IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
East Zonal Bench,
Kolkata.

DATE OF HEARING : 29/06/2018.
DATE OF DECISION: __/__/2018.

Service Tax Appeal No. 68 of 2008

[Arising out of the Order-in-Original No. 13/ST/Kol/2007-08 dated 07/11/2007 passed by The Commissioner Service Tax, Kolkata.]

M/s Sriram Insight Share Brokers Ltd. Appellant

Versus

CST, Kolkata Respondent

Appearance

Shri Amit Jain, C.A. – for the appellant.

Shri H.S. Abedin, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri P.K. Choudhary, Member (Judicial)**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No.FO/A/76854/2018

Per. C.L. Mahar :-

The brief facts of the matter are that the appellant is engaged in activity of share broking services which involved sale and purchase of shares and securities of the listed companies on behalf of various individual and institutional clients through stock exchange namely National Stock Exchange or Bombay Stock Exchange. The appellant collects the amount charged by the respective stock exchange and other statutory bodies from their clients on the transactions of purchases or sales of shares or securities undertaken by them for and on behalf of their clients. It has been the contention of the department that transaction charges collected by the appellant from their clients for providing stock broking services in connection with the sale or purchase of shares and securities. The appellants have failed to pay service tax on transaction charges received by from their clients them during period from October 2001 to March 2006.

2. In view of above, a show cause notice 24/04/2007 demanding service tax of Rs. 51,83,237/- + education cess of Rs. 82,509/- were demanded under Section 73 (2) of the Finance Act, 1994, penal provisions under Section 76 and 78 have also been invoked against the appellant by the department. The matter came to be adjudicated vide order-in-original No. 13/ST/KOL/07-08 dated 07/11/2007 wherein the charges leveled against the appellant have been confirmed by the Commissioner in the said impugned order.

3. The appellant is before us against the above-mentioned impugned order-in-original. It has been the contention of the appellant that with regard to the consideration received by them in the form of brokerage or commission from their clients for providing share or stock broking services they have paid requisite amount of the service tax. So far as the transaction charges recovered by the appellant from the clients is concerned, since

the transaction charges are statutorily levy as per the guidelines of the National Stock Exchange of India which have been issued by the Circular No. NSE/F&A/00663 dated November 7, 1998. It has been the contention of the appellant that the transaction charges recovered by them has been deposited as such with the concerned stock exchange or other statutory bodies and therefore they have acted as a pure agent and the same are not includable in the taxable amount in terms of Rule 5 (2) of the Service Tax (Determination of Value) Rules, 2006.

3. We have also heard the Departmental Representative who has reiterated the findings, as mentioned in order-in-original.

4. Having heard both the sides the main issue before us for adjudication are following :-

(i) whether the transaction charges recovered by the appellant from their clients for providing stock broking service of purchase and sales of the shares need to be included in the taxable value of service for charging service tax or not ;

(ii) whether the Cenvat credit of Rs. 8,95,377/- + education cess of Rs. 16,643/- availed by the appellant on the strength of documents which are not approved documents as per the provisions of Rule 9 (1) of Cenvat Credit Rules is to be allowed for Cenvat availment or not.

5. Before answering the question it (i) above; it is necessary to have look at Section 67 of the Finance Act, 1994 which reproduced :-

> **67. Valuation of taxable services for charging service tax.** — For the purposes of this Chapter, the value of taxable services, —
>
> (a) in relation to service provided by a stock-broker, shall be the aggregate of the commission or brokerage charged by him on the sale or purchase of securities from the investors and includes the commission or brokerage paid by the stock-broker to any sub-broker;
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> (b) in relation to telephone connections provided to the subscribers, shall be the gross total amount (including adjustments made by the telegraph authority from any deposits made by the subscribers at the time of applications for telephone connections) received by the telegraph authority from the subscribers.
>
> *Explanation.* — For the removal of doubts, it is hereby declared that the value of taxable service in this clause shall not include the initial deposits made by the subscribers at the time of applications for telephone connections;
>
> (c) in relation to services of general insurance business provided to the policy holders, shall be the total amount of the premium received by the insurer from the policy holders.

6. It can be seen from the provision of Section 67 that the gross amount charged by the service provider need to be taken as the taxable value for determination of service tax liability. In this particular case, it has been the contention of the appellant that so far as transaction charges are concerned, they have worked as a pure agents between their client and the concerned stock exchanges/statutory bodies and accordingly the transaction charges collected by them from their clients have been deposited as it is with the statutory bodies and therefore same cannot be included in the taxable value of the service tax. In this regard we have perused the guidelines which have been provided by National Stock Exchange in their Circular dated 7th November, 1998 :-

> "It is hereby notified to all the Trading Members in the Capital Market Segment of National Stock Exchange of India Ltd. that with effect from 1st December, 1998, transaction charges in respect of trades done shall be payable by the Trading Members at the following rates until further notice :-
>
> ……………
>
> It is clarified that the reduced rates as given above will apply to only the incremental trade value falling under the respective slabs stated above. For example, a Trading Member who has traded for Rs. 250 crores in a calendar month will pay transaction charges of Rs. 1.85 lacs (i.e. @ 0.009% for the first Rs. 50 crores trade values, @ 0.008% for the next Rs. 50 crores trade value, @ 0.007% for the next Rs. 100 crores trade value, @ 0.006% for the balance Rs. 50 crores trade value)."

7. A perusal of above guidelines makes it apparently clear that the transaction charges recovered by the appellant from their respective clients is primarily statutory levy on the trading members and not on the clients of the trading members. We are of the view that if any of such charges which are primarily legal responsibility for payment with the appellant and same have been passed on to their clients, in case, same that will certainly form the part of gross value charged by them for providing taxable service. In this regard, we hold that the legal responsibility of the payment of transaction charges was of the trading members (in this case apparently the appellant) and as levy of transaction charges from the concerned stock exchange is on the appellant and since this liability have been passed on by

him on their clients, we are of the view that same need to be included in the taxable value as per the provision of Section 67 of the Finance Act, 1994. Accordingly, we find that there is no merit in the appeal on this count and same is dismissed.

8. On the second question wherein Cenvat credits of Rs. 8,95,377/- + education cess of Rs. 16,643/- have been availed by the appellant on the documents which are not approved documents as per the provisions of Rule 9 (1) of the Cenvat Credit Rule. In this regard, we find that since the details contained in such documents has not been discussed either in the show cause notice or in the order-in-original it is very difficult to ascertain whether the documents on the strength of which appellants have availed the Cenvat credit fulfilled the requirement of details to be available as prescribed under proviso to Rule 9 (2) of the Cenvat Credit Rule or not. We are of the view that a substantive benefit cannot be denied to the appellant only for some procedural lapses and if all the requisite details are available on the documents on the strength of which Cenvat credit has been availed by them and as provided under proviso to Rule 9 (2) of the Cenvat Credit Rule, same cannot be denied to them legally. Thus, we hold that the department should verify the documents again on the strength of which the Cenvat credit has been availed by them and if such documents contained all the requisite details has been prescribed under proviso to Rule 9 (2) of the Cenvat Credit Rules the substantive benefit of Cenvat credit cannot be denied to them.

9. In view of above, we uphold the order-in-original so far as major demand of Rs. 51,83,237/- + education cess of Rs. 82,509/- is concerned, however, so far as the denial of Cenvat credit of Rs. 8,95,377/- + education ces of Rs. 16,643/- is concerned, we send back the matter for denovo adjudication as per the guidelines provided in the preceding para.

10. Accordingly, part of the appeal is dismissed and part is allowed by way of remand.

(Order pronounced in open court on __26/10/2018.)

(P.K. Choudhary)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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