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

REGIONAL BENCH-COURT NO. 3

SERVICE TAX APPEAL No. 12130/2014-DB

(Arising out of OIO-VAD-EXCUS-002-COM-090-13-14 dated 05/03/2014 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

V S E Stock Services Ltd **.....Appellant**
Fortune Tower. 3rd Floor,
Sayajigunj, VADODARA, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara,Gujarat-390023

With

SERVICE TAX APPEAL No. 10691/2016-DB

(Arising out of OIA-VAD-EXCUS-001-APP-387-2015-16 dated 22/12/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

V S E Stock Service Ltd **.....Appellant**
Fortune Tower, 3rd Floor,
Sayajigunj, Vadodara, Gujarat.

VERSUS

C.C.E. & S.T.-Vadodara-ii **.....Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara,Gujarat-390023

APPEARANCE:
Shri Vivek Bapat, Advocate for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

Final Order No. 10024-10025/2024

DATE OF HEARING: 22.12.2023
DATE OF DECISION: 03.01.2024

RAMESH NAIR

The issue involved in the present case is that whether

(i) Demat/ Depository charges collected from sub brokers whether the same is liable to service tax under banking and other financial services.

(ii) Transaction/ administrative charges collected from sub-brokers is liable to service tax under the head of stock broker service.

(iii) VSAP/TWS charges collected from sub broker is liable to service tax under the head of stock broker service.

1.2 The brief facts of the case are that the appellant being the stock broker collected DEMAT and depository charges and the same is paid to Vadodara Stock Exchange Clearing House which is registered as depository participant. The appellant during the relevant time were not having the necessary statutory permission to act as a depository participant.

1.3 As regard the transaction charges/ administrative charges and VSAP/ TWS (Computer to Computer Linkage) the same are collected on behalf of the respective stock exchanges namely BSE/NSE and the same are paid to them.

2. Shri Vivek Bapat, Learned Counsel appearing on behalf of the Appellant at the outset submits that all the charges collected by the appellant are not their service charge but the statutory charges and the same are deposited to Vadodara Stock Exchange Clearing House and Bombay Stock Exchange and National Stock Exchange, therefore, the same do not attract service tax under any head. He submits that all the issues have been settled in the various judgments, he relied upon the following judgments:-

- Edelweiss Financial Advisor Ltd vs. CCE & ST , Ahmedabad- 2023 (9)TMI 522 – CESTAT AHMEDABAD
- Saurin Investments Pvt Ltd – 2023 (1) TMI 454-CESTAT AHMEDABAD

- Indses Securities and Finance Ltd – 2018 (2) TMI 569 – CESTAT AHMEDABAD
- Anagram Stock Broking - 2018 (10) TMI 641 – CESTAT AHMEDABAD

2.1 He further submits that the Hon'ble Supreme Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd vs. UOI while upholding the order of the Hon'ble Delhi High Court – 2018 (3) TMI 357 (SC) held that service tax is chargeable only on the charges for providing services. In the present case since reimbursement collected from the sub – broker on behalf of stock exchanges, the same cannot be part of the value of services, therefore, the demand is not sustainable.

3. Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that all the charges on which service tax was demanded by the Revenue are statutory charges which are though collected from the sub- brokers but the same was deposited to the stock exchange i.e. Vadodara Stock Exchange Clearing House, Bombay Stock Exchange & National Stock Exchange , therefore, these charges were not collected as service charge of the appellant but only as reimbursement which was paid to the stock exchange. Therefore, these charges cannot be considered as the service charge of any services provided by the appellant to their sub-broker. These issues have been consistently decided in various judgments cited by the appellant. In the case of Edelweiss Financial Advisor Ltd. (Supra) it has set aside the demand of service tax on computer to computer linkage service wherein following order was passed:

"4. On careful consideration of the submission made by both the sides and perusal of records, we find that in the present case the demand was confirmed on the appellant who

is acting as a stock Broking Company on the charges collected against computer to computer linkage service. This very issue in the appellant's own case has been decided in their favour vide this Tribunal's final order No. A/12224/2022 dated 21.12.2022, the said order is reproduced below:

> *"4. On careful consideration of the submissions made by both the sides and perusal of record, we find that in the light of decision of this Tribunal vide order No. A/11854-11858/2018 dated 09.04.2018 wherein the present appellant is also one of the appellants, has decided the same issue in their favour. The said decision of the Tribunal is reproduced below:-*
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> *"5. After hearing both the sides and examining the record, we find that in these appeals the service tax has been demanded on various charges/commissions/income, which are dealt under the following heads:-*
>
> *(A) Service Tax on CTCL charges and Depository Charges :- We find that these charges relate to payments made by the appellant for the CTCL computer program. Such a program provides a single point trading access to equity, commodity and currency derivatives markets. The NSE (National Stock Exchange) charges fees for giving this facility to the brokers. The broker then shares this service with the customers and charges the customers to recover the fees paid to NSE by way of reimbursements. The Depository/Demat Charges are levied by the Depository under Depositories Act, 1996. The appellants collect these charges from customers and pay the same to depository participants like CDSL or NSDL. It has been held by this Tribunal in the case of Span Caplease Pvt Ltd (supra) that such charges, which are collected separately and in accordance with various statutory bodies regulations and not retained by the stock brokers but deposited with the authorities concerned (e.g. National Stock Exchange), such charges cannot form part of the taxable value. Relevant portions of the said judgment are extracted below:*
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> > *"9. The limited question of law involved in the present appeals is to be 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 State 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 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 broker 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 or 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 Ltd.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 authorised 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."

Accordingly, we hold that the aforesaid charges realized by the appellant are not in the nature of commission or brokerage and that being so; the same shall not form part of the value of taxable services.

(B) Service Tax on income from distribution of Mutual funds and Commission from Banks/Companies for investment in their Bonds:- As rightly pointed out by the Ld. Advocate, in appeal nos. ST/765/2011 and ST/771/2011, the demand in the show cause notice has been raised in the category of banking and financial services whereas in the adjudication order, the same has been confirmed under Business Auxiliary Service (BAS), which is beyond the show cause notice. This fact has not been rebutted by the Ld. A.R. On this ground alone, the demand of service tax under this head is liable to be set aside in these appeals. On merits also, we find that the legal position on this issue is already settled as the demand was raised by the department only on the basis of the Circular No. 66/15/2003- ST dt. 05.11.2003. 9 ST/69/2009, ST/166/2010, ST/494, 765, 771/2011 However, the said circular has been quashed by the Hon'ble High Court of Andhra Pradesh in the case of Karvy Securities Limited (supra). The said judgment has been affirmed by Hon'ble Supreme Court as reported in 2015 (39) STR 705 (SC). The above judgment of Hon'ble High Court of Andhra Pradesh has been followed by this Tribunal in the case of CST, Delhi vs. ABN Amro Bank (supra), wherein this Tribunal has held as under:

> *"3. The respondent is engaged in the mobilising, selling, recommending mutual fund units of various mutual fund houses and also in selling, mobilising recommending investments in bonds issued by banking and non-banking companies. These activities were clarified to be falling under the category of 'Business Auxiliary Services by Board's Circular No. 66/15/2003-S.T., dated 5-11-2003. Relying on the same, Show Cause Notice was issued to the respondent proposing demand of Service Tax and proposing imposition of penalties. Commissioner dropped the proceedings relying on the decision of the Hon'ble High Court of Andhra Pradesh in the case of Karvy Securities Ltd. v. Union of India reported in 2006 (2) S.T.R. 481 by which the circular dated 5- 11-2003 was set aside.*
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> *4. Ld. SDR, drawing our attention in the grounds of appeal submits that the said decision of the Hon'ble High Court stands appealed against before the Hon'ble Supreme Court. Fairly, he concedes that he is not aware that any order has been passed by Hon'ble Supreme Court setting aside the judgment or any stay has been granted.*
>
> *5. Ld. Advocate submits that though appeal has been admitted no order has been passed by the Hon'ble Supreme Court so far. Ld. Advocate for the respondent also relies on the decision in the case of Commissioner of S.T. Delhi v. P.N. Vijay Financial Services Pvt. Ltd. reported in 2008 (12) S.T.R. 628 (Tri.-Del.) holding similar view.*
>
> *6. We find that the Commissioner has dropped the proceedings on the ground that the Circular dated 5-11-2003 of the Board which was the basis for issue of Show Cause Notice stands set aside by the Hon'ble High Court of Andhra Pradesh. The said judgment of the Hon'ble High Court has not been set aside or stayed. Under these circumstances, we do not find any infirmity in the order of the Commissioner."*

Same view has been taken by this Tribunal in the case of P.N. Vijay Financial Services Pvt Ltd. - 2008 (12) STR 628. In view of the above, the demand of service

tax on account of income from distribution of mutual funds and selling bonds issued by banks/companies is not sustainable and the same is set aside.

(C) Service Tax demand on income from RBI bonds:- We find that the issue of liability to pay the service tax on commission received from sale of RBI bonds is no longer res integra and has been settled by this Tribunal in favour of assessee in the case of Enam Securities Pvt Ltd (supra) and HDFC Bank Ltd (supra). In this regard, in the case of Enam Securities Pvt Ltd (supra), it was held as under:

> *"4.1 Unlike other banks, RBI does not undertake borrowing or lending on its own. Whenever the RBI undertakes borrowing activities, it is on behalf of the Government of India to manage the Indian economy which its constitutional responsibility. Therefore, the lending or borrowing of money by the Government is a sovereign function and on such functions there cannot be any tax liability whether by way of direct tax or by way of indirect tax. This is the principle followed by this Tribunal in the case of HDFC Bank and Canara Bank case (supra)*
>
> *5. In view of the above, the impugned demands are clearly unsustainable in law. Accordingly, we set aside the same and allow the appeals with consequential relief, if any, in accordance with the law."*

The ratio of the judgment of this Tribunal in the case HDFC Bank Ltd (supra) is reproduced below:

> *"4.1 As per Notification dated 13-3-2003 issued by the Government, the tax savings bonds have been issued as part of the borrowing programme of the Government from the public. As per the clarification issued by the RBI videletter dated 28-10-2004, copy of which is available on record, the said bonds issued under Section 2(2) of Public Debt Act, 1944, constitute a Government security and the bonds were issued by the Government for raising a public loan. Therefore, these is no doubt that the tax savings bonds issued by the RBI and sold by the appellant bank is a Government Security. For this transaction in Government securities, the appellant bank has received a brokerage for sale of the security. From the Circular dated 10-8-2010 issued by the C.B.E. & C., it is clear that there is no Service Tax liability on underwriting fee or underwriting commission received by the primary dealers for dealing in Government securities; the same logic would apply in respect of brokerage also. Further, this Tribunal in the case of Canara Bank and Union Bank of India cases (cited supra) has held that the sale of RBI bonds would amount to statutory/sovereign function and cannot be subjected to any tax liability.*
>
> *4.2 Following the ratio of these decisions and the clarification issued by the C.B.E. & C. as well as by the RBI, we hold that the impugned demands are not sustainable. Accordingly, the same is set aside. The appellant is also entitled to consequential relief, if any, in accordance with the law. Appeal is disposed of in the above terms."*

In view of the above, we hold that the demand of service tax on commission received from sale of RBI bonds is not liable to service tax.

6. As the demands in appeal nos. listed at Sr. No. 1, 2, 4 & 5 have been set aside, accordingly the penalties imposed on the basis of these demands do not survive

7. We note that appeal nos. ST/166/2010 and ST/494/2011 are both in relation to the show cause notice bearing F.N. ST29/O7A/SCN/Anagram/JC/08 dt. 08.03.2008, which was adjudicated by Additional Commissioner vide Orderin-Order No. STC/5/ADC/2009 dt. 21.07.2009. In the said Original-in-Order dt. 21.07.2009, demand on account of CTCL Charges, income from public issue/RBI relief bonds and income from distribution

of mutual funds was confirmed along with interest and penalty under Section 78 was imposed. However, penalty under Section 76 of the Finance Act, 1994 was dropped. While Revenue went for Revision proceedings for imposition of penalty under Section 76 ibid, the appellant filed appeals before Commissioner (Appeals) for setting aside the entire demand as well as the penalty under Section 78 ibid. In appeal no. ST/494/2011, in the impugned order dt. 18.05.2011, the Commissioner imposed the penalty under Section 76 ibid. In appeal no. ST/166/2010, in the impugned order dt. 23.12.2009, the Commissioner (Appeals) upheld the service tax demand on CTCL Charges and income from public issues/RBI bonds along with pro rata penalty under Section 78 ibid. However, demand on commission on distribution of mutual funds was dropped. Since we have already set aside the demand of service tax pertaining to CTCL charges and income from public issues/RBI bonds emanating from the Order-in-Original dt. 21.07.2009, the imposition of penalty under Section 76 in relation to the same Order-in-Original dt. 21.07.2009 is therefore not sustainable and is therefore set aside.

8. In view of the foregoing, impugned orders are not sustainable and the same are set aside.

9. In the result, the appeals are allowed."

5. In view of the above decision, the issue in hand is no longer res-integra. Accordingly, following the above Tribunal decision the impugned order is set-aside and the appeal is allowed."

From the above decision in the appellant's own case, the issue in the present case is no longer res-integra. Hence, no further discussion is warranted to decide this appeal.

5. Accordingly, following the above Tribunal's order, we are of the view that the demand in the present case is not sustainable. Hence impugned order is set aside. Appeals are allowed."

4.1 In the case of Saurin Investments Pvt Ltd (Supra) this Tribunal has held that NSDL/CDSL charges collected by the stock broking firm cannot be liable for service tax. In the present case the charges of stock exchange are similar charges therefore following the ratio of Saurin Investments case, the same is not liable for service tax.

4.2 In the case of Indses Securities and Finance Pvt Ltd this Tribunal held that NSE/BSE transaction charges, depository/ Demat charges are not liable to service tax in the hands of the stock broker. The said order is reproduced below:-

"9. The limited question of law involved in the present appeals is to be 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 :*
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> *(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;*
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> *(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* ***State 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 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 broker 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 or 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 Ltd.'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 authorised 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."*

5. From the above decisions, it is settled that all the charges which are involved in the present case have been held as not the service charges of the broking firm and hence not liable to service tax and this consistent view has been taken in the other judgments cited by the appellant. Therefore, in the present case also all the charges which were collected on behalf of the stock exchange are not liable to Service Tax .

6. Accordingly, the impugned orders confirming the demand of service tax are set aside and appeals are allowed with consequential relief.

(Pronounced in the open court on 03.01.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Arpita