Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.13222 of 2014

(Arising out of OIA-RJT-EXCUS-000-APP-121-14-15 dated 30/07/2014 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Marwadi Shares & Finance Ltd **.....Appellant**
Marwadi Finance Plaza, Nana Mava Main Road,
Near Iscon Mega Mall, Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

With

Service Tax Appeal No.13520 of 2014

(Arising out of OIA-RJT-EXCUS-000-APP-177-14-15 dated 28/08/2014 passed by Commissioner of Central Excise and Service Tax-RAJKOT)

Marwadi Shares & Finance Ltd **.....Appellant**
Marwadi Finance Plaza, Nana Mava Main Road,
Near Iscon Mega Mall, Rajkot, Gujarat

VERSUS

C.C.E. & S.T.-Rajkot **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Shri S.Bissa, Advocate for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10338-10339 /2022

DATE OF HEARING: 10.01.2022
DATE OF DECISION: 12.04.2022

RAMESH NAIR

In both the Appeals the issue involved is common. The details of the Appeals are as under:

Appeal No.	Period involved	SCN issued	Demand	OIO No.	O-I-A No.
Appeal No. ST/13222/2014-DB	2006-07 to 2010-2011	SCN dated 19.10.2011	Service tax of Rs. 9,17,812/- + Interest and Penalty	37/JC/2013 dated 29.03.2013	RJT-EXCUS-000-APP-121-14-15 dated 30.07.2014
Appeal No. ST/13520/2014	2012-13	SCN dated 22.07.2013	Service tax of Rs. 4,99,913/- + Interest and Penalty	49/ST/2013 dated 31.12.2013	RJT-EXCUS-000-APP-177-14-15 dated 28.08.2014

1.1 The brief facts of the matter are that the appellant is a registered assessee of Service tax department under the category of "Stock Broker's Service, Banking & Financial Services and Business Auxiliary Services. During the course of audit it was observed that the Appellant was charging annual maintenance charges from their clients holding demat account with the appellant and were paying service tax on the said charges. However it was noticed that the Appellant was not paying Service tax in respect of certain category of clients which had opted for "Deposit Schemes". The Appellant had introduced the four schemes for their customer/demat account holders and collected Rs. 10,000/- , Rs. 4000/-, Rs. 3000/- , Rs. 2500/- and Rs. 1250/- as interest free deposit. Initially the Appellant deducted the amount of Rs. 1000, Rs. 400, Rs. 300 , Rs. 250 and Rs. 125 towards Annual maintenance contract (AMC) fees and paid the service tax. However, for the subsequent periods they stopped paying any service tax in respect of their clients to whom they have undertook the Deposit Scheme. After the Audit, a show cause notices was issued to appellant demanding Service Tax and proposing penalty under Section 76, 77 and 78 of the Act. The matter came to be adjudicated vide respective above Orders-in-Original wherein the lower adjudicating authority confirmed the Service tax liability of the Appellant as mentioned above and also imposed the penalty under Section 76,77 and 78 of Act. Being aggrieved, the appeals were preferred before the Commissioner (Appeals) who vide above respective orders-in-appeal under

challenge before him upheld the demand of Service tax and penalties under Section 77 and 78 of the Finance Act. Resultantly the appellant is before this Tribunal.

2. The learned counsel Shri Sudhanshu Bissa, learned counsel appearing for the Appellant submits that the impugned order passed by the Commissioner (Appeals) is erroneous because there cannot be any service tax demand on the refundable deposit. The Appellant kept the deposit of client's only as security in case if the client defaults in payment. Therefore, the deposit was only a security kept by the Appellant and no service tax could have been charged and levied on such security deposit. The Appellant during the proceedings has shown the evidence of the fact that the security amount kept by the appellant was refunded to the customers who had discounted the service provided by the Appellant. Thus, there being no dispute on the fact that the interest free deposit kept by the Appellant was solely used as security deposit, the Commissioner (Appeals) could not have confirmed the demand holding the aforesaid amount as consideration for rendering any service.

2.1 He submits that a refundable deposit is not a "charge" collected by the service provider for providing service and therefore, it can never be a taxable value in terms of Section 67 of the Finance Act. The Commissioner (Appeals) has not appreciated the fact that the appellant is prohibited from utilizing the deposit for any monetary benefit in terms of the circular No. 80626/01 dated 17.03.2001 issued by the Bombay Stock Exchange. Moreover, the amount was not used by the appellant as payment for providing any service and therefore, the recovery of Service tax on such security deposit was against the provisions of Section 67 of the Finance Act, 1994.

2.2 He also submits that Commissioner (Appeals) has not appreciated the Chartered Accountant Certificate dated 20.08.2012 to the effect that the amount collected as deposit was not utilized by the Appellant for any financial operations. Moreover, the certificate also certified that the amount received by the Appellant as interest free security deposit was shown in the balance sheet as other liabilities. Thus, the amounts in question were only deposit which were maintained for security purpose and were refundable on closer of the account by the client.

2.3 The Commissioner (Appeals) has committed an error in confirming the demand by holding that deposit was 'consideration' and the depositors were rewarded by way waiver of AMC. 10% of the deposit was charged as AMC and the Service tax was paid on the said amount at the very outset. 10% of the deposit was more than the annual maintenance charges collected annually. This fact was completely overlooked by the Commissioner (Appeals). Moreover, the Commissioner (Appeals) has relied upon the calculation of Service tax given by the Adjudicating Authority in the Order on Original dated 29.03.2013. However, the calculation given in the OIO is also wrong because admittedly, the appellant has paid service tax on AMC charges which were Rs. 1000, Rs. 400, Rs. 300 and Rs. 250 respectively. Thus, if the Service tax liability was discharged by the Appellant on the AMC charges actually recovered, there could not be a further demand of Service tax on the same amount. This fact was also ignored by the Commissioner (Appeals) while relying upon the calculations given by the Adjudicating Authority.

2.4 He further submits that both the adjudicating authority have gone beyond the scope of the show cause notice as the SCN had proposed to recover tax on security deposits but the original adjudicating authority as well as the Commissioner (Appeals) have confirmed the demand on the basis of AMC charges which were waived by the Appellant. Thus, the order of the lower authorities are diagonally opposite to the issue involved in the show cause notice and therefore, service tax demand on such basis deserves to be set aside in the interest of Justice.

2.5 He also submits that demand is time barred and extended period of limitation cannot be invoked in the present case.

2.6 He also placed reliance on the following decisions in support of above submissions.

- M/s Dish TV India Ltd. Vs. Commissioner of Cus., C.Ex & S.T., Noida-2019(25)GSTL 68 (Tri. All)
- Samir Rajendra Shah Vs. Commissioner of Central Excise, Kolhapur – 2015(37) STR 154 (Tri. Mumbai)
- M/s Murli Relators Pvt. Ltd. Vs. Commissioner of Central Excise, Pune - III- 2015(37) STR618 (Tri. – Mumbai)

- M/s VST Industries Ltd. Vs. Collector of Central Excise, Hyderabad – 1998 (97)ELT 395 (SC)
- Karad Nagar Parishad Vs Commissioner of C.Ex & S.T. Kolhapur – 2019(20)GSTL 288 (Tri. -Mumbai)
- Commissioner Vs. M/s Reliance Parts and Terminals Ltd. – 2016(334) ELT 630 (Guj.)
- Commissioner of Central Excise Vs. M/s Gas Authority of India Ltd. – 2008 (232) ELT 7 (SC)
- M/s Mega Trends Advertising Ltd. Vs. Commr. Of C.Ex & S.T. Lucknow – 2020 (38) GSTL 57 (Tri. All)
- (xi) M/s Tally Solutions Pvt. Ltd. Vs . Commissioner of C.Ex. Bangalore.
- M/s H-Tech Puplicities Vs. Commissioner of Central Excise, Madurai.
- M/s Reliance Life Insurance Company Ltd. Vs. Commissioner – 2018 (19) GSTL J 66 (Tri. Mumbai)

03. On the other hand, Shri Ghanshyam Soni, learned Joint Commissioner (AR) reiterated the findings in the impugned orders.

04. We have gone through the records of the case and considered the submissions made by the Appellant in their grounds of appeal as well as the submissions made at the time of hearing and also the submissions made learned Authorized Representative. The dispute in the present appeals relates to service tax on interest free deposit amount collected by the Appellant from the demat account holders under the Scheme and in lieu of the same Appellant has not collected AMC charges. However, we find that the said "Interest Free Deposit' did not represent value of any taxable service. The said deposit amount was kept with the Appellant as security deposit to adjust the amount in case of any default in making payment by the client. The said deposit amount also refundable to client. We find that in the present matter Appellant also produced Certificate issued by the Chartered Accountant who certify that Appellant have not used the amount collected by them as 'Interest Free Security Deposit' from client for any financial operations or for earning any interest and shown the said amount in Balance Sheet as Current Liability. The amount collected by the Appellant from the clients is in fact an interest free refundable deposit and is not towards any advance for a service. It is, therefore, not taxable.

4.1 We further find that Section 67 provides that taxable value is the consideration whether in monetary or monetary form. Therefore, if any benefit accrues to either party which is not in the nature of consideration agreed upon by the parties, the same is not liable to be added to the value of service in terms of Section 67. Further, there is no deeming provision for increasing the value of consideration either in Section 67 or in the Service Tax (Determination of Value) Rules, 2006 framed thereunder. Here, the deposit is taken for a different purpose. Thus, the said deposit serves a different purpose altogether and it is not a consideration for providing service. The 'consideration for service' is absent in the present case, therefore, what can be levied to Service Tax is only the consideration received for the service charged and no notional interest on the deposit taken can be levied to tax. There is no provision in Service Tax law for deeming notional interest on deposit taken as a consideration for providing the services. Therefore, in the absence of a provision in law providing for a notional addition to the value/price charged, the question of adding notional interest on the deposit amount as a consideration received for the services rendered does not arise.

4.2 We also find that Supreme Court in Commissioner of Service Tax v. M/s. Bhayana Builders 2018 (10) G.S.T.L. 118 (S.C.), while deciding the appeal filed by the Department against the decision of the Tribunal, also explained the scope of Section 67 of the Act. The Supreme Court observed that any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The observations are :

> *"The amount charged should be for "for such service provided" : Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which servicetax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply of goods provided by the service recipient to the service provider is neither an amount "charged" by the service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined."*

The aforesaid view was reiterated by the Supreme Court in *Union of India* v. *Intercontinental Consultants and Technocrats* [2018 (10) G.S.T.L. 401 (S.C.)] and it was observed that since service tax is with reference to the value of service, as a necessary corollary, it is the value of the services which are actually rendered, the value whereof is to be ascertained for the purpose of calculating the service tax payable thereupon.

4.3 We also find that issue of addition of notional interest on refundable security deposit in the value of service has already been settled by the Tribunal in the following Judgments.

(i) In the case of *Kalani Infrastructure Pvt. Ltd.* - 2018 (8) TMI 247 the Tribunal also took the same view and held as under:-

> *"6. The case of the department is that in addition to the service tax payable on rent, the liability for the tax also extends to the notional interest accuring on the lump sum deposit received by the Appellant from the lessee. We find that such a stand is not justified particularly in view of the decision of the Tribunal in the case of Murli Relators Pvt. Ltd. (supra) cited by the Appellant in their support. The Tribunal observed as follows:*
> *6.3 In the case before us, there is not even an iota of evidence adduced by the Revenue to show that the security deposit taken has influenced the price i.e. the rent in any way. In the absence of such evidence, it is not possible to conclude that the notional interest on the security deposit would form part of the rent. We also do not find any reason for adopting a rate of 18% per annum as rate of interest. Adoption of such an arbitrary rate militates against concept of valuation. In view of the foregoing, we hold that notional interest on interest free security deposit cannot be added to the rent agreed upon between the parties for the purpose of levy of service tax on renting of immovable property."*

(ii) In the case of Murli Realtors Private Limited Others. v. Commissioner of Central Excise, Pune-III [2015 (37) S.T.R. 618 (Tri. - Mumbai)], a Division Bench of the Mumbai Tribunal made the following observations with regard to the security deposit towards the renting of immovable property and the observations are as follow :

> *"6.1 Section 67 of the Act, reproduced in para 4.1 above, clearly provides that only the consideration received in money for the service rendered is leviable to Service Tax. The consideration for renting of the immovable property is the amount agreed upon between the parties and on this amount the appellant is discharging Service Tax liability. The security deposit is taken for a different purpose altogether. It is to provide for a security in case of default*

> *in rent by the lessee or default in payment of utility charges or for damages, if any, caused to the leased property. Thus, the security deposit serves a different purpose altogether and it is not a consideration for leasing of the property. The consideration of the leasing of the property is the rent and, therefore, what can be levied to Service Tax is only the rent charged and no notional interest on the security deposit taken can be levied to tax. There is no provision in Service Tax law for deeming notional interest on security deposit taken as a consideration for leasing of the immovable property. Therefore, in the absence of a specific provision in law, as held by the Hon'ble Apex Court in the case of Moriroku UT India (P) Ltd. (supra), there is no scope for adding any notional interest to the value of taxable service rendered. Even in the excise law, under Rule 6 of the Valuation Rules, unless the department shows that the deposit taken has influenced the sale price, notional interest cannot be automatically included in the sale price for the purpose of levy. In the absence of a provision in law providing for a notional addition to the value/price charged, the question of adding notional interest on the security deposit as a consideration received for the services rendered cannot be sustained and we hold accordingly."*

(iii) In *M/s. ATS Township Private Limited* v. *Commissioner, Central GST, Noida* [2019 (11) TMI 297 (CESTAT-Allahabad)], a Division Bench of this Tribunal observed as follows :

> *"3. The issue relates to inclusion of the amount collected by the appellant as IFMS. Revenue's contention is that the said collected amount would fall under the category of 'Management Maintenance and Repair Services' and would be liable to servicetax separately.*
> *We note that the said amount collected by the appellant from the flat owners is towards the security for the purpose of maintenance of the building and to cover the eventual default made by any of the flat owners for payment of monthly maintenance charges. As per the agreement with the flat owners, the said amount is liable to be refunded to them within the period of Six months from the date of termination of the said agreement. The Adjudicating Authority observed that the genuineness of the said term is very much doubted inasmuch as the appellant had not produced any evidence to show that the said IFMS was ever refunded to anyone. We really fail to understand the said reasoning of the Adjudicating Authority. The amount is refundable in case of termination of the ownership agreement and if no such termination has taken place till date, the amount would not be refunded. As long as the provisions for refund of the said amount in the agreement itself is there, it has to be considered that the said amount is refundable and was towards security deposits and was not for the purpose of providing any services, so as to levy tax on the same."*

In view of the above judgments coupled with the facts that department could not bring on record any clinching evidence that the deposit has influenced the service charges, the demand is not sustainable.

05. Thus, for all the reasons stated above, it is not possible to sustain the impugned orders passed by the Commissioner (Appeals). Accordingly, the impugned orders are set aside and the appeals are allowed.

(Pronounced in the open court on 12.04.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul