# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# REGIONAL BENCH AT HYDERABAD

Division Bench

Court - I

## Appeal No. ST/1349/2010

(Arising out of Order-in-Original No.07/2010-ST, Dt.24.03.2010 passed by CCCE & ST, Hyderabad-II)

State Bank of Hyderabad ….. Appellant(s)

Vs.

CCT, Hyderabad - GST ….. Respondent(s)

**Appearance**

Shri S. Ananthan, CA (Representative) for the Appellant.

Shri B. Guna Ranjan, Superintendent/AR for the Respondent.

**Coram:**

**HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)**

Date of Hearing: 20.08.2018
Date of Decision: 20.08.2018

## FINAL ORDER No. A/31191/2018

[Order per: P.V. Subba Rao.]

1. The appellant herein is a nationalized bank with Head Quarters at Hyderabad. They carried out various Government transactions on behalf of the Central and the State Governments and have received commission from the RBI for these services known as agency services. A show cause notice was issued to the appellant demanding service tax on these services and they paid the same under protest. A show cause notice was issued demanding the service tax on these services and proposing to appropriate the amount already paid by them towards the demand. It was also proposed to recover the interest under Sec.75 and impose penalties under Sec.76, 77 and 78 of the Finance Act, 1994. After following due process of law, the learned Commissioner confirmed the demands, appropriated the amounts already paid by them towards the demand. He also demanded interest and imposed penalties under Sec. 77 & 78. He refrained from imposing any

penalty under Sec.78. Aggrieved, by this order the appellant filed this appeal on the following grounds:

(1) The commission which they have received from Reserve Bank is for maintenance of pension accounts of Government employees which is a sovereign function carried out on behalf of the Government and hence as such not liable to tax.

(2) That the Notification No. 22/2006-ST dated 31.05.2006 is applicable to them as they are acting as an agent of Reserve Bank of India and were receiving commission from them. The learned Commissioner erred in holding that appellant had wilfully suppressed facts with an intention to evade tax without bringing out any tangible evidence on record.

(3) The learned Commissioner has wrongly levied penalties under Sec.77 & 78 of the Finance Act, 1994 in contravention to Sec.80 thereof.

2. Learned counsel for the appellant vehemently argued as above. He further contended that earlier a show cause notice was issued for the same transactions demanding duty under 'Business Auxiliary Services' and the demand was dropped. Thereafter this show cause notice was issued demanding duty under 'Banking and other financial services'. He, therefore, contends that the department was fully aware of the nature of their activities and had themselves examined whether service tax was payable under Business Auxiliary services and found it was not. He further submits that the issue of taxability of commission received from the RBI by the banks has been finally settled by the Tribunal in the case of Canara Bank [2012 (6) TMI 274 (CESTAT-Ahmedabad)] (wherein one of us (M.V. Ravindran) was a member). He further submits that the larger bench of the

Tribunal has decided the same matter in the case of State Bank of Patiala [2016 (10) TMI 800 (CESTAT-New Delhi)] in which it was held as follows:

> *"7.4 On careful reading of above reproduced Section 45, it can be noticed that, RBI, under the direction of Central Government of India having regard to public interest, convenience of banking and other factors, can appoint a national bank or the State Bank to transact business as its agent at any place in India. Drawing power from this Section, RBI appoints various national banks/public sector banks for collection of various taxes and making payment of pension etc. This would mean that various national banks are agents of the RBI.*
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> *7.5 The Central Govt. of India by Notification No. 22/2006-ST has given exemption from the payment of service tax of any taxable services provided to or by RBI either in India or under Reverse Charge Mechanism. In our view as the respondent assessee is an agent of RBI, exemption granted by notification No. 22/2006-ST, needs to be extended to respondent. In our view the claim of the respondent from exemption of the service tax on the commission received for undertaking the activity of receiving various taxes on behalf of the Govt. of India, seems to be justified inasmuch as that the provisions of Section 45 of RBI Act categorically mandated for appointing national bank or a State Bank by the RBI for specified purposes as directed by Government; and the said Section also mandates that such Banks will be agents of RBI. As whether an agent will be eligible for exemption or otherwise is being contested in the appeal, in our view the question does not arise as Chapter V of the Finance Act, 1994, in Section 65 (7), the term assessee has been defined which is reproduced:-*
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> *Section 65 (7) - Assessee means a person liable to pay the service tax and includes his agent*
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> *7.6 It can be seen from the above reproduced definition, the Finance Act itself acknowledges the fact that the person who is liable to pay service tax includes its agent which would mean in the case in hand that in the absence of Notification 22/2006-ST, RBI would be liable to pay service tax as also banks which are appointed by RBI as agent under Section 45 of RBI Act. Applying the same analogy, in our view if RBI is exempted from the service tax liability in respect of various services, its agent for doing such services also needs to be extended the same benefit.*
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> *7.7 We may also look at the present controversy from another angle. State Bank of Patiala has been appointed by RBI as its agent under Section 45 of the RBI Act. RBI itself has been entrusted by the Central Government to transact Government business. Hence once State Bank of Patiala has been appointed as agent of RBI, it is transacting Government business which is in the nature of a sovereign function performed on behalf of the Government and hence not liable to Service Tax.*
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> *7.8 In our considered view the judgement of the Tribunal in the case of Canara Bank 2012-TIOL-790-CESTAT-Ahm has correctly interpreted notification no. 22/2006-ST and is correct exposition of the law. In our view the said judgement does not require any reconsideration.*
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> *7.9 As regards the case law cited by the learned D.R. and reliance placed in the case of Malwa Industries Ltd (supra) we find that in that case, the Apex Court was considering the situation of exemption by a notification from a countervailing duty. Learned Commissioner (A.R.) was relying upon this decision to canvass his point that exemption notification should be read literally and should be construed liberally once it is concluded that benefits the notification is applicable. We do not find any merits in the said submission made by the learned D.R. inasmuch as that the definition of assessee in the Finance Act in Section 65(7) clearly states that assessee means a person liable to pay service tax and includes his agent. In the case in hand RBI a person liable to pay tax as an assessee but for exemption, will include their agents viz. Banks appointed under Section 45 of RBI Act, to execute functions of RBI. Accordingly, the ratio of the judgement of the Apex Court as cited by learned A.R. may not be applicable in the facts of this case. In our view the reliance placed by the learned Commissioner*

*(A.R.) in the case of Uttam Industries (supra) may also not carry the case of revenue any further as facts were totally different, than the facts in the case in hand.*
*8. In view of the foregoing discussion, we answer the reference in favour of the respondent and hold that the law as laid down by the Tribunal in the case of Canara Bank (supra) is correct exposition of law. Present appeal has no merit and dismissed."*

3. He also relied on the case of Syndicate Bank [2018 (8) TMI 699] and State Bank of Hyderabad [2017 (2) TMI 1347]. He therefore argued that the demand may be set aside along with interest and penalty.

4. Learned departmental representative reiterates the Order-in-Original.

5. We have considered the arguments on both sides. Notification No. 22/2006-ST dated 31.05.2006 clearly exempts taxable services provided or to be provided by any person to the Reserve Bank of India when the service tax for the service is liable to be paid by the Reserve Bank of India under Sub-Sec. (2) of Sec.68 of the Finance Act, 1994 read with Rule 2 of the Service Tax Rules, 1994. It further exempts taxable services provided or to be provided to any person by the Reserve Bank of India. The aforesaid order of the larger bench of the CESTAT clearly held that the banks receiving commission for the services rendered as an agent to the RBI are not liable to the service tax. This decision has been followed in the other case laws cited above. We find no reason to deviate from this settled legal position. We respectfully follow the same and consequentially find the appeal is liable to be allowed and we do so.

6. The appeal is allowed and the impugned order is set aside.

(Operative part of this order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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