CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 881 of 2008

[Arising out of Order-in-Appeal/Original No. 38-2008 dated 22.05.2008 passed by the Commissioner (Appeals), Chennai]

Clix Capital Services Pvt. Ltd. (Earlier GE Money Financial Services Pvt. Ltd.) ……**Appellant**
(No. 197, Peters Road, Royapettah, Chennai, Tamil Nadu, 600014)

VERSUS

Commissioner of Service Tax, Chennai ……**Respondent**
26/1 Mahathma Gandhi Road, Nungambakkam, Chennai, Tamil Nadu 600034)

WITH

Service Tax Appeal No. 1915 of 2010

[Arising out of Order-in-Appeal/Original No. 07/2010 dated 12.04.2010 passed by the Commissioner (Appeals), Chennai]

Clix Capital Services Pvt. Ltd. (Earlier GE Money Financial Services Pvt. Ltd.) ……**Appellant**
(No. 197, Peters Road, Royapettah, Chennai, Tamil Nadu, 600014)

VERSUS

Commissioner of Service Tax, Chennai ……**Respondent**
26/1 Mahathma Gandhi Road, Nungambakkam, Chennai, Tamil Nadu 600034)

APPEARANCE:

Present for the Appellant: Sh. B.L. Narsimhan, Ms. Krati Singh, Advocates

Present for the Respondent: Sh. Rajeev Gupta, Sh. Narinder Singh, Authorized Representatives

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60102-60103 /2023

DATE OF HEARING: 23.03.2023
DATE OF DECISION: 20.04 .2023

PER S. S. GARG

The appellants have filed these two appeals directed against the two impugned orders dated 22.05.2008 and 12.04.2010 passed by Commissioner of services tax, Chennai. Since the issues, involved in both the appeals are identical, hence, both the appeals are taken together for the purpose of discussion and disposal. The details of show cause notices, period involved and the amount in each of the appeals is given herein below:-

Appeal no.	ST/881/2008	ST/1915/2010
Period of dispute	01.07.2003 to 31.03.2007	01.04.2007 to 30.09.2008
OIO	38/2008 dt. 22.05.2008	07/2010 dt. 12.04.2010
SCN	17/2008 dt. 06.02.2008	(i) 272/2008 Dated 10.10.2008 (ii)525/2009

		Dated 19.10.2009
Tax involved	Rs. 12,90,10,10,648/-	Rs. 6,50,63,533/-
Penalty	Rs. 20,00,00,000/- under section 78 of the Finance Act, 1994	Rs. 200/- per day during which the failure to pay tax continues or 2% of tax, whoever is higher under Section 76 of the Finance Act, 1994.

2. Briefly the facts of the present case are that the appellant is a non-banking financial services company and is engaged in the business of providing various services to its customers like the personal loans, sales finance, auto finance, lease and cash card services and has obtained registration under Service Tax Rules, 1994 for the taxable service category of banking and other financial services. Investigation was carried out by the department alleging non payment of service tax for the services referred namely foreclosure charges, penal charges and insurance administration fees. After completion of the investigation, show cause notices were issued to the appellant proposing to demand service tax on all the three charges namely foreclosure charges, penal charges and insurance administration fee. In respect of the period from 01.07.2003 to

30.03.2008 alleging that service tax shall be leviable on foreclosure and penal charges under the category of 'Banking and other financial services' and on insurance administration fees under the category of 'Business Auxiliary Services' under section 73 of the Finance Act, 1994. After following the due process the adjudicating authority vide the impugned order dated 22.05.2008 and 12.04.2010 confirmed the demand of service tax as detailed under:

Sr. No.	**Appeal No.**	**Period**	**Issue**	**Service Tax**	**Total**
1.	ST/881/2008	01.07.2003 to 31.03.2007	Foreclosure Charges & Penal Charges	8,16,00,900/-	12,90,10,648/-
			Insurance Administration Fee	4,74,09,748/-	
2.	ST/1915/2008	01.04.2007 to 30.09.2008	Foreclosure Charges, Penal	6,50,63,533/-	6,50,63,533/-

			Charges & Insurance Administration Fee		

3. Aggrieved by both the impugned orders the appellant has preferred these two appeals.

4. Heard both sides and perused the record.

5. ld. Counsel appearing for the appellant submitted that bothe the impugned orders are not sustainable in law as the same have been passed without properly appreciating the facts and the law and judicial precedents. He further submitted that the adjudicating authority has wrongly confirmed the demand of service tax on foreclosure charges under banking and financial services by misinterpreting or by wrongly interpreting the taxable services of banking and other financial services (BOFS) as provided under Section 65(12). He further submitted that the adjudicating authority has wrongly held that foreclosure of loan is the last leg of the lending activity. Ld. Counsel further submits that foreclosure charges are collected by the appellant from their customers who desire to terminate a loan agreement prior to pre-agreed period of loan and these charges are independent of lending services and are not collected for providing the service of 'lending' but in fact for

premature termination of the same. He also submitted that these charges are collected by virtue of the separate clause in the contract which is triggered only in specified circumstances, i.e. repayment of loan amount before the maturity of the loan in order to compensate for the loss of interest to the appellant. Therefore, foreclosure charges are recovered as compensation for disruption of service and not towards 'lending services'. He further submitted that foreclosure charges cannot be said to be part of the 'lending service' as it has no nexus with the taxable service i.e. BOFS and hence foreclosure charges shall not be leviable to service tax. In support of this submission the Ld. Counsel placed reliance on the decision of the larger Bench of this Tribunal in the case of ***Commissioner of Service Tax, Chennai Vs. M/s Repco Home Finance Ltd. 2020 (7) TMI 472-(Tri.-Chen.)*** wherein it has been held that foreclosure charges should not be viewed as alternative mode of performance of the contract because they arise upon repudiation of specified terms of contract and are intended to compensate the injured party i.e. banks and non-banking companies. This is because alternative mode of performance still contemplates performance, whereas foreclosure is an express repudiation of the contractual terms giving rise to the levy of foreclosure charges. Further, it has been held that merely because the clause relating to damage is featuring in a contract, it would be incorrect to conclude that the party has been given an option to violate the contract and that the contract cannot be understood to be providing an option to the parties to either perform or not perform. Accordingly, it has been held that foreclosure charges collected by the

banks and non banking financial companies on premature termination of loan are not leviable to service tax under "Banking and other Financial Services" as defined under Section 65(12) of the Finance Act. With regard to the second issued of service tax on penal charges recovered by the appellant, Ld. Counsel submitted that the appellant collects penal charges in two parts namely a fixed transaction charge for cheque dishonor; and interest on non-payment of an EMI. He further submits that these penal charges are recovered when the customer defaults in making timely payment of the sums as agreed in the loan agreement and in the case of dishonor of any cheque issued by the customer. He further submits that the Ld. Commissioner has wrongly confirmed the service tax on penal charges under the category of BOFS by observing that the lending activity does not end with just disbursal of loan and the charge collected as penal charges are also covered under the ambit of lending and hence, taxable under the category of BOFS. He further submitted that such collection of penal charges arises on account of a separate cause of action which is independent of lending service. In support of his submissions he placed reliance on the decision in the case of ***Karur Vysya Bank Limited Vs. Commissioner of Central Excise -2018 (8) TMI 702 (Tri.-472)*** wherein it has been held that the charges collected towards dormant account are in the nature of penalty and are not towards any services being provided to the customer. He also relied upon the following cases :-

(i) Rohan Motors Limited Vs. Commissioner of Central Excise 2020 (12) TMI 1014 (Tri.-Del.)

(ii) Northern Coalfields Ltd. Vs. Commissioner CGST, CE, 2023 (1) TMI 934 (Tri.-Del.)

(iii) Commissioner of Service Tax Vs. Magma Sharchi Finance Ltd. 2015 (6) TMI 442 (Tri.- Cal.).

With regard to third issue of service tax charge on insurance administration fees under the category of business auxiliary service. Ld. Counsel submitted that for a transaction to be covered under the taxable category BAS, the service rendered must be auxiliary to some business activity of the client. He cited the decision of the Tribunal in the case of ***Sukhmani Society for Citizen Services Vs. CCE & ST, Chandigarh 2017 (47) STR 172 (Tri.- Chan.)*** wherein it has been held that business auxiliary service would become chargeable to service tax only if the service rendered is in relation to business of the recipient. He also submitted that the customer/borrower of the appellants are individuals who are availing personal loans and these loans have not been availed for any business or commercial purpose and therefore the service provided by the appellant cannot be classifiable under business auxiliary services. For this submissions, he relied upon the following decisions:-

(i) Smart Chip Ltd. Vs. CCE 2013 (31) STR 727 (Tri.-Del.)

(ii) CCE Vs. Smart Chip 2015 (39) STR 197 (M.P)

(iii) Foxteq Services India Pvt. Ltd. Vs. Commr of CGST 2020 (34) GSTL 470 (Tri.-Chen.)

(iv) Commr. Of Service Tax, Delhi Vs. Intertoll LCS CE Cons O & M.P. Ltd. 2013 (13) STR 477 (Tri.-Del.)

(v) Commissioner of Central Excise & Service Tax, LTU, Chennai Vs. Sundaram Finance Ltd. 2017 (11) TMI 1002 (Tri.-Chen.)

Regarding invocation of extended period of limitation, Ld. Counsel submitted that the impugned order has confirmed the demand by invoking the extended period of limitation which is not justified in the facts and circumstances of this case. He further submitted that the issue of foreclosure was decided by the larger bench in the case of ***CCE Vs. Repco (Supra)*** on account of conflicting decisions between the Division Benches clearly shows that the issue involved relates to interpretation of law and hence extended period cannot be invoked. He placed reliance on the decision of the ***Bharti Airtel Ltd. Vs. CCE 2021 (4) TMI 306-(Tri.-Bang.)***

6. He also submitted that for invoking extended period of limitation, the department needs to establish fraud, Collusion, wilful misstatement or suppression of facts or contravention of any of the provisions of this act or rules with an intent to evade tax payment whereas the adjudicating authority in the impugned order has clearly failed to establish any of these ingredients on the part of the appellant and therefore the demand pertaining to extended period of

limitation uptil September, 2006 is liable to be set aside. In this regard he relied upon the decision of the of Delhi High Court in the case of Bharat Hotels Limited Vs. CCE 2018 (2) TMI 23. As far as the demand of interest and penalty are concerned the Ld. Counsel submits that when the demand of tax is not sustainable, hence, the demand of interest and penalty is liable to set aside.

7. On the other hand, before making his submissions on merit the Ld. DR for the Revenue raised a preliminary objection that on the issue of service tax liability on foreclosure charges of loans, the larger bench of Tribunal at Ahmadabad disposed off of the reference vide final order dated 26.04.2018 by observing that the reference could not be decided without the final decision of the jurisdictional High Court and the appellant in that case was given the liberty to approach the Tribunal again after the decision of the High Court. Ld. DR further submitted that Hon'ble Madras High Court vide its order dated 28.02.2019 while remanding the matter to the Tribunal directed to await the decision of the High Court at Ahmadabad in the case of Housing and Urban Development Corporation. He further submits that on the issue of service tax liability on foreclosure charges, larger bench in the case of ***CST, Chennai Vs. Repco Home Finance Ltd. - 2020 (42) GSTL 104*** vide miscellaneous final order no. 40053/2020 dated 08.06.2020 decided the issue of foreclosure charges in favour of the assessee. He further submits that the decision of the larger bench at Chennai in the case of ***Repco Home Finance Ltd. (Supra)*** is contrary to the directions of the jurisdictional High Court

of Madras. He also submits that the benefits of the said decision by the larger Bench should not be extended to the appellants in this case. While replying to the objections raised by the Ld. DR, Ld. Counsel for appellant submitted that Ld. DR is not legally permitted to raise this objection before this Division Bench. He further submits that once the larger bench has decided the issue of service tax on foreclosure charges, this bench is bound to follow the same unless the same is set aside by the court of competent jurisdiction. He also submits that recently Chennai Tribunal in the case of Ms. Sundaram Finance Ltd. Vs. Commissioner of GST & Central Excise, Chennai- 2023 (2) TMI 896- CESTAT, Chennai decided the issue of foreclosure charges by following the larger bench decision in the case of Repco Home Finance in favour of the assessee.

8. After considering the submissions of both sides on preliminary objections, we are of the considered view that the objections raised by the Ld. DR against the decision of the larger bench before this Tribunal is not maintainable and sustainable in law hence we overrule the objections of the Ld. DR that the benefit of larger bench decision cannot be extended to the present appellants. As per the settled principle of law, the decision of the larger bench are binding on Division Benches and in the case of ***Sundaram Finance Ltd. Chennai*** Bench has rightly given the benefit to the assessee by setting aside the demand of foreclosure charges.

9. Further advancing his arguments on merits the Ld. DR submitted that the appellant has been issued show cause notices

dated 06.02.2008, 10.10.2008 and 19.10.2009 on the following charges:-

(i) Foreclosure charges (10.09.2004 to 30.09.2008).

(ii) Penal charges (10.09.2004 to 30.09.2008).

(iii) Insurance administration (01.07.2003 to 30.09.2008).

10. As regards foreclosure charges the Ld. DR by referring to the definition of BOFS submitted that the said charges are covered under the definition of BOFS. He also referred to the agreement between the appellant and the borrower and then submitted that the activity of foreclosure is a part of the loan agreement and is covered as part of lending under BOFS and cannot be construed as interest.

11. As regards the issue of penal charges, Ld. DR submits that penal charges are received by the appellants towards the following:-

(i) Late payment of EMI for loans taken.

(ii) Late payment of minimum due in the case of credit card.

(iii) Bounce charges in the case of bounced cheques from the customers.

12. Ld. DR further referred to the various clauses in the loan agreement entered into between the appellant and their borrowers and then submitted that it is evident from the agreement that this activity of delayed payment of EMI, bouncing of cheques etc. is a part of the process of repayment of loans and are clearly relatable to the

lending activity and is covered as part of the banking and other financial services as provided in the definition. As per the Ld. DR these charges are chargeable to service tax under the category of BOFS.

13. As regards the issue of insurance administration fees, he submits that service tax has been demanded from the appellant on the insurance administration fee received by them in respect of extending benefit to its customers of insurance policy issued by the insurance company against the risk of repayment of the loan amount and therefore the said income is includable in the taxable service of business auxiliary services under Section 65(19) of the Finance Act, 1994. The Ld. DR then took us through the definition of BAS as provided in section 65(19) of the Finance Act, 1994 and the various agreement entered into between the appellant and the various insurance companies and also the regulation of IRDAI to convass his arguments that these taxable services fall in the definition of BAS and accordingly taxable. He further submits that the Revenue has rightly invoked the extended period of limitation as the appellants have suppressed the material facts from the department with intention to evade payment of service tax.

14. We have considered the rival submissions of both the parties and perused their written submissions and various decisions relied upon by them.

15. "Before we proceed further, it would be appropriate to reproduce the definition of 'Banking and other Financial Services' as it existed prior to 10.09.2004 and after 10.09.2004. The definition as it existed prior to 10.09.2004 was reproduced in the order of the Tribunal in the case of SIDBI and the same is reproduced as under:-

"banking and other financial services" means-

(a) The following services provided by a banking company or a financial institution including a non banking financial company namely:-

(i) Financial leasing services including equipment leasing and hire purchase by a body corporate;

(ii) Credit card services;

(iii) Merchant banking services;

(iv) Securities and foreign exchange (forex) broking;

(v) Asset management including portfolio management, all forms of fund management, pension fund management, custodial depository and trust services, but does not include cash management;

(vi) Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisition and advice on corporate restricting and strategy;and

(vii) Provision and transfer of information and date procession:

8. *This definition of "Banking and other financial services" was amended by Finance Act, 2004 and the present definition as amended reads as under:*

"Banking and financial services" Means-

(a) The following services provided by a banking company or a financial institution including a non banking financial company or any other body corporate or commercial concern, namely:-

(i) Financial leasing services including equipment leasing and hire purchase;

(ii) Credit card services;

(iii) Merchant banking services;

(iv) Securities and foreign exchange (forex) broking;

(v)Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;

(vi) Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restricting and strategy; and

(vii) Provision and transfer of information and date procession; and

(viii) Other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;

(b) Foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a);

From the above, it can be seen that sub-clause(viii) and clause (b) marked bold were added in the 2004 Budget thus expanding this scope of services."

9. *A taxable service is defined under Section 55(105)(zm) of Finance Act, 1994 and is as under:*

"Taxable service means any service provided or to be provided to any person by a banking or a financial institution including non-banking financial company or any other body corporate or commercial concern, in relation to banking and other financial service."

16. The first issue before us is whether the foreclosure charges charged by the banks and non-banking financial companies on premature termination of loan is subject to levy of service tax under BOFS as defined under section 65 (12) of the Finance Act, 1994. The larger bench of the Tribunal in the case ***of Repco Home Finance Ltd. cited above (Supra)*** has considered the issue and has

held that such charges are not liable to service tax. The relevant paras of the larger bench are reproduced herein below:-

"47. The decision of the Tribunal in Hudco now needs to be examined. It concludes that the foreclosure charges would be subjected to service tax after 10 September, 2004 as the definition of "banking and other financial services" was amended under Section 65(12) of the Finance Act by including other financial services like lending in the definition. The taxable service under Section 65(105)(zm) of the Finance Act means any service provided or to be provided to any person, by a banking company or the financial institution including non-banking financial companies, or any other body corporate, in relation to "banking and other financial companies". The definition of "banking and other financial services", as it existed prior to 10 September, 2004, is as follows :

"banking and other financial service" means –

(a) The following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely :-

(i) financial leasing services including equipment leasing and hire purchase by a body corporate;

(ii) credit card services;

(iii) merchant banking services;

(iv) securities and foreign exchange (forex) broking;

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on merges and acquisitions and advice on corporate restructuring and strategy; and

(vii) provision and transfer of information and data processing;

(b) foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a);

***48**. Section 65(12) was substituted with effect from 10 September, 2004 by adding two clauses which are as follows : (viii) banker to an issue services; and (ix) other financial services, namely, lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; transfer of money including telegraphic transfer, mail transfer and electronic transfer; providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts;*

***49**. The Bench observed that when pre-payment is proposed, the borrower is expected to make a request which has to be considered by the banks, charges have to be worked out and informed. Thus there is an element of service involved in considering the request of the borrower for pre-payment of loan, fixing of pre-payment charges collection of the same and closure of their loan. The relevant portion of the order is reproduced below :*

"10. Admittedly, the prepayment charges vary from borrower, according to the appellant themselves. Further, it is collected for premature closure of the loan and it is not the interest factor that is taken into account. It has to be noted that when a borrower makes a prepayment and therefore pays interest separately up to the date of payment, that amount is shown separately as interest and prepayment charges are not collected as interest, but collected as prepayment charges. Further even though the borrower has already borrowed the money and the process is over, when prepayment is proposed, borrower is expected to make a request which has to be considered by lender, charges worked out and informed and paid along with principal and interest up to the date of payment. Therefore, there is definitely an element of service involved in considering the request of the borrower for prepayment of loan, fixing of prepayment charges, collection of the same and closure of loan. These activities can be definitely in relation to Banking and other Financial Services, which includes lending after 10-9-2004. Further, when loans are foreclosed, the situation gives rise to the issue of asset liability mis-match for the lender since lender has to find alternative source for deployment of such funds. Prepayment charges are the charges leviable by a bank/lender to offset the cost of such finding such alternative source for deployment of fund and also intended to make exit difficult for the borrower. This shows that prepayment charges can never be considered to be the nature of interest."

***50.** The decision rendered in Small Industries (I) (supra) was distinguished for the reason that it dealt with a period prior to 10 September, 2004.*

***51.** It is not possible to accept the reasoning given by the Bench in Hudco in view of the discussions made above. The amount of damages is clearly stipulated in the contracts and no element of service is sought to have been rendered by the banks to borrowers. In fact, as noticed above, the contract has been broken by the borrowers for which the banks are entitled to claim damages. The foreclosure charges are nothing but damages which the banks are entitled to receive when the contract is broken. The amendment made in Section 65(12) of the Finance Act in the definition of "banking and other financial services" by addition of "lending" is not relevant at all for the purpose of determining whether service tax can be levied on foreclosure charges.*

***52.** The submission of the Learned Authorised Representative of the Department that premature closure is a facility available to a borrower at a price in the same manner as a facility for availing a loan for a price and, therefore, the activity would fall within the ambit of "banking and other financial services" cannot, therefore, be accepted.*

***53**. Thus, for all the reason stated above, it is not possible to subscribe to the view taken by the Bench of the Tribunal in Hudco. Service tax cannot be levied on the foreclosure charges levied by the banks and non-banking financial companies on premature termination of loans under "banking and other financial services" as defined under Section 65(12) of the Finance Act.*

***54**. The reference is, accordingly, answered in the following terms; "Foreclosure charges collected by the banks and non-banking financial companies on premature termination of loans are not leviable to service tax under "banking and other financial services" as defined under Section 65(12) of the Finance Act."*

Hence by following the decision of the larger bench of the Tribunal we are of the considered view that the demand on foreclosure charges cannot sustain and requires to be set aside and we hereby do so.

17. As regards the demand of service tax on penal charges, which are recovered from the customers when the customer defaults in making timely payment of the sums as agreed in the loan agreement and in the case of dishonor of cheque by the customer, we are of the view that collection of penal charges arises on account of a separate cause of action which is independent of lending services rendered by the appellant. Here, we may refer to the decision in the case of ***Rohan Motors Ltd.*** cited (Supra) wherein it has been held by the Tribunal that the demand of service tax on the amount collected on account of bouncing of cheques is not sustainable as such amount is penal in nature and is not towards consideration for any service. In the following cases, the Tribunal has held that the amounts collected as penalty/penal charges penal charges are not chargeable to service tax as the same are not 'consideration' under the finance Act, ***Northern Coalfields Ltd. Vs. Commissioner CGST, CE, 2023 (1) TMI 934 (Tri.-Del.)*** and ***Commissioner of Service Tax Vs. Magma Sharchi Finance Ltd. 2015 (6) TMI 442 (Tri.- Cal.).***

18. Therefore by following the ratio of the aforesaid decisions we hold that the demand of service tax on penal charges is not sustainable in law and therefore we set aside the same.

19. Now coming to the demand of service tax on insurance administration fees under the category of business auxiliary service as defined under section 65(19)(iv) of the act. Here, it is necessary to reproduce the definition of BAS as provided in the Finance act, 1994 which is reproduced herein below:-

"Business auxiliary service" means any service in relation to-

(i) Promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(ii) Promotion or marketing of service provided by the client; or

[Explanation – For this removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promoting or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto bingo;]

(iii) Any customer care service provided on behalf of the client; or

(iv) Procurement of goods or services, which are inputs for the client; or

[explanation- for the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client;]

(v) Production or processing of goods for, or on behalf of, the client;]

(vi) Provision of service on behalf of the client; or

(vii) A service incidental or auxiliary to any activity specified in sub-clause (i) (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management of supervision,

> *And includes services as a commission agent, but does not include any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the central Excise Act, 1944 (1 of 1944).*

After considering the definition of BAS we are of the considered view that for a transaction to be covered under the taxable category of BAS, the service rendered must be auxiliary to some business activity of the service recipient has held by this Tribunal in the case of ***Sukhmani Society for Citizen Services Vs. CCE & ST, Chandigarh (Supra)*** wherein it has been held that business auxiliary services would become chargeable to service tax only if the service is rendered in relation to business of recipient. Further, we find that in the present case the borrowers are individuals who are availing personal loans and these loans have not been availed for any business or commercial purpose and hence the service provided by the appellant is not classifiable under business auxiliary service. This issue is also decided against the Revenue and in favour of the appellant.

20. Now, coming to the invocation of extended period of limitation we are of the view that since there were divergent views of the Tribunal and the issue was referred to the larger bench for final disposal clearly shows that the issue involves interpretation of law and hence extended period cannot be invoked for this, we rely upon the decision in the case of ***Bharti Airtel Ltd. Vs. CCE 2021 (4) TMI 306-(Tri.-Bang.) (Supra).***

21. Besides this the department could not establish any fraud, collusion, willful misstatement or suppression of facts on the part of

the appellant to invoke extended period of limitation. Demand of interest is not maintainable since the demand of tax itself is not sustainable. Similarly, the penalty is also not imposable when the tax demand is not sustainable.

22. In view of the above discussion, we set aside the impugned order by allowing the appeals of the appellant with consequential relief if any as per law.

(Order pronounced in the open court on 20.04.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash