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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. ST/368 /2007 - CU[DB] Date **01/07/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S STATE BANK OF BIKANER & JAIPUR
INTERNATIONAL BANKING BRANCH, SMS
HIGHWAY BRANCH, JAIPUR

M/S STATE BANK OF BIKANER & JAIPUR Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.**ST/259/ **2011 CU|DB|** dated 27.06.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult
MR.SAMEER JAIN
K - 76, SHYAM NAGAR, JAIPUR.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. II

Date of Hearing : 7.6.2011

Service Tax Appeal No. 368 of 2007

[Arising out of Order-in-Appeal No. 33(GRM)ST/JPR-I/2007 dated 14.2.2007 passed by the Commissioner (Appeals), Central Excise & Customs, Jaipur-I]

Coram:
Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s State Bank of Bikaner & Jaipur — Appellant

Vs.

CCE, Jaipur-I — Respondent

Appearance:

Appeared for Appellant : Shri Vasudevan, Advocate
Appeared for Respondent : Shri Amrish Jain, DR

Coram:
Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

Final Order No. ST/259/11 dated 27.6.11

Per **D.N. Panda :**

At the time of passing of an interim order on 25.5.2009, the Tribunal has observed that service tax on the profit earned on Foreign Exchange is not exigible by Finance Act, 1994 ~~is not exigible.~~ It was also noticed that looking to the provision of law applied by ld. Appellate Authority below i.e., Section 65(105)(zm) and 65(105)(zzk), the Bench was of the view that the Appellant-banker was not liable to Service Tax on the profit earned from Foreign Exchange deal.

2. Today, when the matter is heard, there is nothing improvement on the argument by Revenue to show from the statutory provision by Finance Act, 1994 whether anyway that Act intends to tax profits arising out of dealing in foreign exchange in terms of the taxable entry relating to the period 16.7.01 to 31.3.2006. On the other hand, the Appellant reiterates the same stand that was made in interim stage. According to the Appellant when law does not permit the profit to be taxed under Service Tax law and the respective circular that what was quoted at the interim stage still takes care of case of the Appellant, the Appellant should succeed in Appeal.

3. Ld. DR for Revenue has contention that any amount received in dealing Foreign Exchange shall be subject matter of tax under Finance Act, 1994 that being a receipt from banking and other financial services.

4. We have examined thoroughly the taxable entry as stated aforesaid which brought service provided to the customer by a banking company or a financial institution including a non-banking company. We have also examined the meaning of term banking and other financial services. We are unable to find intention of

legislature to tax the profit earned out of dealing in foreign exchange. What that is necessity of Finance Act, 1994 is that the gross value received providing taxable service is intended to be taxed under that law. Finding no scope to bring profit to the ambit of tax under Finance Act, 1994, the Appeal is allowed.

(Dictated & pronounced in open Court)

(D.N. Panda)
Member (Judicial)

(Mathew John)
Member (Technical)

RM