service Tax Law, but finds mention in the RBI Circulars. We have perused the RBI Circulars/guidelines, which have been relied upon in the impugned order as well cited by the Respondent/Assessee and it is explained therein.

i. RBI Circular No. 2005-06/294 DBOD.NO.BP.BC.60/ 21.04.048/2005-06 dated 01/02/2006 is reproduced below: -

"2. Securitisation is a process by which assets are sold to a bankruptcy remote special purpose vehicle (SPV) in return for an immediate cash payment. The cash flow from the underlying pool of assets is used to service the securities issued by the SPV. Securitisation thus follows a two-stage process. In the first stage there is sale of single asset or pooling and sale of pool of assets to a 'bankruptcy remote' special purpose vehicle (SPV) in return for an immediate cash payment and in the second stage repackaging and selling the security interests representing claims on incoming cash flows from the asset

Para 6 & 7 of the above Circular speaks about "True Sale" Here the term sale includes direct sale, assignment, and any other form of transfer of the assets which results in immediate legal separation of Seller from the assets which are sold."

ii. RBI Circular RBI/DOR/2021-22/85DOR.STR.REC. 53/ 21.04.177/2021-22 dated September 24, 2021. & RBI/2012-13/170 DNBS. PD. No. 301/3.10.01/2012-13 dated August 21, 201 RBI *vide* its revised guidelines RBI/2012-13/170 DNBS. PD. No. 301/ 3.10.01/2012-13 dated August 21, 2012: -

In the opening para-2 of the circular itself it has clarified that the securitization market is primarily intended to redistribute the credit risk away from the Originator to a wide spectrum of investors who can

bear the risk, thus aiding financial stability and provide an additional source of funding.

From the above Circulars we can ascertain that

> *"7.1 The sale should result in immediate legal separation of the originator from the assets which are sold to the new owner viz. the SPV. The assets should stand completely isolated from the originator, after its transfer to the SPV, i.e., put beyond the originators as well as their creditors' reach, even in the event of bankruptcy of the originator.*
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> *7.12 In case the originator also provides servicing of assets after securitisation, under an agreement with the SPV, and the payments/repayments from the borrowers are routed through it, it shall be under no obligation to remit funds to the SPV/investors unless and until these are received from the borrowers."*

In terms of said RBI guidelines, the transaction of Securitization resulted in True Sale and the assets should stand completely isolated from the Seller (the Respondent). Now, the leviability of Service Tax is discussed in the later part of our Order.

10.2 We find that the Respondent enters into a separate service agreement with the buyer for a service fee for collection of the receivables and for which the

Respondent accepts it as Service and the applicable Service Tax is being discharged thereon.

10.3 In terms of Finance Act, 1994, the relevant definitions are extracted as below: -

i. Taxable Service of Business Support was defined under Section 65(105) (zzzq) of the Finance Act, 1994, as follows -

> *"Taxable Service' means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner."*

ii. Support Services of Business or Commerce has been defined under Section 65(104c) of the Finance Act, 1994, as follows: -

> *'Support services of business or commerce means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.*
>
> *Explanation — For the purposes of this clause, the expression 'infrastructural support services' includes providing office along with office Utilities, lounge, reception with competent personnel to handle messages, secretarial*

services, internet and telecom facilities, pantry and security. "

iii. With effect from 01.07.2012, the term 'service' has been defined under Sec. 65B (44) of the Finance Act, 1994, as follows: -

'Service' means any activity carried out by a person for another for a consideration and includes a declared service, but shall not include —

(a) an activity which constitutes merely —

i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29 A) of Article 366 of the Constitution; or a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force."

The Department was of the view that the activity performed by the assessee in helping the Banks to fulfill their legal obligation of 'Rural Lending' and 'Lending to Priority Sector' as stipulated by the Reserve Bank of India, would be covered by the category of services provided in relation to business or commerce and would fall under the broad category of Business Support Services ', prior to 01.07.2012 and would also constitute a service as the definition of Service laid down under Section 65B(44) of the Finance Act, 1994 from 01.07.2012 onwards.

10.4 Here the Ld. Counsel for the Respondent submits that in both the scenarios, i.e., Securitization/Sell Down as well as Direct Assignment,' post securitization/assignment, the loan assets are stripped out from the Books/Ba1ance sheet of the Respondent/NBFC which NBFC is referred to as "Originator" and disclosed as investment/loan assets in the Bank's/investors' financials.

10.5 This issue was also elaborately dealt in Para 29 of the impugned Order on the basic principles of securitization and came to a conclusion that while the services of acting as a collection agent is being agreed as a service and service tax is also being paid by the assessee, it is contended that the selling of the receivables, can by no stretch of imagination be considered as a service as the element of profit is on the sale of the receivables and not a consideration for any service provided to the banks.

10.6 The Respondent has placed reliance on the decision of the Tribunal in their own case in *Commissioner of C. EX. & S.T., LTU, CHENNAI Versus Sundaram Finance Ltd. [2018 (10) G.S.T.L. 580 (Tri. - Chennai)]* wherein it was held as follows: -

*"**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 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 dated 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 Ld. 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.s"*

It has been held in the Order that there is no element of Service and allowed the Appeal in favour of Appellant/Assessee.

10.7 We find from the impugned Order that the securitization/assignment of future receivables resulted in four types of income for the Respondent as follows: -

a. Upfront fees: This is nothing but the interest portion that is available over and above the net present value of the proposed receivable in the case of Direct Assignment being the profit element as between the NBFC selling the securities and the financial institutions buying the same.
b. Express Spread Income on Sell-down: The analysis of the income would reveal that the amount collected under this head is the difference between the actual interest collected from the receivables sold to the Trust under Pass Through Certificate (PTC) route and that is paid to the Trust who had purchased the debtors from the NBFC. To elaborate, if the rate of interest between the original customer and the NBFC is 13% and the rate of interest of the assigned receivables between the

buyer Trust and the NBFC were to be 10%, then the differential 3% would be the excess spread income on the sell-down receivables in the hands of the NBFC and this is also the profit (interest) portion.

c. Collection Efficiency Fee: This is applied in Direct Assignment cases. The buyer Bank/financial institution enters into a contract for collection of the receivables by the NBFC. The receivables which have been sold/assigned, are collected on a monthly basis by the NBFC and duly passed on to the financial institution. In order to give an incentive to NBFC for proper and better collection month after month, the financial institution encourages better collection by NBFC with collection efficiency fee. The assessee considers this for service tax and remits the same.

d. Securitization/Sell Down servicing fee: This is applied when sold to a Trust representing the consortium of banks. The NBFC even after the sale of the future receivables maintains the amounts to be collected from the various customers and obtains a small fee from the assignee rendering a certain service. Assessee considers this for service tax and remits the same. The Show Cause Notice also admits to the fact that assessee pays service tax on such servicing fee collected.

10.8 Thus, from the Appeal records and the submissions made above, we find that the Respondent had sold the future receivables or assigned directly to the buyers and the Appellant proceeded under the premise that the main consideration received by the Respondent for securitization/sell-down of future receivables is a one-time payment received in the form of 'Upfront Fee'. This consists of the actual amount of receivables assigned to the assignee *viz*., the value of the future receivables assigned and the premium amount for securitization/sell-down which have been accounted in the books of accounts of the Respondent.

10.9 We also note that the show cause notices proceed under the premise that the Respondent makes a profit by paying reduced rate of interest to the assignee, the rate of interest collected by them from the customers on the assigned properties along with the principal amount being higher. The difference between the amount of interest collected by the Respondent from the customers and paid to the assignee is a profit to the Respondent in the form of 'Excess Spread Income Sell-down on securitization/sell-down. According to the respondent, the other consideration received by the Respondent from the assignee after securitization is the 'Sell-down Servicing Fee' on a monthly

basis. The Respondent collects all the future receivables from the customers, maintains the Books of Account in respect of the assigned properties, implements the KYC norms to their customers, makes payment of receivables to the assignee, *etc*. In order to render the aforesaid services, the Respondent collects service charges from the assignee. It is the contention of the Appellant that the activity of securitization/sell-down of future receivables to the Banks performed by the Respondent helped the Banks in fulfilling their legal obligation of rural lending and lending to priority sector.

The Appellants considered such activities under the category of services provided in relation to business or commerce. In short, the Appellants considered such services under the broad category of 'Business Support Services' prior to 1 July, 2012 and which would also constitute within the definition of 'service' under Section 65B(44) of the Finance Act, 1994 with effect from 1 July, 2012.

10.10.1 We further observe that, in the Securitization/Sell Down route, there will be a consortium of bankers, and each one will be interested to purchase/invest a portion of the loan receivables from the Respondent/NBFC and the Loan receivables will be sold by the Respondent/NBFC to them. The cash flow from the

underlying pool of assets is used to service the securities issued by the SPV. The difference between the actual interest collected from the receivables sold to the Trust under PTC route and that is retained by the Trust for disbursement to the investors/consortium of banks who had purchased the debtors covered under the pool from the Respondent /NBFC is booked as "excess spread income" every month until the end period of the loan receivables, which is nothing but profit on sale. Since such excess spread income is the profit portion on sale of receivables, it doesn't form part of "Service" and we hold that Service Tax is not payable thereon.

10.10.2 We on the other hand find in the case of Direct Assignment, it involves only one Bank who is interested in purchasing the securitized receivables and here the entire identified receivables will be sold/assigned by the Respondent/NBFC directly to such bank at the agreed discounted rate. In a Direct Assignment transaction, since the Respondent/NBFC (Originator) transfers such loan assets directly to the investing Bank, this is a one-to-one sell down transaction. Here, the difference between the interest receivable from the underlying assets from the end customer of the Respondent NBFC/Seller under the assigned loan receivables and that of the interest rate negotiated with the

Bank is booked as profit upfront. This too is nothing but the interest portion that is available over and above the net present value (discounted rate / agreed interest rate) of the proposed receivable in the case of Direct Assignment, being the profit element as between the Respondent/NBFC selling the securities and the financial institution buying the same and there is no liability to pay Service Tax on the Same.

10.10.3 From the above narrative, it can be seen that it is the profit/interest portion arising out of sale of receivables backed by assets, and the same doesn't fall within the purview of "Service, and therefore the payment of service tax on it will not arise as there is no element of service provided.

10.10.4 From the discussion above, we hold that there is no element of service in respect of the incomes received in the form of upfront fee and Excess Spread Income on Sell-down, which are essentially income generated through sale of future receivables, and service tax cannot be demanded on the same. Therefore, the Appeal against the dropping of demands cannot be held to be maintainable. As for the other two amounts viz. Collection Efficiency Fee and Sell-down Servicing Fee, since the Respondent has not disputed their tax liability and there is an issue of interest on the delayed

payment of Tax which we do uphold. Thus, the Appeal of the Department fails on merits.

10.11.1 Further, we find that RBI has in its guidelines (RBI No. 2005-06/294 DBOD.NO.BP. BC.60/21.04.048/2005-06 February 1, 2006) has clarified what is securitization means (to refer paras-6 & 7 of the said guidelines under the heading "True Sale"). Here the term sale includes direct sale, assignment, and any other form of transfer of the assets which results in immediate legal separation of Seller from the assets which are sold.

10.11.2 We find that Service tax is leviable on the transactions or activities falling under any of the clauses of section 65(105) of the Finance Act, 1994. The taxable event for service tax must necessarily be the rendition of services as per section 66 of the Finance Act, 1994.

Service tax is applicable on rendition of services and not on sale. While goods or intangible goods may be sold, services will have to be rendered. Service tax is a tax on activity whereas sales tax is a tax on sale of things or goods.

In a transaction involving sale, transfer of goods or transfer of right to use is essential in case of a deemed sale under article 366 of the Constitution. If this does not happen, the transaction would only be a service and a taxable service if

covered as per clause 105 of section 65 of the Finance Act, 1994. The question as to whether a transaction would amount to sale or a service depends on individual transaction which is the subject under discussion is only a sale of portfolio or in other words, assignment of debt receivable which is not a taxable service as on date.

10.11.3 In *All India Federation of Tax Practitioners' [2007 -TMI - 1556 - Supreme Court],* the Apex Court explained the concept of service tax and held that service tax is a Value Added Tax ('VAT' for short) which in turn is a destination based consumption tax in the sense that it is levied on commercial activities and it is not a charge on the business but on the consumer. That, service tax is an economic concept based on the principle of equivalence in a sense that consumption of goods and consumption of services are similar as they both satisfy human needs. Today with the technological advancement there is a very thin line which divides a "sale" from "service". That, applying the principle of equivalence, there is no difference between production or manufacture of saleable goods and production of marketable/saleable services in the form of an activity undertaken by the service provider for consideration, which correspondingly stands consumed by the service receiver. It is this principle of equivalence which is inbuilt into the

concept of service tax under the Finance Act, 1994. That service tax is, therefore, a tax on an activity. That, service tax is a value added tax. The value addition is on account of the activity which provides value addition, for example, an activity undertaken by a chartered accountant or a broker is an activity undertaken by him based on his performance and skill. This is from the point of view of the professional. However, from the point of view of his client, the chartered accountant/broker is his service provider. The value addition comes in, on account of the activity undertaken by the professional like tax planning, advising, consultation etc. It gives value addition to the goods manufactured or produced or sold or services provided. Thus, service tax is imposed every time service is rendered to the customer/client. This is clear from the provisions of Section 65(105)(zm) of the Finance Act, 1994 (as amended). Thus, the taxable event is each exercise/activity undertaken by the service provider and each time service tax gets attracted. Service tax is, thus, a tax on activity whereas sales tax is a tax on sale of a thing or goods.

10.11.4 We are absolutely clear that there cannot be any service Tax on the profit/consideration received on the sale of Mortgaged Assets and the demand fails on this score also.

10.12 Further the Respondent refers to the Order-in-Original No. LTUC/415/2011-ADC dated 31.12.2011 passed by the Additional Commissioner relating to eligibility of availment of CENVAT Credit in their own case wherein in Para 6 of the Order it was held as follows: -

> *"6. ……..the EMI's are receivables for SFL, which were sold by them to a trust or were directly assigned to a buyer. This activity is not a service and it is non-taxable and hence the income from the same is not subjected to Service Tax. ……..."*

10.13 The Commissioner (Appeals) in the case of the Appeal filed by the Respondent/Assessee *vide* his OIA 15/2014 dated 08.01.2014 re-affirmed the above observation in para 7 of his order which has been reportedly accepted by the Department.

10.14.1 Further, the Respondent drew our attention to the Department's own guidelines in the CBEC's Guidance Notes, TRU Circular, dated 20.06.2012 issued by CBEC during introduction of "Negative List" of services *viz*., point 2.8 — "Transactions only in money or actionable claims do not constitute service" wherein it had specifically clarified the subject transaction "secured debt" under point No.2.8.9 which is extracted below: -

"2.8.9 Would sale, purchase, acquisition or assignment of a secured debt like a mortgage also constitute a transaction in money?

Yes. However, if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax."

10.14.2 From the answer to questions 2.8.8 and 2.8.9, it is very relevant and would directly apply in favour of the Respondent and there is absolutely no basis for issuing the show cause notices in this case and it becomes clear to us that securitization/sell-down or assignment are only sale and transactions in money and cannot be subjected to Service Tax.

10.15 In the upshot, we come to the conclusion that service Tax cannot be levied on Excess Spread income and Upfront Fees which are in the nature of profit on the Sale of receivables.

Therefore, the FIRST question framed by us is answered in the negative against the Department and the order of the Adjudicating Authority is upheld on the grounds of merit.

10.16 The Respondent challenged the show cause notices before the Writ Court (Madras High Court) on the

ground that the profit element, which is termed as Excess spread of income on sell-down amount is merely the difference between the actual interest collected on a hire-purchase transaction and that paid to the financial institutions, who had purchased the debtors from the company. It is the grievance of the Respondent that the show cause notice considered the aspect of sale of securitization/sell-down of future receivables as being liable to tax and thus calculated the service tax liability.

The Learned Single Judge dismissed the writ petition on the ground that the issues involved in the matter are pure questions of fact, which should be decided by the Adjudicating authority on merits. Feeling aggrieved, the Respondent had filed an intra court appeal.

The WA filed by the Respondent was decided on 28-6-2018 upholding the order of the single Judge on merits.

10.17 As regards limitation, we find that the Department was seized of this issue in the year 2010 itself during the Audit of accounts of the Respondent, and the demand was set aside by this Tribunal in Appeal as discussed above in Para 10.06 *Supra*.

10.18 On the question of limitation framed by us, the Respondent / assessee has argued that both the Show Cause

Notices are hit by the limitation of time and in support of their stand they had referred to the show cause notice No. LTUC/346/2010 which was adjudicated by the Commissioner against which this Tribunal had also set aside the demand vide Final Order No 42948-42949/2017 dated 18.11.2017. As for the second notice, they had stated that it draws strength from the previous SCN dated 09.06.2016 on the same issue and therefore the invocation of extended period is not sustainable in both the Notices.

10.19.1 In this context we have perused Paras 3.4 and 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.3.2017 wherein it has been stated that,

> *"3.4 Extended period in disputed areas of interpretation: There are cases where either no duty was being levied or there was a short levy on any excisable goods on the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be. Both trade and field formations of revenue may have operated under such understanding. Thus, the general practice of assessment can be said to be non-payment of duty or payment at lower rate, as the case may be. In such situations, Board may issue circular clarifying that the general practice of assessment was erroneous and instructing field formations to correct the practice of assessment. Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty.*

3.7 Second SCN invoking extended period: Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation."

In *Paper Products Ltd. Versus Commissioner of Central Excise' [1999 (8) TMI 70 - SUPREME COURT]* it was held by the Supreme Court that the departmental circulars are binding in nature on the revenue authorities and as the circular was in force at the relevant point of time, the demand against the appellants is not sustainable.

10.19.2 We are of the opinion that had the contents of the above Circular followed in letter and spirit, both the SCN's would not have come to be issued, as the Department was already seized of an identical issue of the same Assessee

way back in 2010 itself and it is a genuine interpretational issue.

10.20 Now, coming to the first notice, *viz*. LTUAC/CHN/02/2016-(C) dated 09.06.2016, the Appellant in the impugned order has recorded that it had covered four issues *viz*. Upfront fees, Excess Spread Income Collection Efficiency fees and Sell-down Servicing Fee. Out of these four issues, the previous Order of the Commissioner which was decided by the CESTAT obviously covered only the two latter issues *viz*. Collection Efficiency fees and Sell-down Servicing Fee, both of which are not contested by the assessee now and the two issues of Upfront fees and Excess Spread Income on Sell-Down being taken up for demand for the first time, it can be safely argued that this show cause notice is not hit by the limitation of time and the facts of the case are not exactly similar to the facts of the previous case. Therefore, the invocation of extended period of limitation for this notice would be tenable in as much as the entire issue was unearthed only through further investigations made by the audit team the Department.

10.21.1 We have gone through the contents of the First SCN. Though the first Notice covers 4 issues out of which two issues, i.e., Collection Efficiency fees and Sell-down

Servicing Fee, have already been litigated by the Department from 2010 itself. On the other two issues Upfront fees, Excess Spread Income are linked to securitization of loan receivables sold /assigned by the Respondent. We find that all the 4 issues covered in the first SCN is flowing out of securitization of assets either through a sell down or Direct Assignment. The Appellant had taken a stand that but for the Audit and further investigation carried out, the issue would not have come to light and that extended period is rightly invokable in this case. We are unable to subscribe to this view taken in the impugned order. Further the Respondent/Assessee Company is a public listed company and publishes its Annual Audited balance sheet every year and declares its Audited quarterly results which are in the public domain. Further, the Department should have exercised due diligence, after this issue was unearthed in 2010, to check/verify whether any charges and Fees linked to securitization has continued thereafter also. There is a failure on the part of the Appellant on this score. We also note that initially the Department took a stand in 2010 that the services of the Respondent are classifiable under Business Auxiliary Service and in the present impugned order, it has been classified as Business Support Services by the Department, even though there is no corresponding change in Service Tax Law This itself is a pointer that there is

genuine interpretational issue in this case and the suppression of facts cannot be adduced/invoked in this case.

10.21.2 Reference has been made to the decision in *M/s. Vandana Global Ltd. Versus Commissioner (Appeals) Central GST, Central Excise & Customs, Raipur [2022 (12) TMI 450 - CESTAT NEW DELHI]*, where it has been held that it is not correct to say that had the audit not been conducted, the alleged errors in assessment would not have come to light because they would have come to light if the officers had scrutinised the returns in time and called for any data or records which they needed. The fact that audit has pointed out the alleged mistakes only shows that the officers have not scrutinised the Returns properly. Thus, the extended period of limitation cannot be invoked in the present case, and therefore the demand being barred by limitation is unsustainable.

10.22 As for the second notice *viz*. 07/2020 (C) dated 15.10.2020, it is seen that this notice has been issued once again invoking the extended period of limitation which apparently is without any legal sanctity as this notice was issued on the same set of facts as that of the first notice dated 09.06.2016. There is nothing on record to show that the Respondent-assessee was non-co-operative and that the

Department was unable to obtain the details from the assessee or not filing the ST-3 Returns. The Respondent-assessee would have easily provided the details if the same had been sought for from them by the Department especially in the light of the facts that a previous show cause notice had already been issued on this issue and it therefore cannot be said that the Department was not aware of the facts to extend the benefit of extended proviso for a second time as this would go against the very principles of law laid down by the Hon'ble Apex Court in the following cases.

10.23.1 We find that the Apex Court in the case of *P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise [(2003) 3 SCC 599] = [2003 (153) ELT 14(SC)]* has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the department. It was observed in para 14 as follows: -

> *"14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause*

notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period."

10.23.2 This judgment was followed by this Court in the case of *ECE Industries Limited v. Commissioner of Central Excise, New Delhi [(2004) 13 S CC 719] = [2004 (164) ELT 236 (SC)].* In para 4, it was observed: -

"4. In the case of M/s. P&B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such

circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked."

10.23.3 Similarly, this judgment was again followed in the case of *Hyderabad Polymers (P) Ltd. v. Commissioner of Central Excise, Hyderabad [2004 (166) ELT 151(SC)].* It was observed in para 6: -

"..... On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and / or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct."

10.24 As a result, we find that the Allegation of suppression of facts against the Respondent cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts

on the part of the Respondent- assessee as these facts were already in the knowledge of the authorities. We concur with the view taken in the aforesaid judgments and in respectfully following the same, hold that there was no suppression of facts on the part of the assessee/Respondent and the extended period invoked in this case for the two SCN's is not justified.

11. Therefore, the demand fails on the ground of limitation also as well as on merits.

12. In view of above discussions and analysis, the appeal filed by Revenue is dismissed and the impugned Order-in-Original Nos. 13&14/2022-CH.N.GST dated 31.01.2022 are upheld in toto with consequential relief if any as per the law.

(Order pronounced in open court on 18.12.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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