

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50015 of 2019-SM

(Arising out of order-in-appeal No. IND-EXCUS-000-APP-210-18-19 dated 29.06.2018 passed by the Commissioner (Appeals), Customs, Central Goods Service Tax & Central Excise, Indore).

M/s Swastika Investmart Limited

48, Jaora Compound, MYH Road
Indore (M.P.)

Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax,**

P. B. No. 10, Manik Bagh Palace
Indore (M.P.)

Respondent

APPEARANCE:

Shri Abhishek Jaju, Advocate for the appellant

Shri Pradeep Gupta, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51575/2019

DATE OF HEARING/DECISION: 31.07.2019

ANIL CHOUDHARY:

The issue involved in this appeal is whether, the appellant who is engaged in the business of rendering 'Stock Broker Service' and 'Banking and other Financial Services', and activity of buying and selling of shares on their own account, are entitled to cenvat credit on receipt of 'insurance service' and 'repair service' for motor car.

2. The brief facts as per the show cause notice are pursuant to audit and scrutiny of the document it appeared to Revenue that appellant is not entitled to cenvat credit of insurance service in respect to motor vehicle and also in respect to repair and maintenance of motor vehicle. The amount of Rs. 60,487/- was reversed.

3. Further, it appeared to Revenue that appellant is also engaged in taxable activity of sale and purchase of security which is exempted from the levy of service tax. They are availing cenvat credit on common input services such as transaction charges, internet services, telephone services, banking services, stock broking services, etc. Thus, it appeared that the appellant is providing both taxable service as well as exempted service (trading) and hence under Rule 6(3) of Cenvat Credit Rule, required to reverse an amount specified on the differential amount, which is purchase and sale price of the security.

4. In reply to the memo dated 25.08.2015 the appellant stated that they have purchased and sold securities and done transaction on the stock exchange, in its own name. Thus, there is no element of service involved, the said activity being for self. Thus, the appellant is not providing service to any other person. It is also urged that trading of share on own account is not a service, and is not covered under the definition of exempted service. Accordingly, show cause notice dated 11.07.2016 was issued invoking the extended period of limitation, for the period 2012-13 to 2015-16

demanding an amount of Rs. 34,18,054/- (by reversal) towards exempt service of trading in securities. Another demand of Rs. 60,487/- was also proposed, being cenvat credit taken on insurance of motor vehicle and repair and maintenance of motor vehicle.

5. The show cause notice was adjudicated vide order-in-original dated 29.09.2017 on contest, and the proposed demand confirmed alongwith equal amount of penalty under Section 78. Being aggrieved, the appellant preferred appeal before the learned Commissioner (Appeals) who was pleased to dismiss the appeal.

6. Heard the parties and perused the record.

7. The definition of service as provided in Section 65B sub-section 44 is as follows:

Service means – any activity carried out by a person for another for 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 manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) on Article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;

From the perusal of facts, I find that Revenue have not identified the other person for whom the appellant did the transaction of buying of shares in their own account. I further take note that buying and selling of securities for a client is a taxable service. There is no dispute that the appellant have admittedly paid

the service tax on their activity of buying of shares on others/client account. Thus, I hold that buying and selling of shares by the appellant on their own account, does not amount to service as the said activity is not for another person which is the condition precedent in sub-section 44 of Section 65D of the Finance Act, 1994. Further, I hold that buying and selling of shares in their own account also does not amount to trading, as defined in Rule 2(e) of Cenvat Credit Rules, 2004.

8. Learned Counsel informed that they are not contesting the disallowance of cenvat credit on insurance and maintenance of motor vehicle and they have already reversed the amount. They had also reversed the amount in dispute with regard to amount of Rs.34,18,054/- being the demand raised towards sale/ purchase of security of their own account.

9. In view of the transitional provision under Central Goods and Service Tax Act, the appellant shall be entitled to the refund of Rs.34,18,054/- in cash. The penalty imposed under Section 78 on both the demand is set aside. The appellant is entitled to consequential benefit, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)