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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.250 of 2012

(Arising out of OIA-53/2009/STC/KANPAZHAKAN/COMMR-A-/AHD dated 14/02/2012 passed by Commissioner of Service Tax-SERVICE TAX - AHMEDABAD)

Saurin Investments Private Limited **.....Appellant**
10, Arun Society,
Paldi, Ahmedabad, Gujarat

VERSUS

C.S.T.-Service Tax – Ahmedabad **.....Respondent**
7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

APPEARANCE:
Shri S J Vyas, Advocate for the Appellant
Shri R P Parekh, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10026 /2023

DATE OF HEARING: 14.09.2022
DATE OF DECISION: 10.01.2023

RAJU

The appellant are a stock broking firm. This appeal has been filed against inclusion of NSDL & CSDL charges in assessable value for the purpose of service tax by the appellant.

02. The dispute relates to includability of NSDL/CSDL charges paid by the appellant to the depositories. The same is recovered by the appellant from their clients. The appellant had not included the said amounts in the assessable value for the purpose of payment of service tax. It is noticed that in the appellant's own case, the tribunal vide Order No. A/1538/WZB/AHD/2009 dated 16.07.2009 has allowed the exclusion of the said charges from the assessable value relying on the board circular B-11/1100-TRU dated 9.7.2001. The impugned Show Cause Notice issued to the appellant was dropped by the original adjudicating authority on the ground of limitation relying on the aforesaid circular issued by the board. On revenue's appeal the Commissioner (Appeals) reversed the order and confirmed the demand.

2.1 It is noticed that the issue of includability of NSDL/CSDL has been considered by the tribunal in the case of M/s. KUNVARJI FINSTOCK PVT. LTD.- 2018 (12) TMI 344- CESTAT AHMEDABAD and in the case of M/s. INNOVATIVE SECURITIES PVT. LTD.- 2018 (11) TMI 1473- CESTAT AHMEDABAD. It has been the consistent stand of the tribunal that these charges being statutory charges as per SEBI Rules should not be included for the purpose of service tax. The tribunal vide Order No. A/12761-12788/2017 dated 29.09.2017 had observed as follows:-

> ***"9.*** *The limited question of law involved in the present appeals is to addressed is: whether the appellants-stock brokers are required to include NSE/BSE transaction charges, SEBI turnover fees, Stamp duty, Depository/Demat charges and Security Transaction charges in the value of 'brokerage and commission charges' recovered from their customers/clients. The contention of the Advocates for the respective appellants is that these charges are collected separately and in accordance with various statutory Bodies Regulations and not retained by the stock brokers but deposited with the authorities concerned viz., Stock Exchanges, hence, such charges cannot form part of the taxable value as alleged by the Dept. The determination of the aforesaid question should not the same has been considered by way of judgments Including M/S LSE Securities Ltd (supra)*
>
> > *"12.1 Matters before us fall within the periods before 2001 and after 2001 but before 2004. When service tax was introduced in the year 1994 to tax the service provided to investors by stock brokers in connection with sale or purchase of securities listed on a recognized stock exchange, Legislature, up to the year 2001 intended that aggregate of the commission or brokerage charged to the investors by stock broker for sale or purchase of securities shall be taxed under the charging provision of the Act. So also the commission or the brokerage paid by stock broker to any sub-broker was made liable to tax. Such receipts were measure of value for taxation. The valuation provision incorporated in Section 67 of the Act envisaged that aggregate of commission or brokerage only shall be measure of tax. Basis of taxation was provided in express terms and no implied taxation was permitted by law.*
> >
> > *12.2 Law is well settled that there is nothing like an implied power to tax. The source of power which does not specifically speak of taxation cannot be so interpreted by expanding its width as to include therein the power to tax by implication or by necessary inference. The judicial opinion of binding authority flowing from several pronouncements of the Hon'ble Supreme Court has settled these principles: (I) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the Light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject.*

12.3 There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the Legislature's failure to express itself clearly. It is well settled that power to tax cannot be inferred by implication; there must be a charging section specifically empowering the State to levy tax. When these are the principles laid down by Apex Court in the case of Slate of West Bengal v. Kesoram Industries Ltd. - (2004) 10 SCC 201, bringing a strange element to the ambit of tax shall be without authority of law. There was no scope provided by Section 67 of the Act to expend its width to have artificial measure of levy bringing a receipt by implication or inference running counter to the charging provision.

12.4 The scheme of valuation of aforesaid service which was in force till 15-7- 2001 underwent amendment by Finance Act, 2001. The amending Act replaced Section 67 by Finance Act, 2001, prescribing levy of tax on the gross amount charged by service provider (stock broker) for the taxable service provided by him. Such aggregate charge was gross value. An explanation appeared in the amended section declaring that value of taxable service as the case may be shall include certain receipts prescribed by different clauses appearing under Section 67. Clause (a) is the relevant clause insofar as that relates to taxable service provided by stock broker and that is under consideration in these appeals. That clause states that aggregate of commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock broker to any sub-broker shall be Liable to service tax. Thus, there is no extended meaning of measure of levy even by amended definition of valuation of taxable service.

12.5 Provision of Section 67 provides the basis to determine the value of taxable service. No ambiguity persists in Section 67 of the Act. 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. Charging section in a taxing statute is to be construed strictly. As is often said, there is no equity about tax. If the words used in a taxing statute are clear, one cannot try to find out the intention and the object of the statute (Ref: Govt. of Andhra Pradesh V. P. Laxmi Devi - (2008) 4 SCC 720 - AIR 2008 SC 1640].

13. Learned Counsels arguing the matter are correct to say that budget speech of the Hon'ble Finance Minister made clear what was intended to be taxed in respect of service provided by stock broker. It was submission of the Learned Counsel Shri Mittal that insofar as stock brokers are concerned, brokerage or commission charged by them only from value of taxable service and that was intended to be taxed by the budget of 1994-95. This was the proposal in Part 'B' of the Budget presented to the Parliament on 28th February, 1994. Reading of the legislative intent from the budget speech and the express Legislation in Section 67 of the Act does not Leave any room for implication of ambiguity. Therefore, express grant of the statute no way leaves scope for implication to make the statutory grant ineffective. Law being well settled that there is no intendment in taxation and the State has to discharge its burden of proof to bring the subject into tax, there is no scope to bring any other element of receipt 5 Appeal No. ST/467-

468/2010 other than brokerage or commission to the scope of assessable value in respect of service provided by stock brokers.

14. Normally value is derived from the price and value is the function of the price. This is conceptual meaning of value. Section 67 is the sole repository of law governing value of taxable service provided by the stock broker. Any charge on the non-includible elements other than brokerage or commission will result in arbitrary taxation. Similarly receipts not in the nature of commission or brokerage should not be taxed in disguise. The brokerage or commission service provided by stock broker shall be liable to service tax. That being consideration for taxable service provided, become assessable value of such service. Because tax is compulsory exaction, no subject shall be made Liable without authority of law. To the extent authority is vested, only to that extent tax can be imposed. Commission or brokerage charged by stock brokers are only liable to tax by express provision of law. Any other exercise of authority beyond that shall make that fatal.

15. The correct assessable value of taxable service usually is the intrinsic value of the service provided since service commands that value only and that should only be taxed without any hypothetical rule of computation of value of taxable service under Section 67 of the Act. The other receipts a stock broker makes are irrelevant for determination of the assessable value of taxable service provided by him. Thus the test is whether a receipt of stock broker is in the nature of commission or brokerage to levy service tax. Burden of proof failed to be discharged by Revenue to bring the receipts to charge

16. The appellants in these appeals received "turnover charges", stamp duty, BSE charges, SEBI fees and DEMAT charges contending that the same was payable to different authorities and claimed that the same is not taxable. But Revenue taxed the same on the ground that such receipt by stock broker was liable to tax. Revenue failed to bring out whether the turnover charges and other charges in dispute in these appeals received by appellant were commission or brokerage. The character of receipts was claimed by appellants as recoveries from investors to make payment thereof to respective authorities in accordance with statutory provisions of Indian Stamp Act and SEBI guidelines and were not received towards consideration in the nature of commission or brokerage of sale or purchase of securities. While burden of proof was on Revenue to establish that such receipts were in the nature of commission or brokerage or had the characteristic of such nature that was failed to be discharged. The character of commission or brokerage is remuneration for the service of stock broking provided by a stock broker to investors. Therefore, aforesaid charges realized by appellants were not being of commission or brokerage are not taxable and shall not form part of gross value of taxable service. On merit, all the appellants succeed on the fundamental principles of taxation. Therefore, other contentions on merit made in respective appeals are not considered in this order."

10. *Similar view has been expressed recently by the Tribunal in M/s Consortium Securities Pvt. Limited's case (supra). We do not find any reason to deviate from the ratio laid down in the aforesaid judgments of this*

Tribunal. We are also of the view that the allegation of the department that the demat charges collected by the brokers are banking and financial service, hence taxable, also devoid of merit in as much such charges are collected by the Appellant, and paid to the depository participants viz. CDSL/NSDL who are authorized to levy such charges under the Depositories Act, 1996. Thus, in view of the aforesaid precedent, we do not find merit in impugned orders and accordingly set aside. The appeals are allowed with consequential relief, if any, as per law."

03. In view of the above and also in view of the fact that in the appellant's own case, the tribunal has held in favour of the appellant on this very issue the impugned order cannot be sustained.

04. The impugned order is set aside. Appeal is allowed.

(Pronounced in the open court on 10.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul