CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. III

Service Tax Appeal No. 51207 Of 2020
With
Service Tax Miscellaneous Application No. 51542 of 2024

[Arising out of Order-in-Original No. 09-10/TPS/PC/CGST/DSC/2020-21 dated 01.09.2020 passed by the Principal Commissioner, Central Goods, Service Tax, Delhi South]

ACB India Limited : **Appellant**
18, Vasant Enclave Rao Tula
Marg, South Delhi New Delhi
110057

Vs

Principal Commissioner of CGST : **Respondent**
And Central Excise, Delhi South
Plot No. 2-B, EIL Annexe, 3rd Floor,
Bhikaji Cama Place, Delhi South
New Delhi

APPEARANCE:
Ms. Swati Bhardwaj and Ms. Aditi, Advocates for the Appellant
Shri S. K. Meena Authorized Representative for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50840/2026

Date of Hearing:10.04.2026

Date of Decision:29.04.2026

HEMAMBIKA R. PRIYA

The present appeal has been filed M/s ACB India Limited1 to assail the impugned Order-in-Original No. 09-10/TPS/PC/CGST/DSC/2020-21 dated 01.09.2020 wherein the Commissioner confirmed the demand of service tax amounting to Rs. 1,69,62,671/- along with interest and appropriate penalties. The

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1 the appellant

Department has filed Miscellaneous Application No. 51542 of 2024 dated 11.07.2024 seeking early hearing of the appeal on the following grounds:-

(i) That the Petitioner M/s. ACB India Limited (spectrum) fall under Jurisdiction of erstwhile service tax, Delhi-III Commissionerate which is now an integral part of CGST, Delhi South Commissionerate.

(ii) That the Petitioner namely M/s ACB India Limited (Spectrum) has filed an appeal against OIO No. 09-10-TPS-PC-CGST-DSC-2020-21 dated 01.09.2020.

(iii) That huge arrears is pending for realization.

(iv) That the Department have a strong case and the balance of convenience lies in favour of Department.

2. The brief facts of the case are that the appellant was engaged in the activity of beneficiation of coal whereby the raw coal belonging to its customers who are mostly Electricity Generating Companies is washed to reduce the ash content in raw coal. The washed coal is supplied to the customer and the rejects generated during the process is disposed off by the appellant. The present appeal arises out of the impugned order dated 01.09.2020 whereby Show Cause Notice dated 09.05.2017 pertaining to the period 2013-14 and 2014-15 and Show Cause Notice dated 11.04.2018 pertaining to the period 2015-16 to 2017-18 (up to June 2017) were adjudicated. The first Show Cause Notice dated 09.05.2017 sought to raise demand of Service Tax under three heads namely:

(1) Non-payment of service tax on 'Banking and other financial services" (Corporate Guarantee);

(ii) Non-payment of service tax on External Commercial Borrowings; and

iii) Short reversal of CENVAT Credit attributable to Exempted service.

The second Show Cause Notice dated 11.04.2018 pertaining to subsequent period sought to raise demand only under the head Non-payment of service tax on banking and other financial service (Corporate Guarantee). No demand was sought to be raised under the other two heads as were raised in the first Show Cause Notice dated 09.05.2017. Vide the impugned order, the demand was confirmed along with interest & appropriate penalties. Aggrieved, the appellant has filed the present appeal before this Tribunal.

3. Learned counsel for the appellant submitted that Non-payment of service tax on 'Banking and other financial services' (Corporate Guarantee), was covered in favour of the appellant by a judgment of the Hon'ble Supreme Court which has been followed in two judgments delivered by this Tribunal. She submitted that the appellant had provided Corporate Guarantees to certain banks against credit facilities given by the banks to its Group companies. Admittedly, the appellant did not charge any commission or interest or fee from its Group Companies for providing Corporate Guarantees. She further submitted that the act of providing Corporate Guarantee without any consideration does not fall within the meaning of service as defined under section 65(B)(44) of the Finance Act, 1994. Thus, the same is not eligible to tax. Learned counsel contended that the said issue is covered by the following judgments in favour of the appellant including the judgment in case of appellant itself:

> (1) Commissioner of CGST and Central Excise Vs. Edelweiss Financial Services Ltd.[2]
>
> (ii) Principal Commissioner of Central Tax GST, Delhi Vs. Sindhu Trade Linkers[3]

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2 2023 SCC Online SC 687

(iii) M/s ACB India Ltd. Vs. Principal Commissioner of Central Goods and Services Tax, Delhi South[4]

3.1 As regards non-payment of service tax on External Commercial Borrowings, learned counsel submitted that the appellant had taken External Commercial Borrowings from Syndicate Bank, London, and had paid an amount of Rs. 1,09,620/- to Syndicate Bank, London in 2013-14 as Bank charges towards seeking "No Objection Certificate". The Revenue, in the Show Cause Notice, had sought to levy service tax of Rs. 21,387/-treating the amount paid to Syndicate Bank, London as a facilitation fees for arranging the External commercial borrowings and it was also alleged that the onus of payment of service tax was on the appellant, as per section 68(2) read with Rule 2(1)(d)(G) of the Service Tax Rules, 1994 since service provider had no establishment in India. The appellant in the reply dated 7.03.2018 had submitted that the Syndicate Bank has its Headquarters in India and the London Branch is governed by the Headquarters situated in India and therefore, the liability to pay service tax, if any, shall be of the Syndicate Bank and thus Rule 2(1)(d)(G) would not be applicable in the present case. It was also contended that such payment was towards payment of interest.

3.2 Learned Counsel stated that during the period 2013-14 and 2014-15, the appellant had availed CENVAT Credit of service tax paid on the input service towards maintenance of their Washery Plant located at Maharashtra, Chhattisgarh, Andhra Pradesh & Orissa. She submitted that the appellant was in the business of washing of raw

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3 2023 SCC Online CESTAT 8277
4 Service Tax Appeal No. 50202 of 2021 decided on 18.07.2025

coal, which generates rejects (a by-product) because the purpose of washing is to reduce the ash content and segregate the high ash content low carbon coal from low ash content high carbon coal. The rejects were nothing but high ash content coal. She further stated that coal washing was the only activity for which the appellant undertook maintenance service expenditure. The disposal of such high as to context rejects was not an activity for which the washeries were setup by the appellant. In support of her submissions, learned counsel relied upon the following decisions;-

(i) Commissioner of Central Excise and Customs, Vadodara vs. Sterling Gelatin[5]

(ii) Commissioner of Central Excise vs. M/s Sterling Gelatine[6]

(iii) Union of India vs. Hindustan Zinc Limited[7]

(iv) M/s Jaiswal Neco Industries Limited versus CCE Raipur[8]

She prayed that the appeal may be allowed.

4. Learned Authorized Representative for the Department reiterated the findings of the impugned order. As regards the demand on corporate guarantee, learned Authorized Representative agreed that the issue was no more res-integra in view of the Supreme Court's judgment relied upon by the learned counsel. With respect to the service tax on facilitation charges, learned Authorized Representative submitted that the appellant had not submitted any documentary evidence to substantiate their claim that the bank charges were part of payment of interest. In respect of the short reversal of cenvat credit,

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5 2010 SCC Online Guj 10182
6 Civil Appeal Nos. 3035-3036 of 2011
7 2015 (15) SCC 312
8 2016 SCC CESTAT 4862

learned Authorized Representative that the appellant had failed to reverse proportionate credit taken on maintenance service as they were also trading goods, as required under Rule 6(3) (ii) of the Cenvat Credit.

5. We have heard the ld Counsel for the appellant, ld AR for the department and perused the records. The issues before us for consideration are as follows: -

(i) Non-payment of service tax on Corporate Guarantees

(ii) Non-payment of service tax on facilitation charges paid for External Commercial Borrowings

(iii) Short reversal of Cenvat Credit attributable to exempted service

6. We take up each issue for consideration: -

6.1 **Corporate Guarantee**: We note that as submitted by the Ld Counsel, this issue is no more *res-integra*, in view of the Supreme Court judgment in Commissioner, CGST vs Edelweiss Financial Services Lt, (supra). The relevant paras are extracted hereinafter:

> "6. Mr. Rai Chandani then read paragraphs 8 and 9 of the judgment of the Tribunal, which are extracted below :-
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> > "8. The criticality of 'consideration' for determination of service, as defined in section 65B(44) of Finance Act, 1994, for the disputedperiod after introduction of 'negative list' regime of taxation has been rightly construed by the adjudicating authority. Any activity must, for the purpose of taxability under Finance Act,1994, not only, in relation to another, reveal a 'provider', but also the flow of 'consideration' for rendering of the service. In the absence of any of these two elements, taxability under Section 66B of Finance Act, 1994 will not arise. It is clear that there is no consideration insofar as 'corporate guarantee' issued by respondent on behalf of their subsidiarycompanies is concerned.
> >
> > 9. The reliance placed by Learned Authorised Representative on the 'non-monetary benefits' which may, if at all, be of relevance for determination of assessable value under section 67 of Finance Act, 1994 does not extend to ascertainment of

> 'service' as defined in section 65B(44) of Finance Act, 1994. 'Consideration' is the recompense for the 'contractual' undertaking that authorizes levy while 'assessable value' is a determination for computing the measure of the levy and the latter must follow the former."
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> 7. The above would suggest that this was a case where they had not received any consideration while providing corporate guarantee to its group companies. No effort was made on behalf of the Revenue to assail the above finding or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service. In these circumstances, in view of such conclusive finding of both forums, we see no reason to admit this case basing upon the pending Civil Appeal No. 428 @ Diary No.42703/2019, particularly when it has not been demonstrated that the factual matrix of the pending case is identical to the present one.
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> 8. In consequence, the Civil Appeal stands dismissed."

6.1.1 In view of the above settled legal position, we set aside the demand confirmed on this issue.

6.2 **External Commercial Borrowings: -**We note that the impugned order has confirmed the demand on the following grounds:

> **"**7.8. I observe that the SCN has alleged that the Noticee has made expenditure in foreign currency on account of Bank charges and rate, fees and taxes. On being as ked the details of these expenses, the Noticee informed that they have taken External Commercial Borrowings from Syndicate bank, London. The Syndicate Bank, London has charged facilitation fee from them and accordingly in 2013-14, they have paid an amount of Rs.1,09,620/- to the said Bank.
>
> **..**
>
> I find that the notice*(sic)*themselves have admitted the fact in their own statement that they paid bank charges to the Syndicate Bank, London for No Objection Certificate and on other hand they claim that these bank charges are part of interest. I further find that the noticee has not submitted any documentary evidence in support of their claim regarding that the amount paid to the bank is part of interest and in absence of documentary proof, merely a statement by the taxpayer cannot be admitted as proof of fact. Further, I find that facilitation fee/Bank charges collected by the bank from the noticee for arranging External Commercial Borrowings is neither covered in the exclusion clauses or the negative list enumerated in Section 66D of the Act, w.e.f. 1st July 2012. Hence, the facilitation charges are taxable service and liable to Service tax. Further, the noticees' contention that an establishment of Syndicate Bank is also situated in India, hence, the activity of External Commercial Borrowings from Syndicate Bank, London does not attract leviability of Service Tax on noticee on Reverse Charge Mechanism. So, here it is only a question of shifting liability from noticee to Syndicate Bank in India. Being indirect

> tax, the burden of taxation is on the person availing/enjoying the service. So even it is presumed that an establishment of Syndicate Bank is situated in India, though the party remained silent in their reply to the said SCN on the fact that whether the raised service tax liability is being paid by the Indian establishment of Syndicate Bank. Hence, in such situation and circumstances, the liability of Service tax as demanded in the subject SCN is to be paid by the noticee."

6.2.1 We note that the appellant has submitted that this amount was not paid as facilitation charges but as processing fee towards payment of interest and hence there was no service tax liability. It is an admitted fact that as per Notes to financial Statement for the year 2013-14, the appellant had incurred this expenditure in foreign currency on account of Bank charges. When the department sought clarification, the appellant admitted that they had been charged facilitation fee by Syndicate Bank, London., on the External Commercial Borrowings taken by them. We note such facilitation charges are not excluded under section 66D of the Finance Act, 1994. In this context, we take note of Rule 2(1)(d)(g) which lays down as below:-

> The person liable for paying service tax in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service.

In this context, we note that the appellant received the said service from the Syndicate Bank, London and the payment was made in foreign currency to them. They have not led any evidence to establish that these were payment towards interest, as claimed by them. The argument that such liability would be on the local Syndicate Bank is not acceptable as the service provider was the Syndicate Bank, London and the service recipient was the appellant. Hence, the liability was on the appellant only. Consequently, as per the aforesaid rule, the liability is on the appellant. In view of the foregoing, we uphold the said demand.

6.3 **Short reversal of Cenvat credit attributable to exempted services:**

The demand has been confirmed by the Pr. Commissioner on the grounds that as the appellant was using common inputs/input services for rendering of both taxable and as well as non-taxable services, and had not maintained separate accounts of inputs/input services used in exempted services. It is an admitted fact that for the year 2013-14, the appellant had chosen to reverse proportionate Cenvat credit attributable to such exempted services under Rule 6(3)(ii) of the Cenvat Credit Rules, 2004. The show cause notice alleged that the service tax credit availed on maintenance services used for the Coal washery was not reversed proportionately for trading of coal by them. We note that the appellant has submitted that that the demand is not sustainable as they had relied on several decisions wherein similar issues had been decided but the adjudicating authority has not given his findings on their submissions. It has been submitted that the Principal Commissioner in the impugned order has given no reasons as to why the cited judgments are not applicable to the present case. We take note of the findings in the impugned order wherein the adjudicating authority has dismissed the judgments relied upon by the appellant in a single sentence, which is reproduced hereinafter:-

> "7.10. ……………………………………………………………………………………….. I further find that judgments quoted by the notice (*sic*) are not squarely applicable in the instant case ……………………………………………………………….."

6.3.1 In view of the above, we deem it appropriate to remand this issue to the adjudicating authority to reconsider the matter taking in to note the submissions, and any further documents which may be submitted by the appellant during personal hearing.

7. The Miscellaneous Application No. 51542 of 2024 dated 11.07.2024 filed by the Department seeking early hearing of the appeal is rendered infructuous as the main appeal has been listed and taken up for regular hearing.

8. In view of the above, we hold as follows:-

(i) The demand of service tax on Corporate Guarantee is set aside

(ii) Service tax on facilitation charges paid to Syndicate Bank is upheld.

(iii) Short reversal of Cenvat credit is remanded to the adjudicating authority for reconsideration.

9. The impugned order is modified to the extent above and the appeal is allowed partly, and partly by way of remand. The Miscellaneous application is dismissed as infructuous.

(Order pronounced in the open Court on 29.04.2026)

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.