

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76787 of 2016

(Arising out of Order-in-Original No.29/Commr./ST-I/Kol/2016-17 dated 29.07.2016 passed by Principal Commissioner of Service Tax I, Kolkata)

M/s Sriram Insight Share Brokers Ltd.
CK-5, Sector II, Salt Lake City, Kolkata-700091

Appellant

VERSUS

Commissioner of Service Tax I, Kolkata
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

Shri Rajeev Agarwal, Advocate for the appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.75299/2022

DATE OF HEARING : 15.02.2022
DATE OF PRONOUNCEMENT : 07 JUNE 2022

PER P.K.CHOUDHARY :

The present appeal is directed against Order-in-Original 29/Commr/ST/KOL/2016-17 dated 29.07.2016 passed by the Ld. Principal Commissioner, Service Tax, Kolkata.

2. The facts of the case in brief are that the Appellant is engaged in the business of Stock broking and is paying applicable service tax and filing the returns. Show Cause Notice dated 23.10.2013 was issued to propose demand of Rs.4,56,49,523/- alongwith applicable interest and penalty. The Ld. Commissioner vide the impugned Order dated 29.07.2016 has adjudicated the said Show Cause Notice whereby he has confirmed the demand of Rs.9,99,683/- only and dropped the

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remaining demand of Rs.4,46,49,840/-. The details of demand confirmed and dropped are appearing in a Table Format in Order-in-Original in Page 83 of the Appeal Petition. The Appellant is contesting only the portion of demand of service tax of Rs.5,17,406/- which pertains to the period 2010-11 on account of alleged erroneous adjustments. Interest and penalty in respect of the above demand are also challenged by the Appellant in this appeal.

3. Heard Sri Rajeev Kumar Agarwal, Advocate, for the Appellant and Sri Sumit Mukhopadhyay, Ld. Departmental Representative for the Revenue.

4. The Ld. Advocate for the Appellant submitted that they have been depositing service tax on accrual basis, although as per the Rules, service tax was liable to be paid on receipt basis till 31.03.2011. The appellant had deposited service tax of Rs.5,17,406/- on the brokerage amount of Rs.50,23,360/- pertaining to the invoices raised in 2009-10. Since the said brokerage income was not received, the appellant made an adjustment in Financial Year 2010-11, in respect of which the instant demand has been raised. The appellant has received the said brokerage income subsequently in Financial Year 2012-13 and accordingly included the same while arriving at the sustainable value for payment of service tax in 2012-13. He also referred to the Chartered Accountant's certificate and the reconciliation submitted by them in the reply to Show Cause Notice which has been ignored by the adjudicating authority.

5. The Ld. DR justified the findings of the Ld. Commissioner.

6. Heard both sides through video conferencing and perused the appeal records.

7.1 I find that in the course of adjudication, the Appellant had duly submitted the above facts before the Ld. Commissioner as appearing in the reply to the Show Cause Notice. The Appellant also submitted a reconciliation statement which shows the brokerage income as per the ledger and the disputed adjusted amount which was added to the said ledger amount to submit that service tax has been deposited in Financial Year 2012-13. The Appellant also submitted a Chartered Accountant's Certificate to justify the said computation. The Ld.

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Commissioner has given his findings in respect of the above demand which is appearing in the impugned Order-in-Original under the heading "6.6 Discussion on 4". The Ld. Commissioner after noting the entire facts submitted by the Appellant, has confirmed the demand of service tax of Rs.5,17,406/- with the finding, the operative portion is reproduced below:

"... The reconciled statement shows that in their ST-3 returns for 2012-13 they had paid tax on brokerage income, transaction charges, market making incentive BSE and Auction Penalty under Stock broking services. They also produced Chartered Accountant's certificate in this regard. However, they have neither submitted the ledger of Stock broking service for 2012-13 nor the documents of receiving the impugned amount in 2012-13. In absence of the same their defence can't be considered as foolproof and I thus, find that the demand of Rs. 5,17,406/- survives."

7.2 I further find that the Ld. Commissioner has confirmed the demand on the ground that the Appellant has neither submitted the ledger of Stock broking services for Financial Year 2012-13 nor the documents of receiving the impugned amount (i.e., the brokerage income) in 2012-13. However, I find that he has not disputed the content of the Chartered Accountant's certificate submitted by the Appellant. It is a settled position that the authorities cannot reject the C A certificate without stating the reasons as to why the CA certificate submitted by the Appellant is not acceptable to such authorities. Therefore, the stand taken by the Ld. Commissioner to confirm the impugned demand of service tax is legally not tenable.

7.3 I also find that the adjudicating authority never requisitioned the ledger copies before adjudicating the case inasmuch as the entire proceedings were initiated consequent to the audit undertaken by the authorities where the authorities have examined the entire Books of Accounts and service tax returns filed by the Appellant. I also find that the Appellant has enclosed the ledger copies which is appearing in the

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Appeal Paper Book (Pages 28-59). Even though the said ledger copies would have been submitted by the Appellant in the course of adjudication, the same would not have served any purpose in as much as the reconciliation statement together with the CA certificate were already available with the Ld. Commissioner. Having not disputed the same, the Ld. Commissioner could not have confirmed the demand.

8. In view of the above findings, I do not find any reason to sustain the service tax demand of Rs.5,17,406/- and interest thereon and equivalent penalty of Rs.5,17,406/- imposed on the Appellant. The appeal is thus allowed in the manner stated above with consequential relief as per law.

(Pronounced in the open court on **07 June 2022**)

Sd/
(P. K. Choudhary)
Member (Judicial)

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