

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

Service Tax Appeal No. 60244 of 2013

(Arising out of Order-in-Appeal No. 54/ST/Appeal/DLH-IV/2013 dated 07.09.2013 passed by the Commissioner of Central Excise (Appeals), Delhi-IV)

M/s Almondz Global Securities Ltd.
2nd Floor, Scindia House, Janpath, New Delhi-11001

Appellant

VERSUS

The Commissioner of Central Excise
(Appeals), Delhi-IV
New CGO Complex, NH-IV, Faridabad

Respondent

Appearance

Shri A.K. Batra, Chartered Accountant – for the Appellant.

Shri S.K. Meena, Authorized Representative – for the Respondent

CORAM :

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 23.02.2024
Date of Decision : 29.02.2024

Final Order No. 54522/2024

Binu Tamta

The appellant has challenged the order in appeal number 54/ST/Appeal/DLH-IV/2013 dated 27.06.2013, whereby the Commissioner (Appeals) affirmed the demand of service tax on transaction charges and delayed payment charges under the category of 'Stock Broker's Services' and 'Banking & Other Financial Services'.

2. The appellant is engaged in trading of securities and is a registered member of Bombay Stock Exchange and National Stock Exchange. The appellant is registered with the service tax

department for rendering 'Stock Broker's Services' and 'Banking & Other Financial Services'. On the basis of the intelligence gathered by the service tax department, show cause notice dated 19.04.2010 was issued to the appellant raising demand of Rs. 32,21,550/- along with interest and penalty for not discharging the service tax liability on transaction charges and delayed payment charges received from the clients. On adjudication, the entire demand was confirmed by order in original dated 23.05.2011 on the ground that service of a broker gets completed only when the terms and conditions of the contract note entered with the client for sale or purchase of securities are completely accomplished and the payment of outstanding amount to the Stock Exchange on behalf of the clients is part of the service relating to the Broker. The appeal filed by the appellant was rejected by the impugned order and hence the present appeal has been filed before this Tribunal.

3. Having heard both sides and perused the records of the case, we find that the demand under challenge relates to the transaction charges for the period 1.04.2005 to 15.05.2008 and for delayed payment charges for the period 2007–2008 and 2008–2009.

4. The submission of the learned counsel for the appellant is that the issues involved are no longer res-integra and the same have been decided by various judicial pronouncements, the ratio thereof is squarely applicable in the present case, and the order is liable to be set aside. The learned Counsel relied on the following decisions :

(i) Religare Securities Ltd. Vs. Commissioner of Service Tax, Delhi – 2014 (36) STR 937 (Tri.-Del.);

(ii) LSE Securities Ltd. Vs. Commissioner of Central Excise, Ludhiana – 2013 (29) STR 591 (Tri. – Del.);

(iii) **Monarch Research & Brokerage Pvt. Ltd. Vs. Commissioner of Service Tax, Ahmedabad – 2021 (55) GSTL 357 (Tri.- Ahmd.);**

(iv) **Indses Securities And Finance Ltd. Span Caplease Pvt. Ltd. and Others Vs. CST-Service Tax, Ahmedabad – 2018 (2) TMI 569 – CESTAT-Ahmedabad**

(v) **VSE Stock Services Ltd. Vs. CCE & ST, Vadodara-II – 2014 (1) TMI 248-CESTAT Ahmedabad;**

(vi) **M/s HFL Holding Ltd. Vs. Commissioner of CGST & Central Excise, Mumbai – 2024 (2) TMI 967 – CESTAT, Mumbai.**

5. On the contra, the learned Authorised Representative referring to the decision of the Kolkata Bench in **Shriram Insight Share Brokers Ltd Vs. Commissioner of ST, Kolkata, 2019 (26) GSTL 231** has submitted that on the issue of transaction charges the decision has been rendered in favour of the revenue holding that the same has to be included in the taxable value as per the provisions of section 67 of the Act.

6. We agree with the learned Counsel for the appellant that the issue whether service tax is leviable on the transaction charges stands settled by series of decisions. We would refer to the decision in **LSE Securities Ltd.** (Supra) which after considering several decisions, the Circulars issued by the Board from time to time and also relying on the Budget Speech of the Hon'ble Finance Minister of 1994-95 enunciated the principle that no receipt other than commission or brokerage made by a stock broker is intended to be brought to the ambit of assessable value of service provided by stock broker in view of the express provisions of section 67 of the Act which leaves no room for any implication of ambiguity. The law was specifically interpreted to include only the commission or brokerage charged by the stock broker and any other receipts stockbroker makes were held to be irrelevant for determination of the assessable value of taxable service provided by him. The test

laid down was whether a receipt of stock broker is in the nature of commission or brokerage to levy service tax. Following the said decision, the Ahmedabad Bench in **Indses Securities and Finance Ltd, Span Caplease Pvt. Ltd and others Vs. C.S.T. Service Tax – Ahmedabad** (supra), accepted the contention of the appellant that these charges are collected separately and in accordance with various statutory bodies regulations and are not retained by the stock brokers but deposited with the authorities concerned and hence such charges cannot form part of the taxable value.

7. In a recent decision in **VSE Stock Services Ltd Vs. CCE & ST, Vadodara** (supra), the Tribunal considering the issue whether the transaction/administrative charges collected from sub-broker is liable to service tax under the head of stock broker service, observed that all the charges on which service tax was demanded by the revenue are statutory charges which are collected from the sub-broker but the same was deposited to the stock exchange and therefore these charges were not collected as service charges by the appellant but only as reimbursement which was paid to the stock exchange and hence these charges cannot be considered as service charge of any services provided by the appellant.

8. We are constrained to observe that the reliance placed by the learned Authorized Representative on the decision of the Kolkata Bench in **Sriram Insight Share Brokers Ltd** (supra), has been passed without referring to any of the earlier decisions particularly the decision in **LSE Securities Ltd.** (supra) dated 7.05.2012 which has been repeatedly followed in subsequent decisions. We

therefore do not find any reason to differ with the settled position of law as interpreted in **LSE Securities Ltd.** We find that the transaction charges collected by the appellant are not in relation to the provision of taxable service but the same are collected from the clients and are remitted to the stock exchange. Therefore, applying the principle that any receipt other than brokerage or commission is not exigible to service tax under the category of stock broker service, the appellant cannot be saddled with the liability of service tax on the transaction charges.

9. We now come to the demand of service tax towards delayed payment charges (DPC). The learned Authorized Representative very fairly conceded that the issue is covered by the decisions of the Tribunal in favour of the appellant. The decision in **Religare Securities Ltd.** (supra), also followed the principle laid down in **LSE securities Ltd.** and on that basis concluded that DPC is not a commission/brokerage for sale/purchase of securities and hence there is no justification for inclusion of the same in the value of the services. To quote from the said decision :

“ that such DPC collection has got nothing to do with the sale/purchase of the securities, a service which the appellant is rendering as a stock broker, but admittedly is a charge recovered from only those customers, who delayed the payments of the securities value and is in fact is a penal interest, for compensating the assessee for the payments already made by them , to the Exchange, on behalf of their clients.”

We find that in the aforesaid decision the Tribunal has categorically noted that the issue of delayed payment charges stands clarified by the CBECs letter dated 3.08.2011, where it has been observed as under:

“2.1 In a similar manner, delayed payment charges received by the stock-brokers are not includible in taxable

value as the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time. Such amounts are not includible in the taxable value for charging Service Tax. This principle will also apply to other service provider."

10. The learned Counsel for the appellant has also referred to a recent decision of the Mumbai Bench in **M/s IIFL Holding Ltd vs Commissioner of CHST & CE, Mumbai Central 2024 (2) TMI 967** wherein after quoting the observations in **Religare Securities** (supra), the demand on the assessee in respect of delayed payment of charges paid by the clients for the actual delay, if any, in payment for the purchase of shares or other stocks was set aside as it in no way, can be considered as service of tolerating or refraining from an act, or to tolerate an act or a situation, or to do an act. Here we find that the appellant had made payments to Stock Exchanges on behalf of their clients who delayed the payments against their transactions of securities and the appellant charged the DPC from the said clients by making debit entries in their ledgers which cannot be termed as consideration for the service rendered.

11. As we have decided the issue on merits in favour of the appellant, the other consequential issues of extended period of limitation, interest and penalty does not require any consideration although the same is covered by the observations made by the Tribunal in **LSE Securities Ltd.** that there persisted several confusion between the revenue and the appellants in respect to determination of accessible value of taxable service provided by the stock brokers and therefore there was a bona fide belief that there was no levy on receipts other than commission or brokerage

received by the stock broker and consequently, no suppression of material facts can be attributed on the appellant with intent to evade payment of duty.

12. In view of the judicial pronouncements no demand of service tax both can be raised on the appellant on account of transaction charges and delayed payment charges. The impugned order deserves to be set aside and the appeal is, accordingly allowed.

(Pronounced in Court on 29th February, 2024)

(Binu Tamta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

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