CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 3

SERVICE TAX APPEAL NO. 50700 OF 2021

[Arising out of Order in Original No. 02/2021-ST dated 28.01.2021 passed by the Additional Director General(Adjudication), Directorate General of Goods and Service Tax, New Delhi]

M/S KOTAK SECURITIES LIMITED **......APPELLANT**
8th Floor, Kotak Infinity Building No. 21, Infinity Park,
Off. Western Express Highway, General A K Vaidya
Marg, Malad (East), Mumbai-400 097

Vs.

ADDITIONAL DIRECTOR GENERAL
(ADJUDICATION), DGGSTI-NEW DELHI **......RESPONDENT**
2nd Floor, West Block-8, Wing No. 6,
R.K. Puram, Sector 1, New Delhi-110066

Appearance:

Shri Tarun Gulati, Senior Advocate and Shri Udit Jain, Advocate for the appellant

Shri Dhirendera Singh Garbyal, Authorised Representative for the Revenue

CORAM:
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51204 /2026

DATE OF HEARING/DECISION : 13/07/2026

BINU TAMTA

1. M/s Kotak Securities Limited[1] have assailed the order in original no. 02/2021-ST dated 28.01.2021 confirming the demand of service tax on Delayed Payment Charges[2] under the provisions of section 66E(e) of the Finance Act, 1994[3].

2. The factual matrix of the case as stated by the appellant is that they are engaged in rendition of stock broking services by providing

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1 Appellant
2 DPC
3 the Act

trading facility to its customers/clients by offering trading platform where the clients can trade in equity shares, mutual funds and other securities, currency derivatives, etc. The Appellant also provides Margin Trading Facility ("MTF") to its clients who are registered with it for availing stock broking services. The clients desirous of trading are required, on settlement date, which is transaction date + 2 days ("T+2 days"), to pay-off their settlement obligations. In case of delay in meeting their obligations by the settlement date or the pay-in date, the customers are liable to pay DPCs to the Appellant. Similarly, the clients availing MTF are required to maintain a minimum amount known as "maintenance margin" (a portion of transaction value) with the Appellant before the actual purchase of shares. The Appellant advances the balance amount to meet the full settlement obligations. In case of delay in payment by the clients, DPCs are payable by the clients to the Appellant.

3. On the basis of an intelligence that the appellant had not discharged service tax on DPCs, SCN dated 09.03.2018 was issued to the appellant, alleging that DPC is consideration for rendering the activity of agreeing to the obligation to tolerate the clients act, situation of deviating from the underlying agreement to settle the obligation of payment by stipulated date. Since the appellant agrees to refrain from enforcing their entitlement right to liquidate or close out or any of the clients position and allows the client to pay at a later date in view of the DPC, the activity rendered by the appellant amounts to declared service under section 66E(e) of the Act. On adjudication, the impugned order upheld the levy of service tax on the DPC along with penalty under section 78 and interest by invoking the extended period of limitation. The impugned order allowed the

benefit of cum-tax benefit and also dropped the penalty under section 76 and 77 of the Act. Hence, this appeal.

4. We have heard Shri Tarun Gulati, learned senior counsel for the appellant and Shri Dhirender Singh Garbyal, learned authorized representative for the Revenue at length.

5. The appellant has submitted that the issue whether DPC is chargeable to service tax has been considered by various Benches of this Tribunal rejecting the submission of the Revenue that DPC is towards the charges for tolerating an act of delayed payment of funds by the clients. The submission is that DPC is not includable in the taxable value for charging service tax and it does not constitute a declared service under section 66E(e) of the Act. Reliance has been placed on the following decisions:

(i) **Globe Capital Market Limited vs. Additional Director General (Adjudication) Directorate General of GST Intelligence,**[4]

(ii) **India Infoline Limited vs. ADG New Delhi**[5]

(iii) **Religare Securities Limited vs. Commissioner of Service Tax,**[6]

(iv) **SMC Global Securities Ltd. vs. ADGGI**[7]

(v) **Balajee Loha Ltd. vs. CCE**[8]

(vi) **Shriram Insight Share Brokers Ltd. vs. Commissioner of CGST & CX,**[9]

(vii) **South Eastern Coalfields Ltd. vs. CCE & ST, Raipur**[10]

(viii) **K.N. Food Industries Pvt Ltd. vs. CGST, Kanpur,**[11]

(ix) **J.M. Financial Services Limited**[12] **passed by the Commissioner, CGST and Central Excise, Mumbai Central**

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4 2025 (5) TMI 1453-CESTAT, NEW DELHI
5 2025(3)TMI 574-CESTAT, NEW DELHI
6 2014 (4)TMI 588
7 2025 (6) TMI 1732-CESTAT, NEW DELHI
8 2025(6) TMI 186-CESTAT, NEW DELHI
9 2023 (6) TMI 1056
10 2020 (12) TMI 912-CESTAT, NEW DELHI
11 2020(1)TMI 6
12 Order-in-Original dated 25.06.2025

6. Shri Dhirendra Singh Garbyal, learned authorized representative vehemently opposed the appeal though the issue has been settled in catena of decisions. He submitted that by actively choosing not to exercise his legal right to square off or liquidate the defaulting client's portfolio, the appellant is providing a distinct economic service, i.e, a service of tolerating the clients financial record. The appellant has voluntarily agreed to the commercial arrangement with its clients which established pre-agreed mechanism wherein client gets extra time to pay and the appellant gets paid a late payment fee which is the direct "consideration" for the appellant tolerating the delay.

7. The concept of DPC is linked to the payment which is to be made by the clients by a particular settled date but has not been paid so and in view of the delay, the appellant deposited the amount and charged DPC from their clients. Learned counsel for the appellant has referred to contractual clauses of the agreement such as voluntary terms and conditions, policies and procedure and the rights and obligations of the beneficial owner and depository participants as prescribed by SEBI.

8. Having perused the various decisions relied upon by him we are of the opinion that the issue has been well settled that DPC is not includable in the taxable value for charging service tax. In support thereof, we refer to the decision of this Tribunal in the case of **Religare Securities Ltd** which has been followed subsequently in the case of **India Infoline Limited** and **Globe Capital Market Limited**, the observations of the Bench is as under;

> "10. After appreciating the submissions made by both the sides, we find that the dispute to be decided in the appeal is as to whether the DPC collected by the appellants from their clients in those cases where the appellants have already

> made payments to the Exchange but has not recovered the same from their clients, are required to be considered as a part of the value of the services, so as to levy the service tax in respect of the same. We find that there is not much dispute on the facts. The DPCs are being collected by the appellants only from those clients, who have not paid them well within the time limit period and the appellants being under a legal contract with the Exchange, had to deposit the value of the securities, sold or/and purchased by their clients. As such, the nature of the said DPCs being a penal charge, is established. Where there is no delay in making payments by the clients, no DPC is being charged from them. As such, one thing becomes clear that such DPC is not on account of any stock-broking services being provided by the appellants.
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> In terms of clause 45 of the agreement entered by the appellants with investors, - "any amount overdue towards trading or any other reason will be charged with delayed payment charges". Perusal of the said clause reveals that the DPCs are collected only in case of overdue payments. The reasoning of the Commissioner that the origin of the DPC has taken place on account of business or service of sale/purchase of securities by a stock-broker and the same has to be considered as a part of the service does not appeal to us, for the simple reason that such DPC collection has got nothing to do with the sale/purchase of the securities, a service which the appellants is rendering as a stock-broker but admittedly is a charge recovered from only those customers, who delayed the payments of the securities value and is in fact is a penal interest, for compensating the assessee for the payments already made by them, to the Exchange, on behalf of their clients.”

9. The primary question whether DPC constitutes declared service under section 66E has also been considered by this Tribunal elaborately relying on several decisions of the Apex Court. Reference is invited to the decision in the case of **South Easten Coalfields Limited** where the Bench has laid down the test for determining whether DPC would fall under section 66E, i.e., where the agreement specifically refers to such an activity and there is a flow of consideration for this activity. The Bench further observed that the intention of the parties was certainly not for flouting the terms of the agreement so that the penal clauses get attracted as they are in the nature of providing safeguard to the commercial interest of the appellant and it cannot by any stretch of imagination be said that recovering any sum by invoking the penalty clauses is the reason

behind the execution of the contract for agreed consideration. Thus, the emphasis was on the intention of the parties which was not to impose any penalty rather to render the main service as contemplated under the agreement.

10. Taking note of the Circular No. 102/21/2019, GST dated 28.06.2019 clarifying that levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act, i.e, "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act ", as this levy of additional/penal interest satisfies the definition of "interest" as contained in Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017.

11. The reference invited by the learned Counsel to CBIC FAQ on Banking Insurance and Stock Broker Sector as updated on 27.12.2018 categorically answered that no GST is leviable on interest/delayed payment charges for debit for settlement obligations/margin trading facility. The relevant portion is quoted below:

Is GST leviable on interest/ delayed payment charges charged to clients for debit for settlement obligations/ margin trading facility?	Any interest/ delayed payment charges charged for delay in payment of brokerage amount/ settlement obligations/ margin trading facility shall not be leviable to GST since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by entry no. 27 of notification no. 12/2017-Central Tax (Rate) dated 28th June 2017 (Amended on 27.12.2018)

12. Coming to the Circular which have been issued by CBEC under the service tax regime, attention is invited to Circular No.

137/25/2011 – ST dated 3.08.2011, which reads as:

> "2.1. In a similar manner, delayed payment charges received by the stock brokers are not includible in taxable value as the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time. Such amounts are not includible in the taxable value for charging service tax. This principle will also apply to other service providers."

13. Thus from the aforesaid discussion, what culls out is that the Department has also understood the provisions that no service tax or GST is payable on DPC for the simple reason that these are not charges for providing taxable services.

14. The submissions made by the learned authorized representative runs contrary to the principle of law enunciated in series of decisions and hence we are unable to accept the same for the simple reason that the same are binding on us. The provisions of section 66E(e) as interpreted by the Tribunal has also been accepted by the Department as is evident from the Circulars issued in the service tax and GST regime. It is not the case of revenue that DPC is included in the account statement/invoice/bill issued by the appellant showing the gross amount towards value of services. Considering, the decision relied on by the learned authorized representative in **Steel City Securities Ltd,** we find that none of the earlier decisions of the Tribunal has been considered.

15. Since the main issue stands decided on merits in favour of the appellant holding that no service tax is leviable under the provisions of Section 66E(e) of the Act, it is not necessary to go into other contentions raised.

16. In view of our discussion above, we do not find any merit in the case of the revenue as upheld in the impugned order and is, therefore set aside. The appeal is, accordingly allowed.

(Operative part of the order pronounced in open court)

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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