CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing: 21.06.2017
Date of Pronouncement: 28.07.2017

Appeal No. ST/1105/2011-CU[DB]

[Arising out of the Order-in-Appeal No. 166/S.Tax/D-II/2011 dated 28.03.2011, passed by the Commissioner of Central Excise, New Delhi]

M/s. Vivek Financial Focus Ltd. … Appellant

Vs.

CST Delhi … Respondent

Appearance:

Present Ms. Vibha Narang, Advocate for the appellant
Present Shri Amresh Jain, DR for the respondent

Coram: **Hon'ble Mr. D.M. Misra, Member (Judicial)**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

FINAL ORDER No. 55580/2017

Per Ashok K. Arya:

M/s. Vivek Financial Focus Ltd. is in appeal against the order in appeal no. 166/2011 dated 28.03.2011 whereunder liability of service tax on the "stock broking services" as defined under section 65(105)(a) read with Section 65 (101) of the Finance Act 1994 has been confirmed.

2. The brief facts are as follows:

i) The appellant has its registered office in Delhi and is registered with service tax department for rendering stock broker service.

ii) The assessee has appointed sub broker herein the state of Jammu and Kashmir and all the transactions / services in Jammu and Kashmirare carried out through the said sub broker.

iii) The Department conducted the audit of the assessee appellant and it was noticed that the assessee inter alia did not pay service tax on brokerage received on stock broking services from the clients of Jammu and Kashmir.

iv) The Department issued show cause notice (SCN) and inter alia confirmed the liability of service tax of Rs.2,18,308/- in respect of the brokerage received from clients of Jammu and Kashmir. Initially the demand was confirmed inter alia by the order in original dated 16.03.2010 passed by Additional Commissioner and appellant went in appeal before the Commissioner (A) against the said order in original. Commissioner (A) also sustained said service tax demand of stock broking services against the appellant.

v) Therefore, the appellant is in appeal against the confirmation of the said demand of service tax of stock broking services before the Tribunal.

3. With the background of above facts both the sides have been heard.

4. After having carefully considered the facts of the case and submissions made by both the sides, it appears that provisions of law for levy of service tax for the services provided in the state of Jammu and Kashmir are not applicable. Section 64 of Finance Act 1994 makes it very clear stating that Chapter V of the Finance Act 1994, which deals with the liability of service

tax, extends to the whole of India but has not been extended for application to the state of Jammu and Kashmir.

4.1. The Central Board of Excise and Customs, Ministry of Finance has also clarified in its instruction letter-ST no. 137/62/2003-CX.4 dated 22.03.2004 that in terms of the Finance Act, 1994, service tax is not applicable to the services provided in the state of Jammu and Kashmir irrespective of the services provider being from the State or otherwise.

4.2. In this regard, Tribunal in the case of ***Religare Securities Ltd. vs. CST Delhi 2014 (36) STR 937 (Tri-Del)*** has held that in terms of the section 64 of the Finance Act 1994, discharging of service tax has been exempted in the case of services provided in Jammu and Kashmir region. The Tribunal in the said case observes as under:

> *"15. As regard, the Revenue's appeal, we find that the Commissioner has dropped the same by observing that the appellants have established branch office/franchise unit and has appointed sub-brokers in Jammu & Kashmir for doing trading activities for their clients based in Jammu & Kashmir. He has scrutinised the agreement entered into by the appellants with various Jammu & Kashmir sub-brokers and has come to a conclusion that inasmuch as they were appointed and authorised by the assessee for dealing, assisting, buying and selling the securities for the investors situated in Jammu & Kashmir, which seems to be the sole purpose of the appointments, it has to be held that services were provided in Jammu & Kashmir for the people of Jammu & Kashmir. In terms of Section 64 of the Act, the discharging of Service Tax has been made exempted for the purpose of whole of Jammu & Kashmir region. Merely because the accounts for such services were being maintained in New*

Delhi/Gurgaon/Noida offices, for the sake of facility and maintaining a control on its finance, such services rendered in the State of Jammu & Kashmir cannot be held to be taxable.

16. We do not find any infirmity in the said order of the Commissioner. Admittedly, the service is a destination based tax. The said services, which are being provided by various sub-brokers located in Jammu & Kashmir to the people of Jammu & Kashmir, would not be taxable in terms of Section 64 of the Finance Act, 1994. The Board vide its Circular dated 17-8-2004 has clarified that inasmuch as Service Tax is a destination based consumption tax and the principle of consumption of service would determine the liability of Service Tax, the insurance services rendered by New India Assurance Company Ltd., Jammu to the clients having assets in the State of Jammu & Kashmir by their Jammu Branch are not liable to Service Tax. The Revenue in their Memo of Appeals given no reasons to deviate from the above finding of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected."

7. In the light of the above discussion the impugned order in respect of confirmation of liability of service tax and corresponding penalty on account of "stock broking services" provided to the clients located in Jammu and Kashmir is set aside and appeal allowed accordingly.

[Order Pronounced in the open court on 28.07.2017]

(Ashok K. Arya) **Member (Technical)**	**(D.M. Misra)** **Member (Judicial)**

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