IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Misc. Application No. ST/Misc/50494/2017
Service Tax Appeal No. ST/59593/2013-[DB]

[Arising out of Order-In-Appeal No. 32-33/AKM/CST/ADJ/2013 dated 31.05.2013 passed by Commr. (Adjudication) New Delhi]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Unikcon Securities Pvt. Ltd. ...Appellant

Vs.

Commr. of Service Tax Delhi …Respondent

Appearance:
Sh. Vikas Khalndelwal (CA) for the Appellant
Mr. Sanjay Jain (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.08.06.2017

Final Order No. 53806 /2017

Per B. Ravichandran:

The appeals is against order dated 31.05.2013 of Commissioner (Adjudication) Service Tax, New Delhi. The appellants are engaged in the business of stock broking. They are contesting only two issues namely, a) their service tax liability on late payment fees charged from the clients for delayed payment of purchased securities and b) liability to penalty under Section 76 & 78.

2. There is a miscellaneous application filed by the appellant for change of their name in the title from Unickon securities Pvt. Ltd. to Unicon Securities Pvt. Ltd. We note that the change of the appellant's name has been duly recognized by the appropriate authority. Accordingly, the Misc. application for change of name in the title of appeal, is allowed.

3. The Ld. Counsel submitted that as a stock broker while transacting in security on behalf for the clients they are bound by the settlement schedule fixed by the stock exchanges. In case the amounts are not received in time from client, they make payment to the exchanges on their behalf and for delay in receiving the consideration, they levy late payment fees from the clients. This is not for providing any service but is only a compensation for delayed receipt to compensate possible interest liability. As such it is not to be considered as a value of taxable services. He relied on Circular dated 03.08.2011 of the Board which specifically clarified that charges that are collected on account of delay in making payments by the service recipient to the service provider are in the nature of penalty charged for not making the payment within stipulated time. Such amount is not includable in the taxable value for charging service tax. The circular specifically referred to delayed payment charges received by the stock brokers.

4. Regarding penalties imposed, the Ld. Counsel submitted that the DP charges and Demat charges collected by them from the clients were subjected to service tax under the category of 'banking and other financial services'. Though, they remitted the amount towards this tax liability, on merit they are not liable to pay the same. They are not a banking or financial services company' and they are not providing DP or Demat services, as they are not authorized for the same. They are getting these services on behalf of the client and charging the amount towards that. Similarly, the cenvat credit held to be inadmissible was denied on the ground that the invoices were in the name of group companies. The appellant did not go into the details and contest the reversal. They paid the same before issue of SCN. It is pleaded that on these two payments of service tax, no penal action can be taken and the provisions of Section 80 are rightly invokable in this regard.

5. We have heard both the sides and perused the appeal records. We note that regarding service tax liability on late payment fees charged and collected by the stock brokers, the issue stands clarified by the Board, to the effect that such delayed payment charges are not to be included in the taxable value for stock broker service. As the legal position has been clarified, we find that there can be no tax liability for the appellant on such consideration received by them.

6. Regarding the penalties, we note that the service tax liability under banking and other financial service itself is not free from doubt. The appellants discharges the amount for the past and in view of the advice from the department, started collecting the service tax from their clients for future. Similarly, regarding cenvat credit, the amount was reversed before the SCN and the same was due to the allegation that documents not satisfied the requirement of Cenvat Credit Rules. Under these circumstances, we find that the penalties imposed on the appellants can be waived by invoking the provisions of Section 80. The said Section provides for non-imposition of penalties for any failure to pay service tax was due to reasonable cause.

7. In view of the above discussions and analysis, we find that the appellants are not liable to pay service tax on delayed charges and the penalties imposed on them are to be waived in terms of Section 80 of the Finance Act, 1994. The appeal is disposed of in above terms.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha