CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

E-HEARING

Service Tax Cross-Objection No. 86696 of 2018
In
Service Tax Appeal No. 88196 of 2018

(Arising out of Order-in-Original No. 43/COMMR/Dr.KNR/CGST&CEX/MC/2018 dated 20.01.2018 passed by Commissioner of CGST & Central Excise, Mumbai Central.)

Commissioner of CGST and Central Excise, Mumbai Central .... **Appellant**
4th Floor, Central Excise Building, Churchgate,
Mumbai-400 020.

Versus

Axis Bank Limited .... **Respondent**
C-2, Wadia International Center,
Pandurang Budhkar Marg, Worli,
Mumbai - 400 025.

APPEARANCE:

Shri Shahshank Kumar Yadav, Auth. Representative for the Appellant

Shri Vinay Jain, Advocate for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87623/2024

Date of Hearing: 12.09.2024

Date of Decision: 12.09.2024

Per: S.K. MOHANTY

Brief facts of the case are that the respondents herein are engaged in providing various taxable services, including Banking and Other Financial Services, defined in the Finance Act, 1994. During the disputed period, the respondents were engaged in the activities of sale and purchase of foreign currency, wherein the consideration was charged separately for providing such activity and service tax liability was duly discharged, the fact of which has not been disputed by the department. However, the department had sought to confirm the service tax demand on the profit margin earned by the respondents, terming the same as 'consideration' for provision of the taxable service. The Show Cause Notice dated 24.10.2013 issued in this regard, was adjudicated by the learned Commissioner of CGST & Central Excise, Mumbai Central vide the impugned order dated 20.01.2018, in dropping the proposals made therein. Feeling aggrieved with the impugned order, the revenue-appellants have filed this appeal before the Tribunal.

2. Heard both sides and perused the case records.

3. We find that the issue arising out of the present dispute is no more *res integara,* in view of the Final Order No. A/87450/2023 dated 29.03.2023, passed by this Bench of the Tribunal, in the case of M/s. HDFC Bank Ltd. Vs. Commissioner of Service Tax-V, Mumbai. In the said order, it was held that the profit element earned by the appellant's bank is out of 'trading of the foreign currencies', and not as a consideration for the 'services rendered' towards purchase and sale of foreign currency, on which service tax liability had already been discharged. The relevant paragraphs recorded in the said order, are extracted hereinbelow:

> *"6. The incidence of levy of service tax is on provision of the taxable output service. In order to cover the activities under the service tax net, the prime requirement to be fulfilled is that there must be an involvement of the service provider and service receiver; and the provision of service should be for consideration either in monetary or otherwise form. In the present case, the facts are not under dispute that the appellants have provided the service of conversion of foreign currency and for that purpose, got the consideration and that the said consideration amount had been duly suffered with the service tax at the prescribed rate. However, the department has confirmed the service tax demand on the profit earned by the appellants on making the transaction in foreign exchange. Since, the element of profit earned is not in context with any provision of taxable service, there is no scope for levy of service tax on such profit element earned by the service provider, owing to various reasons viz. fluctuation in currency rate etc. In other words, the profit element in question earned by the appellants is out of 'trading of the foreign currencies' and not as a consideration for the 'services rendered' towards purchase and sale of foreign currency, on which due service tax liability had already been discharged by the appellants. Since there is no element of any provision of service, by which*

the disputed profit margin, was generated, the said element of profit shall not be considered as a 'taxable value' for the purpose of levy of service tax.

7. We find that this Tribunal in the case of State Bank of India (supra) and State Bank of Bikaner and Jaipur (supra) has held that margin of profit is not taxable under the Finance Act, 1994 and it is only the gross value, which is recognised under the statute for sufferance of the tax element on the value of the services rendered, which admittedly, the appellants in this case, has duly complied with. Further, we also find that the adjudication Order dated 23.02.2017 (supra) passed by the Hyderabad Commissionerate in the case of Andhra Bank, in dropping the proposed demand made in the SCN, was also accepted by the Committee of Chief Commissioners, which is evident from the Order No.02/2023-RTI 17.01.2023 passed by the Assistant Commissioner, (CPIO), in the Office of the Chief Commissioner, GST & Customs, Hyderabad Zone. Since, upon proper analysis of the legal provisions, the competent authorities in some other Zone had decided not to agitate the matter further by way of filing appeal, consistency is required to be maintained in adopting the ratio that profit element on provision of the taxable service shall not be subjected to levy of service tax inasmuch as such profit element is not a 'consideration' for provision of the taxable service"

4. In view of the foregoing discussions, we do not find any infirmity in impugned order passed by the learned adjudicating authority, in dropping the proposals made against respondents. Therefore, the appeal filed by revenue-appellants is dismissed. Cross-objection stands disposed of.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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