

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

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 52160 of 2019-SM

(Arising out of order-in-appeal no. 392 (CRM) ST/JDR/2019 dated 24.04.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jodhpur).

State Bank of Patiala

Now State Bank of India
CAD Circle, Dadabari
Kota (Rajasthan).

Appellant

VERSUS

**Commissioner, Central Excise and
Central Goods & Service Tax,**

G-105, New Industrial Area
Opp. Diesel Shed, Basni, Jodhpur.

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. 51739/2021

DATE OF HEARING/DECISION: 09.08.2021

ANIL CHOUDHARY:

Heard the parties.

2. The appellant is a banking company providing service under the category of 'Banking and other Financial Service' among others.

3. In the course of audit for the period April, 2008 to September, 2011 it was observed that appellant had taken cenvat

credit wrongly, relating to the period April, 2008 to March, 2010 being on input service - 'Collateral Management charges' as per the invoices raised by the 'National Bulk Handling Corporation' which provides services in relation to processing of loans / advances, as is evident from the invoices. It appeared to Revenue that such input service is exclusively used for providing exempt services i.e. service tax is not chargeable on the interest earned by the bank on loans/ advances. Hence, cenvat credit is not available on this service, as per the provision of Rule 6(1) read with Rule 6(5) and 6(3) of the Cenvat Credit Rules. It is further alleged that these facts came to the knowledge of the Department in the course of audit or else, the same would have gone un-noticed. Further alleged, there have been suppression of facts on the part of the appellant and accordingly the show cause notice dated 23.10.2013 was issued, invoking the extended period of limitation under the proviso to Section 73(1) of the Finance Act.

4. The show cause notice was adjudicated on contest. The proposed demand was confirmed alongwith equal amount of penalty with interest.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who was pleased to dismiss the appeal upholding the order-in-original. As regards the limitation, learned Commissioner (Appeals) observed that there is lack of bonafide, as in case of doubt, they should have approached the Department, but failing to do so, the appellant cannot get absolved from the charges

that they have not suppressed the fact with intent to evade payment of service tax.

6. Learned Counsel Shri Abhishek Jaju appearing for the appellant urges that the show cause notice is misconceived, as prima facie giving of loans is not an output service, rather money in real terms somewhat akin to goods, goes out of the bank when the loan is advanced. Secondly, only for the reason that interest earned by the Bank on the loans is not chargeable to service tax, it cannot be said that giving of loan is exempt service. It is further urged that admittedly appellant have maintained proper books of accounts and statutory registers, and further they have filed their returns with the Department regularly. Further, there is no allegation in the show cause notice that the appellant have not filed the return properly and /or there is any suppression of facts or mis-statement in the returns. Accordingly, he prays for allowing the appeal both on limitation and on merit.

7. Learned Authorised Representative Shri Pradeep Gupta appearing for the Department relies on the impugned order.

8. Having considered the rival contentions, I find that giving of loans is not a service, rather it is an activity of the Bank in which money in real terms which is akin to goods, is given to borrower. Further, for the reason that interest earned by the Bank on loans is not liable to tax, the show cause notice alleged that giving of loan is an exempt service. Further, I find that the show cause notice have been

issued after more than 32 months from the last date when the return was due from the financial year ending 31.03.2010. Accordingly, I hold that the show cause notice is bad for invoking the extended period of limitation. There is no suppression of facts or contumacious conduct on the part of the appellant.

9. In this view of the matter, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

(Dictated and pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Pant