CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 88359 of 2018

(Arising out of Order-in-Appeal No. IM/CGST A-I/MUM/25/18-19 dated 25th April 2018 passed by the Commissioner of Central Tax (Appeals-I) Mumbai)

STANDARD CHARTERED BANK ....Appellant
7th Floor, Cresenzo C-38/39 G-Block
Behind MCA Club
Bandra Kurla Complex
Bandra (E), Mumbai 400051.

VERSUS

Commissioner of C.G.ST. – Mumbai South ....Respondent
13th Floor, Air India Building
Nariman Point
Mumbai-400021.

APPERANCE:

Shri Parth Parikh, Advocate for the Appellant
Shri Sudhir B. Mane, Asst. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86778 / 2019

Date of Hearing: 25-06-2019
Date of Decision: 04-10-2019

SUVENDU KUMAR PATI:

Confirmation of penalty imposed under section 77 and 78 of Finance Act. 1994 for non-payment of service tax on SWIFT charges by the Commissioner (Appeals) is assailed by the appellant in this appeal.

2. Brief fact of the appellant's case is that it is engaged in providing "Banking and Other Financial Services in India. During the period 2006-07 to 2008-09, appellant paid SWIFT charges to one Belgium company M/s Society for Worldwide Inter-Bank Financial Telecommunication (SWIFT) for the purpose of transmission of financial and other related messages internationally. DGCEI initiated industrywide enquiry on levy of service tax on SWIFT charges paid by the Banks of India on reverse charge basis and issued letter date 29-2-2009 to the appellant in that connection. Unlike other Banking institutions, appellant decided not to dispute the service tax liability and made prompt payment of service tax of ₹ 25,47,642/- along with interest of ₹ 4,57,974/- for the period between 2006-09 and informed DGCEI regarding such payment but SCN dated 29-1-2010 was received by the appellant for recovery of equivalent penalty of ₹ 25,47,642/- under section 78 and penalty under section 77 of the Finance Act 2004. The matter was adjudicated upon. On receipt of reply to show cause, matter was adjudicated upon, such duty demand along with interest and penalty were confirmed in OIO and OIA against which appellant has come to this Tribunal for relief.

3. In the memo of appeal and during the course of hearing of appeal Learned Counsel for the appellant Mr. Parth Parikh submitted that taxability under reverse charge mechanism had been challenged by various sectors till the issue was finally settled in the case of ***Indian National Shipowners Association [2010 (017) STR 0J57 (SC)***] by the Hon'ble Supreme Court confirming judgement of Hon'ble Bombay High Court. He further submitted that penalty under section 78 cannot be imposed for non-payment of service tax on SWIFT charges in view of settled position of law emerged from the decisions of *Axis Bank Ld. V. Commissioner of Service Tax [2018 (10) TMI 214-CESTAT MUMBAI, The Karur Vysya Bank Ltd. v. CCE&ST [2018 (7) TMI 532 – CESTAT CHENNAI], Ladshmi Vilas Bank Ltd. v. CCE [2018 (8) tmi 1175 – CESTAT CHENNAI, Bank of baroda v. Commissioner of Service Tax [2016 (43) STR 141 (Tri.-Mumbai)], Indian Overseas Bank v. CCE [2018 (7) tmi 513 – CESTAT CHENNAI]*. He argued that section 80 of Finance Act is squarely applicable to the appellant since issue of taxability of SWIFT charges was interpretational in nature during the relevant period and there was no wilful suppression on the part of appellant to evade payment of tax of such miniscule when it had promptly discharged service tax liability of more than ₹500 crores (approximately) during the relevant period. Further argument raised by the Learned Counsel for appellant is on non-application of provision of section 73(4) of the Finance Act when prompt payment of service tax with interest was made, upon the same being pointed out by the Investigating Agency such as DGCEI that would cover appellant under section 73(3) proviso

for which he prayed to set aside the order passed by the Commissioner (Appeals).

4. In response to such submissions, Learned Authorised Representative for respondent Department Mr. Sudhir B. Mane argued in support of the reasoning and rationality found in the order of the Commissioner (Appeals) and in placing reliance on the decision reported in *Board of Control for Cricket in India v. Commissioner of Service Tax, Mumbai-I [2014-TIOL-1774-CESTAT-MUM, Air India Ltd v. Commissioner of Service tax, Delhi [2017-TIOL-3069-CESTAT-DEL], TATA Steel Ltd. v. Commissioner of Service Tax, Mumbai-I [2016 (41) S.T.R. 689 (Tri.-Mumbai)]*, he argued that plea of bonafide belief cannot be accepted since appellant is a large company and not new to indirect tax laws for which he sought no intervention by the Tribunal in the order passed by the Commissioner (Appeals).

5. Perused the case record and the relevant case laws filed by the adversaries. As found from the SCN and the order passed by the lower authority, SWIFT charges were paid in foreign exchange for transmission of financial and other related messages internationally to M/s. SWIFT Belgium. Going by the provision of Banking and other financial services, as was in force during the relevant period, that has been enumerated in section 65 (105)(12)(a)(vii) read with section 65 (105)(zm), the service is to be provided by a Banking company or financial institution to any other body/ corporate. There is nothing available in the case record to indicate that M/s. SWIFT is a Banking

company but as its name appears, it handles transmission of financial and other telecommunication net working for the Banks. Further, as can be observed in the OIA, the Learned Commissioner (Appeals) put the services in the 'transfer of information and data processing' which is included in the Banking and Financial service' definition. The allegation against appellant in the show cause is found to be use of service of transmission of financial and other related messages. In common parlance, "transfer of data" and "transmission of messages" could be different from each other but as SWIFT charges has been held to be taxable in the above referred judgements, judicial precedent dictates that the same principal is to be respected for all times to come unless over-ruled by a larger Bench or Appellate Forum. Therefore, taxability on SWIFT charges, which has been accepted by the appellant who also discharged duty liability, is to be excluded from the purview of this discussion. However, having regard to the fact that taxability on SWIFT charges and application of reverse charge mechanism during the relevant period was in hegemony, imposition of penalty by invoking the extended period is beyond the purview of section 78 (4) unless the intention to evade payment of tax on ground of suppression etc. is established. Section – 77 penalty is for not reflecting the taxable service in the periodic Returns. Therefore, in conformity to the findings of the Tribunal, given in the above referred decisions, as cited by the appellant, particularly in the decision of *The Karur Vysya Bank Ltd* cited by Supra, the following order is passed.

ORDER

6. The appeal is allowed to the extent of setting aside penalties u/s 77 and 78 of the Finance Act and the order passed by the Commissioner (Appeals), in order-in-appeal No. IM/CGST A-I/MUM/25/18-19 dated 25th April 2018, is accordingly modified.

(Order pronounced in the court on 04-10-2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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