

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT -IV

Service Tax Appeal No. ST/52489/2016-ST [DB]

[Arising out of Order-in-Original No.RPR/EXCUS/COM/000/070/2016 dated 31.05.2016 passed by Commissioner, Service Tax Commissionerate, Raipur, Chhattisgarh]

Punjab National Bank

...Appellant

Vs.

C.S.T, Raipur

... Respondent

Present for the Appellant : Mr.A.K. Batra, C.A.

Present for the Respondent: Mr. Vivek Pandey, D.R.

**Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing/Decision:20.12.2018

FINAL ORDER NO. 53562 /2018

PER: RACHNA GUPTA

The appellant is engaged in providing banking and other financial services and are filing ST-3 returns as per the provisions of law. The Department during the course of audit has observed that the noticee has not paid the Service Tax of Rs.91,17,680/- and Rs.1,08,92,597/- and also an amount of Rs.7,38,64,684/- on the interest earned from the cash credit and over draft and also an amount of Rs.8,82,30,460/- as an interest earned on demand loan and term loan both being the irregular amounts as not shown separately on an invoice, a bill or as the case may be, the challan issued for this purpose. Resultantly, for the period 2006-07 to 2008-09 show cause notice dated 24.08.2011 was served upon the appellant

proposing the recovery of the service tax on the said amounts alongwith the interest at appropriate rate and the proportionate penalties. The said show cause notice was adjudicated by Commissioner vide its order No.070 dated 31.05.2016. The Commissioner has dropped the entire demand pertaining to interest received on cash credit, overdrafts and term loans for the period 2006-07 to 2008-09. The only demand of Rs.35,657/- has been confirmed on commitment charges for the period 2008-09 alongwith the interest under section 75 and penalties under Section 77 and 78 of the Finance Act, 1994 (penalty under section 76 has also been dropped). Still being aggrieved, the appellant has preferred the appeal before this Tribunal.

2. We have heard Shri A.K. Batra, Id. C.A. for the appellant and Shri.Vivek Pandey, Id. DR for the Department.

3. It is submitted on behalf of the appellants that the recovery even of commitment charges has wrongly been confirmed; as such charges are not taxable under the category of banking and other financial services. More so, for the reason that commitment charges have no relations to the services provided but are penal in nature of liquidated damages.

4. Above all, by confirming the demand on commitment charges, Commissioner has gone beyond the scope of show cause notice, which has proposed recovery of Service Tax only on interest earned. Finally, arguing that the Department was not entitled to invoke the extended period of limitation the

order under challenge is prayed to be set aside. The following case laws have been relied upon by the appellant:

1. **CCE, Chennai vs. Amalgamations Pvt. Ltd. reported in 2018-TIOL-2073-CESTAT-MAD.**
2. **Collector of Central Excise, Bombay vs. Ram Decoratives & Industries Ltd. reported in 2000 (124) E.L.T. 659 (Tri.)**
3. **CCE, Lucknow vs. Krishna C & F Agency reported in 2018 (14) G.S.T.L. 251 (Tri. All.)**
4. **CCE, Bangalore vs. Motor World reported in 2012 (27) STR 225 (Kar.)**

5. Ld. D.R., per-contra, has justified the order submitting that due consideration for all grounds of defence have been given by the Commissioner. The demand of Service Tax qua commitment charges has been confirmed as the same was found to be included in the taxable value drawn up for the aforesaid relevant statutory ST-3 returns for 2006-07 and 2007-08. It stands paid for 2006-07 but not for 2008-09, which is why the demand has been rightly confirmed. Appeal is accordingly, prayed to be dismissed.

6. After hearing both the parties, we are of the opinion that the narrow compass of the adjudication here is:

Whether the appellant is liable to pay Service Tax on the commitment charges received, as the remaining demand has been dropped by the Commissioner observing that the other charges proposed in show cause notice are in the nature of interest, which is out of the ambit of taxability. The procedural lapse of showing the income of interest separately has been considered as a mere procedural lapse insufficient to deny the substantial benefit. Further, it is Board's Circular dated

10.09.2004 also which clarifies that no service tax is leviable on interest in the category of banking and financial services.

7. The Appellant's plea is that commitment charges is also the part of the interest. To appreciate the same, we observe that term interest has not been defined in Finance Act, 1994.

8. It was defined as follows, vide Interest Act, 1974 before its repeal:-

"Interest means interest on loans and advances made in India and includes -

- (a) commitment charges on unutilized portion of any credit sanctioned for being availed of in India; and
- (b) discount on promissory notes and bills of exchange drawn or made in India,

but does not include-

- (i) Interest referred to in sub-section (1B) of Section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (ii) discount on treasury bills;"

8.1. Section 2(28A) of the Income-tax Act, 1961 defines "Interest" as under :

"Interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized."

8.2. The Central Board of Direct Taxes vide Para 12.1 of Circular No. 202 dated 5-7-1976 in the context of Section 2(28A) of the Income-tax Act, 1961 has clarified as under :

"The term interest has been defined in new clause (28A) inserted, in Section 2 of the Income-tax Act with a view to

removing doubts about the true character of fees or other charges paid in respect of monies borrowed or in respect of credit facilities which have not been utilized. The definition is very wide and covers interest payable in any manner in respect of loans, debts, deposits, claims and other similar rights or obligations. It also includes any service fees or other charges in respect of such loans, debts, deposits, etc. as also fees in the nature of commitment charges on unutilised portion of credit facilities. This definition will be applicable for all purposes of the Income-tax Act”.

The perusal of the Circular makes it clear that commitment charges are in the nature of interest on unutilized portion of credit facilities.

8.3. The observations of the Madras High Court in the case of Vishwapriya Financial Services and Securities Ltd. v. CIT, (2002) 258 ITR 497 are noteworthy in this regard :-

“The definition of interest, after referring to the interest payable in any manner in respect of any moneys borrowed or debt incurred proceeds to include in the terms money borrowed or debt incurred, deposits, claims and “other similar right or obligation” and further includes any service fee or other charge in respect of the moneys borrowed or debt incurred which would include deposit, claim or other similar right or obligation, as also in respect of any credit facility which has not been utilised. This statutory definition regards amounts, which may not otherwise be regarded as interest for the purpose of the statute. Even amounts payable in transactions where money has not been borrowed and debt has not been incurred are brought within the scope of the definition as in the case of a service fee paid in respect of a credit facility which has not been utilised. Even in cases where there is no relationship of debtor and credit or borrower and lender, if payment is made in any manner in respect of any moneys received as deposits or on money claims or rights or obligations incurred in relation to money, such

payment is, by this statutory definition, regarded as interest."

8.4 The Department's SLP against the decision of the Madras High Court has been dismissed by the Supreme Court in 264 ITR (Statute) 144. The appellant has also drawn attention to the pronouncement of the Supreme Court in the case of **Titaghur Paper Mills Company Limited v. State of Orissa, (1983) 142 ITR 663** where in it is held that -

"dictionary meaning of a word cannot be looked at where the word has been statutorily defined and judiciously interpreted but where there is no such definition or interpretation, the Court may take aid of dictionaries to ascertain the meanings of a work in common parlance, bearing in mind that a word is used in different sense according to its context and a dictionary gives all the meanings of a word and the Court has therefore the context in which it has to interpret that word."

8.5 Further, they have quoted Board's letter F. No. B2/8/2004-TRU, dated 10-9-2004. Para 19.2 reads as under :

"The interest on loans has been specifically excluded by way of amendment to the provisions relating to the valuation. All such interests that are in the nature of interest on loan would thus remain excluded from taxable value".

9. The Commissioner has confirmed this demand observing that the said amount of commitment charges have been shown included in the taxable value and the liability thereof since has been discharged for 2006-07 but not for 2008-09 that for the later year same has been confirmed. But we are of the opinion that the Commissioner has wrongly relied upon the debit entry qua the commitment charges. This Tribunal in the case of **CCE, Bombay vs. Ram Decorative & Industries Ltd. reported**

in 2000 (124) ELT 659 has held that the commitment charges being in the nature of liquidated damages for the breach of contract are not includible in the assessable value in terms of Section 4 of Central Excise Act.

10. Finally coming to the plea of the show cause notice being barred by time, we observe that the demand is for the year 2006-07 to 2008-09 but the show cause notice is of the year 2011 that is it has been issued beyond a normal period of one year. For invoking the extended period of 5 years, it was for the Department to prove the *malafide* in terms of suppression of facts or the mis-representation on part of the appellant, that too, with an intend to evade the duty but there is no such evidence on record which may prove beyond sufficient doubt the willful default on part of the appellant. Rather the Commissioner himself has dropped the major demand holding that the amount of interest is out of the ambit of tax. In absence of any such evidence, the extended period would not have been invoked. Show cause notice is apparently barred by time. Demand for this reason is also not sustainable.

11. In view of the entire above discussion, the order under challenge is hereby set aside. Appeal accordingly stands allowed.

[Operative part pronounced in the open Court]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita