

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH**

Dated: 29/10/2015

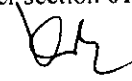
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/53252/2015-CU[DB] dated 15/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

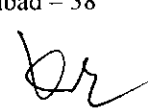

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	ST/405/2009	SBI CARDS AND PAYMENT SERVICES PVT. LTD. 3 RD FLOOR, BLOCK 4 -A, DLF CORPORATE PARK, QUTAB ENCLAVE,DLF PHASE-III, GURGAON 2).
		Name and Address of Respondent
2		-C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.

Copy To3 Advocate(s) / Consultant(s):

Shri.V.LaxmiKumaran, Advocate
5, Jangpura Extension Link Road,
New Delhi-110 014

4 Additional Party's Name & Address :**5 Bar Association, CESTAT, Delhi****6 Director Publications, Customs, Excise. I.P. Estate, Delhi****7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3****8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17****9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005****10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15****11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)****12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070****13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38****14 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082****15 C.D.R. 16 Office Copy 17 Guard File**

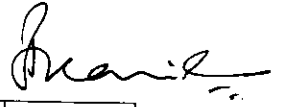

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. II

Date of hearing/decision: 15.10.2015

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. B. Ravichandran, Member (Technical)



1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Service Tax Appeal No. 405 of 2009
(Arising out of order-in-original No. 07/VKG/2009 dated 10.02.2009
passed by the Commissioner, Service Tax, New Delhi).

SBI Cards and Payment Services Pvt. Ltd. Appellant

Vs.

CST, New Delhi Respondent

Appearance:

Shri B. L. Narasimhan, Advocate for the Appellant
Shri Amresh Jain, DR for the Respondent.

Coram: Hon'ble Mr. Justice G. Raghuram, President
 Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order Nos. 53252/2015



Per: B. Ravichandran:

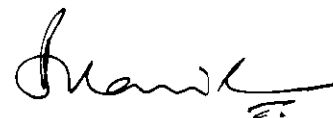
The appellant is engaged in credit card business and is constituted as a non-banking Financial company. The appellant is registered for payment of service tax under 'Banking and other Financial Services' (BOFS) since July, 2001.

2. Proceedings were initiated against the appellant to demand service tax on the following categories of income linked to credit card business:

- a) revenue generated from 'interchange' - the differential amount generated by the appellant for funding the receivables.
- b) revenue generated in the name of mark-up amount over and above the official conversion rate when credit card is used abroad by the card holder.

3. The Commissioner, Service tax, New Delhi vide his order dated 10.02.2009 confirmed the demand of service tax and imposed penalties under Section 78 of Finance Act, 1994. Aggrieved by this order the appellant is before us.

4. Ld. Counsel for the appellant, Shri B. L. Narashimhan, submitted that out of two issues involved in the present appeal, the question of service tax liability on 'interchange' income has been settled in their favour by the larger Bench of the Tribunal in the case of **Standard Chartered Bank and others 2015-TIOL-1713-CESTAT-DEL-LB**. The Id. AR Shri Amresh Jain agreed with the said submission of the appellant. As such we find that the service tax liability confirmed in the impugned order on this income is not sustainable. The Id. Counsel



informs that tax amount of Rs. 6,13,44,046/- is attributable to this category of income out of total confirmed tax demand of Rs.7,05,57,492/-.

5. Effectively the only other issue for consideration in this appeal is the service tax liability of the appellant on the income attributable to the currency conversion mark-up when the card holder uses the card abroad.

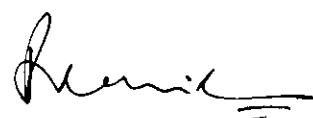
6. The Id. Counsel for the appellant narrated the transaction flow leading to the accrual of the aforesaid income to the appellant. When the card holder transacted in a foreign currency using his card in foreign exchange, the VISA system tracked the transaction and debited the customer's statement in Indian rupees at pre-determined currency conversion rate, which includes mark up. The appellant debit the account of the customer and credit the account of VISA the entire amount as above in Indian rupees. When VISA made its daily settlements with the appellant, 2.15% share of the conversion mark up was adjusted as payable / receivable to/ from VISA. The dispute is relating to the mark up income accrued to the appellant. The Revenue contended that the said mark-up income was in relation to the 'credit card service' covered under the category of taxable service 'Banking and other Financial Services' during the period 16.07.2001 to 30.04.2006.

7. The Id. Counsel for the appellant submitted that the transaction involved in the card holder using the card for payment to a foreign party involves two elements viz: (a) usage of the credit ^{card} outside India and (b)



the conversion of foreign currency. He contended that the mark up on conversion of the foreign currency cannot be taxed under credit card services. The appellant while issuing card or on periodical basis collects certain service charges in respect of international cards. The service tax on such service charges stands discharged. Thus the use of card in international transaction is enabled by the appellant. However, when card holder uses card to pay in foreign currency for any goods/ services abroad this will necessarily involve conversion of the foreign currency. In the absence of card, such conversion has to be made by the card holder by other means like money changers etc. The card usage helps to facilitate payment to goods/ services with simultaneous conversion of currency. The appellant is already collecting service charge on issue of international card on which service tax is also paid. The terms of issue of card enable the usage of the said card for payment in foreign currency also. Hence, the Id. Counsel pleaded that the mark up revenue is solely attributable to service of conversion of foreign exchange which is not covered by credit card services during the impugned period.

8. Without prejudice to the above contention, the Id. Counsel also contended that the whole service is rendered, received and consumed outside territory of India and hence cannot be subject to service tax levy. For this he relied on the Tribunal's decision in **Cox & Kings India Ltd. – 2014 (35) STR 817**. The Id. Counsel also contested the demand on the ground of time bar as the show cause notice was issued on 03.10.2006 for demanding tax from 01.07.2001. The appellant was guided by Board's circular dated 09.07.2001 and was under bonafide belief that

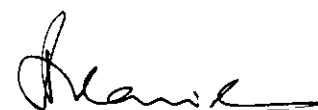


services rendered were in the nature of conversion of foreign currency and not credit card service. They also believed that the services having been rendered outside India are not taxable.

9. The learned AR Shri Amresh Jain submitted that the mark up charges are collected from the card holder by the appellant and are directly attributable to use of credit card. He further stated that the provider/ receiver of service were ordinary resident of India and the consideration for service is settled in India in rupees. Hence, the service is in taxable territory only. The conversion in foreign currency is enabled by usage of card and such the revenue accruing to appellant is relatable to card services only. He further contended that the larger Bench of the Tribunal (supra) followed the ratio that charges for provision of any service between the issuing bank and card holder falls under the taxable entry of BOFS during the relevant period.

10. We have heard both the sides and examined the connected appeal papers. The point for decision is tax liability of income accruing to appellant as mark up when card is used for foreign exchange payment. "Credit Card Services" is one of the services taxed under Banking and Financial Services introduced with effect from 16.07.2001. The term 'Credit Card Services' was not defined during the impugned period. A new tax entry was introduced in 2006 under Section 65(12) as 'Credit Card Services' with much wider scope as defined under Section 65 (33a). The period relevant for the present appeal is prior to this new entry.

The relevant statutory provisions are as below:



Section 65 (10) of Finance Act, 1994:

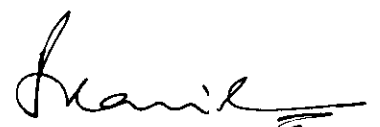
"Banking and Financial Services" means the following services provided by a banking company or a financial institution including a non-banking financial company, namely:-

- (i)
- (ii) credit card services;
- (iii)

Later on amendments were carried out by Finance Act, 2002, 2003, 2004. Vide Finance Act, 2006 'Credit Card Services' was omitted from BOFS and a new entry was introduced separately.

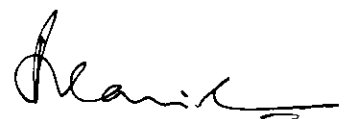
In the absence statutory definition of the meaning and scope of taxable entry 'Credit Card Services' during the relevant time, guidance may have to be taken from executive clarification and judicial interpretation.

11. It is an admitted fact that when card is issued with international credit facility, service charges collected at that time or on periodical basis are subjected to service tax under credit card service. When such card is used to pay in foreign exchange outside India there will necessarily be a charge for conversion of currency. The card holder is ^lsetting ₂ his dues with appellant only in rupees. The card is used for payment in foreign exchange. As such the mark up charge is directly attributable to the conversion of currency. This much is clear from the terms of usage and the card holder is also aware of the nature of mark up. The case of Revenue is that since card is an instrument which only enables such conversion of currency, hence any mark up collected on this account is leviable to tax as credit card service. As discussed above the mark up comes only when currency exchange is involved. If not using the card the card holder will be spending certain charges to convert the currency through any other means. As discussed in the larger Bench decision of this Tribunal (supra) the Finance Act, 1994 has not defined, even



illustratively, the nature and variety of services which amount to credit card services. The larger Bench of Tribunal in agreement with clarification in para 2.2 of Board's circular dated 09.07.2001 confirmed the restricted scope of levy prior to 01.05.2006. We find on examining the discussion in the said order and the nature of transaction now in dispute, that the mark up charges attributable to currency conversion will not fall under the category of 'Credit Card Services' during the impugned period.

12. Without prejudice to the above findings we find strong force in appellant's claim on service being outside the taxable territory of India. Admittedly the card transaction happened outside India. The service in respect of such transaction is rendered, received and consumed outside India. The card issuing appellant and card holder having normal residence in India is of no consequence for tax liability on service rendered and consumed outside India. The Tribunal's decision in **Cox & Kings India Ltd.** (supra) is applicable to the present case. The essence of taxability of service is that it should be taxed in the jurisdiction of its consumption. Here, the service, namely facility of use of card for payment, is rendered outside India and duly consumed by the recipient-card holder outside India. We find service tax liability on such service is not sustainable for want of jurisdiction. Even if it is considered, conceding the plea of revenue that the card is issued in India and the service availed abroad is in continuation of such card usage, it is clear that the identified service element has been wholly rendered and consumed abroad. As Hon'ble Supreme Court in the case of **Ishikawa-**



Ima-Harima Heavy Industries Ltd. – 2007 (6) STR 3 (SC) held that in respect of offshore services, there should be sufficient nexus between the rendition of services and territorial limits of India. It was held that applying the principle of apportionment to composite transactions which have some operation in one territory and same in other, it is essential to determine taxability of the service operations. Applying this principle, we find even if alternate argument of Revenue is considered, in the present case the whole of service rendered and consumed outside India is beyond the taxable territory as per Finance Act, 1994.

13. Considering the above discussion and findings we hold that the mark up charges accruing to the appellant when card holder uses card to pay in foreign exchange abroad is not liable to service tax under 'Credit Card Services' during the impugned period. This conclusion is based both on merit of scope of 'Credit Card Services' during relevant period and lack of territorial jurisdiction of charge.

14. To conclude, a) the appellant is not liable to service tax on 'interchange charges' in view of the findings of the larger Bench of the Tribunal in **Standard Chartered Bank** (supra) b) the 'mark up' charges are also not liable to service tax as concluded above. Accordingly the appeal is allowed.


(Justice G. Raghuram)
President


(B. Ravichandran)
Member (Technical)

Pant