CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 60503 Of 2013

[Arising out of OIA No.65/ST/Appeal/DLH-IV/2013 dated 19.07.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s H.B. Securities Ltd. **: Appellant (s)**
H-72, Connaught Circus,
New Delhi-110001

Vs

The Commissioner of Central Excise, Delhi-IV **: Respondent (s)**
Plot No.36&37, Sector-32, Near
Medanta Hospital, Gurgaon,
Haryana-122001

With

Service Tax Appeal No.60505 Of 2013

[Arising out of OIA No.65/ST/Appeal/DLH-IV/2013 dated 18.07.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s H.B. Securities Ltd. **: Appellant (s)**
H-72, Connaught Circus,
New Delhi-110001

Vs

The Commissioner of Central Excise, Delhi-IV **: Respondent (s)**
Plot No.36&37, Sector-32, Near
Medanta Hospital, Gurgaon,
Haryana-122001

APPEARANCE:
Shri Nitesh Garg and Shri Kamal Gupta, CA for the Appellant
Shri Rajiv Gupta and Shri Narinder Singh, Authorised Representatives for the Respondent

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

FINAL ORDER No.60493-60494/2023
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Date of Hearing:21.08.2023

Date of Decision:13.10.2023

Per:P. ANJANI KUMAR

The appellants, M/s H.B. Securities Limited, are engaged in trading of securities as Stock Brokers; alleging that the appellants have not paid service tax on the transaction charges recovered, from their clients along with brokerage, from their customers, show-cause notices dated 31.12.2008 and 02.02.2009 were issued to the appellants seeking to recover service tax of Rs. 2,92,740/- and Rs.6,977/-, for the periods, October 2003 to March 2008 and 01.04.2008 to 15.05.2008along with interest and penalty; the show-cause notices were adjudicated by the OIOs dated 05.01.2011 confirming the service tax demanded, imposing penalty of Rs. 2,92,740/- and Rs.6,977/- under Section 76 and penalty of Rs.5,85,480/- and Rs.13,954/- under Section 78 of the Finance Act respectively; on appeals filed by the appellants, the Commissioner (Appeals), vide the impugned orders dated 19.07.2013 and 18.07.2013, upheld the duty demanded and penalty imposed under Section 76 while setting aside the penalty imposed under Section 78. Hence, these appeal Nos. ST/60503/2013 and ST/60505/ 2013.

2. Shri Nitesh Garg assisted by Shri Kamal Gupta, learned Consultant appearing on behalf of the appellant, reiterates the grounds of appeal and submits that the impugned order is perverse and passed dis-regarding the consistent Final Orders passed by the Tribunal, in the case of LSE Securities Ltd.- 2013 (29) STR 591 (Tri. Delhi) in favour of the assessee. He submits that Hon’ble High Court

of Delhi in the case of Intercontinental Consultants and Technocrats Pvt. Ltd.- 2013 (29) STR 9 (Delhi) held that the value of taxable services for charging service tax has to be in consonance with Section 66 which levies a tax only on the taxable service and nothing else. He submits that learned Commissioner (Appeals) has grossly erred in holding that the service tax is levied on transaction charges. He relies on the following cases:

- H.B. Securities Ltd. (Stay Order No.1-2/2015 dated 01.12.2015).
- Edelweiss Financial Advisors Ltd.- 2019-TIOL-2409-CESTAT-AHM.
- HEM FinleasePvt. Ltd.- 2018-TIOL-1998-CESTAT-DEL.
- Monarch Research and Brokerage Pvt. Ltd.-2021-TIOL-655-CESTAT-AHM.

3. Shri Rajiv Gupta, assisted by Shri Narinder Singh, appeared on behalf of the Department,submits that transaction charges are collected as per Regulation 8 of Securities and Exchange Board of India (Stock Brokers [***]) Regulations, 1992; transaction charge is a fee payable by the Stock Broker to the Stock Exchange for using the stock platform; Stock Broker has to pay these charges in order to provide their service as Stock Broker to their clients. He further submits that while clarifying in respect of Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, SEBI vide Letter dated 20.07.2016 clarified that there is no dispute regarding the inclusion of service tax on brokerage and exchange transaction cost. He relies on Sriram Insight Share Brokers Ltd.- 2009 (14) STR 86 (Tri. Kolkata) and Sriram Insight Share Brokers Ltd.- 2019 (26) GSTL 231

(Tri. Kolkata) and submits that the issue stands settled by the Tribunal in favour of the Revenue vide above cases.

4. Heard both sides and perused the records of the case. The main allegation of the Department is that the appellants are recovering the transaction fees/ charge from their customers and are not discharging the applicable duty on it. The argument of the appellant is that the transaction charges, payable to SEBI, are in the nature of statutory levies and therefore, are not includable in the assessable value; he relies on Intercontinental Consultants and Technocrats Pvt. Ltd. (supra) and submits that service tax is to be levied on the amount that is charged for the service rendered in terms of Section 66 of Finance Act, 1994. We find that these transaction charges are payable by the Stock Brokers in terms of the Regulations issued by SEBI and these are not any fee or statutory levy that is payable by the customers of the Stock Brokers. In effect, the Stock Broker/ Appellants are recovering the fee or charges payable by them to SEBI for the conduct of business and are paying the same to SEBI. It is not the case of the appellants that the said transaction charges are payable by the ultimate customers and that as the Stock Broker Agent, they are paying the same on behalf of the customers. Therefore, we are of the considered opinion that these charges recovered from the customers are in the nature of consideration towards the taxable service rendered by the appellant as far as the customers are concerned. We find that the Tribunal has already gone into the issue of the includability of transaction charges in the service

tax in the case of Sriram Insight Share Brokers Ltd.- 2019 (26) GSTL 231 (Tri. Kolkata). We find that the Tribunal has found as under:

> ***5.*** *Before answering the question (i) above; it is necessary to have a look at Section 67 of the Finance Act, 1994 which [is] reproduced: -*
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> ***67. Valuation of taxable services for charging service tax.*** *- For the purposes of this Chapter, the value of taxable services, -*
>
> *(a) in relation to service provided by a stock-broker, shall be the aggregate of the commission or brokerage charged by him on the sale or purchase of securities from the investors and includes the commission or brokerage paid by the stock-broker to any sub-broker;*
>
> *(b) in relation to telephone connections provided to the subscribers, shall be the gross total amount (including adjustments made by the telegraph authority from any deposits made by the subscribers at the time of applications for telephone connections) received by the telegraph authority from the subscribers.*
>
> *Explanation. - For the removal of doubts, it is hereby declared that the value of taxable service in this clause shall not include the initial deposits made by the subscribers at the time of applications for telephone connections;*
>
> *(c) in relation to services of general insurance business provided to the policy holders, shall be the total amount of the premium received by the insurer from the policy holders.*
>
> ***6.*** *It can be seen from the provision of Section 67 that the gross amount charged by the service provider need to be taken as the taxable value for determination of service tax liability. In this particular case, it has been the contention of the appellant that so far as transaction charges are concerned, they have worked as a pure agents between their client and the concerned stock exchanges/statutory bodies and accordingly the transaction charges collected by them from their clients have been deposited as it is with the statutory bodies and therefore, same cannot be*

included in the taxable value of the service tax. In this regard we have perused the guidelines which have been provided by National Stock Exchange in their Circular dated 7th November, 1998 :-

"It is hereby notified to all the Trading Members in the Capital Market Segment of National Stock Exchange of India Ltd. that with effect from 1st December, 1998, transaction charges in respect of trades done shall be payable by the Trading Members at the following rates until further notice :-

…….

It is clarified that the reduced rates as given above will apply to only the incremental trade value falling under the respective slabs stated above. For example, a Trading Member who has traded for Rs. 250 crores in a calendar month will pay transaction charges of Rs. 1.85 lacs (i.e. @ 0.009% for the first Rs. 50 crores trade values, @ 0.008% for the next Rs. 50 crores trade value, @ 0.007% for the next Rs. 100 crores trade value, @ 0.006% for the balance Rs. 50 crores trade value)."

7. *A perusal of above guidelines makes it apparently clear that the transaction charges recovered by the appellant from their respective clients is primarily statutory levy on the trading members and not on the clients of the trading members. We are of the view that if any of such charges which are primarily legal responsibility for payment with the appellant and same have been passed on to their clients, in case, same that will certainly form the part of gross value charged by them for providing taxable service. In this regard, we hold that the legal responsibility of the payment of transaction charges was of the trading members (in this case apparently the appellant) and as levy of transaction charges from the concerned stock exchange is on the appellant and since this liability have been passed on by him on their clients, we are of the view that same need to be included in the taxable value as per the provision of Section 67 of the Finance Act, 1994. Accordingly, we find that there is no merit in the appeal on this count and same is dismissed.*

> ***8.*** *On the second question wherein Cenvat credits of Rs. 8,95,377/- + Education Cess of Rs. 16,643/- have been availed by the appellant on the documents which are not approved documents as per the provisions of Rule 9(1) of the Cenvat Credit Rule. In this regard, we find that since the details contained in such documents has not been discussed either in the show cause notice or in the Order-in-Original it is very difficult to ascertain whether the documents on the strength of which appellants have availed the Cenvat credit fulfilled the requirement of details to be available as prescribed under proviso to Rule 9(2) of the Cenvat Credit Rules or not. We are of the view that a substantive benefit cannot be denied to the appellant only for some procedural lapses and if all the requisite details are available on the documents on the strength of which Cenvat credit has been availed by them and as provided under proviso to Rule 9(2) of the Cenvat Credit Rules, same cannot be denied to them legally. Thus, we hold that the department should verify the documents again on the strength of which the Cenvat credit has been availed by them and if such documents contained all the requisite details has been prescribed under proviso to Rule 9(2) of the Cenvat Credit Rules, the substantive benefit of Cenvat credit cannot be denied to them.*

5. In view of the above, we find that the appellant has not made out any case in their favour. Therefore, we are of the considered opinion that the impugned orders do not require intervention. Accordingly, both the appeals are rejected.

(Pronounced on 13/10/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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