CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 86064 of 2014

(Arising out of Order-in-Original No. 10/AC/COMMR/TH-II/ST/2013 dated 27.12.2013 passed by Commissioner of Central Excise, Thane –II)

HDFC Bank Ltd. **.....Appellant**
Kamla Mills Compound, Trade World,
C Wing 10th Floor, Senapati Bapat Marg,
Lower Parel, Mumbai 400 013.

VERSUS

Commissioner of Central Excise, Thane-II **.....Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai 400 028.

Appearance:

Shri S. Ananthan, Advocate with Ms. R. Lalita, C.A. for the Appellant
Shri S.K. Hatangadi, Authorized Representative for the Respondent

Service Tax Appeal No. 88449 of 2014

(Arising out of Order-in-Original No. 19/AC/COMMR/TH-II/ST/2014 dated 28.04.2014 passed by Commissioner of Central Excise, Thane –II)

ICICI Prudential Life Insurance Com Ltd. **.....Appellant**
ICICI Prulife Towers, 1089, Appasaheb Marathe Marg, Prabhadevi,
Mumbai 400 025.

VERSUS

Commissioner of Central Excise, Thane-II **.....Respondent**
3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai 400 028.

Appearance:

Shri S.S. Gupta, C.A. for the Appellant
Shri S.K. Hatangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87454-87455/2023

Date of Hearing: 30.11.2022
Date of Decision: 11.05.2023

PER : S. K. MOHANTY

In the case of the appellant M/s. HDFC Bank Ltd., the learned adjudicating authority has confirmed service tax demand of Rs.78,21,12,294/- along with interest and also imposed penalties under Section 77 & 78 of the Finance Act, 1994. The said adjudged demands were confirmed in the impugned order dated 27.12.2013 on the following transactions made by the appellant during the disputed period:-

Sr. No.	Issue	Period covered	Amount (Rs.)
1.	Discount received from Collateralised Borrowing & Lending Obligation (CBLO) Transactions	April 08 to June 12	4,33,51,356/-
2.	Discount earned on Factoring	April 08 to June 12	27,18,47,238/-
3.	Interest on Bill Discounting	April 08 to June 12	46,69,13,700/-

1.2 In respect of the appellant M/s. ICICI Prudential Life Insurance Company Ltd., the learned adjudicating authority vide the impugned order dated 28.04.2014 has confirmed the service tax demand of Rs.5,04,39,116/- along with interest and also imposed penalties under Section 77 and 78 *ibid*. The said adjudged demands were confirmed on the ground that receipt of income from services provided to the borrowers in the Collateralised Borrowing & Lending Obligation (CBLO) market should be considered as the taxable income for provision of the service under the category of 'Banking and Other Financial Services', defined under Section 65(105) (zm) of Chapter V of the Finance Act, 1994. The period of dispute involved in this appeal is from 2008-09 to 2011-12.

1.3 Feeling aggrieved with the impugned orders, both the appellants M/s. HDFC Bank Ltd. and M/s. ICICI Prudential Life Insurance Company Ltd. have preferred these appeals before the Tribunal.

2. Heard both sides and perused the case records.

3.1 The appellants herein are engaged in providing 'Banking and Other Financial Services'. The surplus funds received from such activities are invested by the appellants on CBLO, a money market instrument designed by the Reserve Bank of India (RBI). Under the said operation, the banks are required to invest in securities as per the RBI guidelines. The securities are placed with Clearing Corporation of India Ltd. (CCIL), a subsidiary of Reserve Bank of India, who manages and operate the scheme of CBLO. CCIL fixes the limit of borrowing of each of the participants and is reflected on the website of CBLO along with rate of interest, period etc. Any member having surplus fund can inform CBLO of its intention to lend to the person desiring to borrow such funds. If the borrower accepts the proposal of the lender, then CCIL issues instrument, called 'CBLO'. Under the scheme, the amount is paid by the borrower after deducting the interest amount chargeable for the period of borrowing. To illustrate, we may say that suppose, bank 'X' wants to borrow Rs.100 Crores for three months and the appellants wants to lend out of their surplus fund such amount at an interest of Rs.50 lakhs for 3 months; then, in such case, the appellants will pay Rs. 99.50 Crores to the borrower and that after completion of 3 months period, the appellants will receive an amount of Rs.100 Crores from such borrower. The *modus operandi* adopted by the appellants on earning of Rs.50 lakhs was interpreted by the Revenue, treating that such amount should be exigible to service tax under the category 'Banking and Other Financial Services'. Accordingly, the department has held that earning of such amount by the appellant is not in the nature of 'interest' and as such, they are liable to discharge appropriate service tax liability.

3.2 On reading of the scheme of CBLO, it transpires that the income earned from CBLO operations is in the nature of interest income, earned on money lent by the banks by using CCIL as a settlement platform. It is basically a loan arrangement between the lender and a borrower, and CCIL only acts as an intermediary. Since, the appellants earned the money by way of lending the surplus money for the specified period, such earnings should be considered as the 'interest' on lending of the principal amount. Considering the scope and object of the levy of service tax on banking and other financial services, the Tax Research Unit, in the Ministry of Finance vide Circular dated 17.09.2004 have clarified that the interest amount would remain excluded from the purview of service tax. Further, interest on loans has specifically been excluded from the provisions of Section 66 of the Finance Act, 1994 for the purpose of levy of service tax, in terms of Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006.

3.3 We find that considering the scope and ambit of levy of service tax on the banking and other financial services, the Principal Commissioner of Service Tax-II, Mumbai vide Order-in-Original No. 61-63/PR. Commr/ST-II/APPS/2016-17 dated 26.04.2017 had dropped the show cause notices issued against Life Insurance Corporation of India, seeking confirmation of service tax demand on earning of interest amount. Further, from the available records, we find that the application dated 16.07.2018 filed by Shri Prabhakar Jha under the RTI Act, 2005 was replied by the Deputy Commissioner (CPIO), CGST & CX, Office of the Principal Commissioner of Central GST, Mumbai South, stating that the Order dated 26.04.2017 (supra) was accepted by the Committee of Principal Chief Commissioners on 07.08.2017 and no appeal was preferred against such Order before the appellate forum. Since, the issue arising out of the present dispute and those decided in the case of Life Insurance Corporation (supra) are identical, we are of the view that different stand cannot be taken in interpreting the statutory provisions differently. Furthermore, we also find that the issue on hand is no more in dispute inasmuch as the following Order-in-Originals passed by the adjudicating authorities were accepted by the department and no appeals have been filed before the higher appellate forum.

(i) BLR-LTUNT-000-COM-12-2016 dated 12.07.2016 in the case of Canara Bank

(ii) BLR-LTUNT-000-COM-13-2016 dated 03.08.2016 in the case of Vijaya Bank, and

(iii) MLR-EXCUS-000-COM-MS-03-18-19 dated 29.06.2018 in the case of Karnataka Bank.

Since the issue of earning of interest on CBLO transactions has been accepted by the department as being not leviable to service tax, we are of the view that different view cannot be placed at this juncture for deciding the issue differently.

4. ‘Factoring’ is also a form of lending transaction, in which a customer who is in need of funds assigns his rights in accounts receivables (i.e., invoices) in favour of the bank. The bank collects the interest in advance upto the due date of payment of the bill. In banking parlance, interest collected in advance is known as ‘discount’. The borrower continues to be liable to the bank for payment of the sum borrowed by him, by assigning the receivables. It is also a form of lending and the consideration is in the form of interest collected in advance. During the disputed period, earning of interest on loan is excluded from the value of taxable service as per the provisions of Rule 6(2)(iv) ibid. Therefore, discount earned on factoring cannot be included in the value of taxable services. We also find that in the appellant’s own case for the subsequent period, the original authority vide Orders

dated 16.04.2018 and 30.05.2022 had held that discount received on factoring is also an interest and is not liable for payment of service tax.

5. In the case of interest on 'bill discounting', the bank provide loan to the borrower by taking the security of the bill. The interest is collected in advance and therefore, it is called as 'discount'. Such interest is collected upto the date on which the bill is due for payment. In case, there is a delay in payment of the bill by the acceptor of the bill, the bank collects additional interest for the period starting from the due date of the bill to till the actual date of payment. In the present case, the service tax demand has been confirmed on the additional interest collected by the bank. Since, such amount collected by the appellant is to be considered as an 'interest', as per the rules of 2006, such an amount cannot be included in the value of taxable services. We find that the issue arising out of the present dispute is no more *res integra* in view of the decisions of this Tribunal in the case of *UCO Bank Vs. CST, Kolkata* – 2014 (9) TMIL 820 – CESTAT Kolkata and *Federal Bank Ltd. Vs. CCE, Nagpur* – 2016 (4) TMI 984 – CESTAT Mumbai.

6. In view of the foregoing discussions, we do not find any merits in the impugned orders, insofar as the adjudged demands were confirmed on the appellants. Therefore, by setting aside the impugned orders, the appeals are allowed in favour of the appellants.

(Order pronounced in the open court 11.05.2023)

(C J Mathew)
Member (Technical)

(S. K. Mohanty)
Member(Judicial)

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