IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY CIVIL JURISDICTION

WRIT PETITION (CIVIL) NO. ________ OF 2019

IN THE MATTER OF

PUNJAB NATIONAL BANK

PLOT NO. 4, SECTOR-10

DWARKA,

NEW DELHI-110070 PETITIONER NO. 1

STATE BANK OF INDIA

STATE BANK BHAVAN, MADAME CAMA ROAD

NARIMAN POINT,

MUMBAI-400021 PETITIONER NO. 2

KOTAK MAHINDRA BANK

27BKC, C 27, G BLOCK,

BANDRA KURLA COMPLEX, BANDRA (E)

MUMBAI-400051 PETITIONER NO. 3

HDFC BANK LTD

HDFC BANK HOUSE,

SENAPATI BAPAT MARG,

LOWER PAREL

MUMBAI-400013 PETITIONER NO. 4

AXIS BANK LIMITED,

C-2, WADIA INTERNATIONAL CENTER

6TH FLOOR,

PANDURANG BUDHKAR MARG

WORLI,

MUMBAI-400025 PETITIONER NO. 5

DEUTSCHE BANK AG,

2ND FLOOR, BLOCK B1

NIRLON KNOWLEDGE PARK,

WESTERN EXPRESS HIGHWAY

GOREGAON (E)

MUMBAI- 400063 PETITIONER NO. 6

THE HONGKONG AND SHANGHAI BANKING

CORPOATION LIMITED,

52/60, HSBC BUILDING,

MAHATMA GANDHI ROAD,

FORT, MUMBAI-400001 PETITIONER NO. 7

CORPORATION BANK,

H.O. P.B. NO 88

MANGALDEVI TEMPLE ROAD,

PANDESHWAR,

MANGALORE-575001 PETITIONER NO. 8

BANK OF BARODA

C-26, G-BLOCK,

BANDRA KURLA COMPLEX,

MUMBAI-400051 PETITIONER NO. 9

YES BANK LIMITED

15th FLOOR, TOWER 2,

INDIABULLS FINANCE CENTER,

SENAPATI BAPAT MARG,

ELPHINSTONE WEST

MUMBAI-400013 PETITIONER N0. 10

CITIBANK N.A

CLUB HOUSE ROAD,

ANNA ROAD HO,

CHENNAI,

TAMIL NADU-600002 PETITIONER NO. 11

ICICI BANK

ICICI BANK TOWERS,

BANDRA KURLA COMPLEX,

BANDRA,

MUMBAI-400051 PETITIONER NO. 12

STANDARD CHARTERED BANK,

23-25, MG ROAD, FORT,

MUMBAI-400001 PETITIONER NO. 13

DEEPAK TANEJA

CHIEF MANAGER (FINANCE AND TAXATION)

PUNJAB NATIONAL BANK

PLOT NO. 4, SECTOR 10,

DWARKA-110070 PETITIONER NO. 14

VISHVESH RAMMURTHY

CHIEF GENERAL MANAGER

STATE BANK OF INDIA

STATE BANK BHAVAN, MADAME CAMA ROAD,

NARIMAN POINT,

MUMBAI – 400021 PETITIONER NO. 15

SANDEEP SETH

CHIEF GENERAL MANAGER

STATE BANK OF INDIA

STATE BANK BHAVAN, MADAME CAMA ROAD,

NARIMAN POINT,

MUMBAI – 400021 PETITIONER NO. 16

PVBN MURTHY

HEAD OF TAXATION

STATE BANK OF INDIA

STATE BANK BHAVAN, MADAME CAMA ROAD,

NARIMAN POINT,

MUMBAI – 400021 PETITIONER NO. 17

SUSHIL KUMAR SHAH

HEAD OF TAXATION

STATE BANK OF INDIA

STATE BANK BHAVAN, MADAME CAMA ROAD,

NARIMAN POINT,

MUMBAI – 400021 PETITIONER NO. 18

SAGAR NATH KHAWRE

GROUP TAXATION

KOTAK MAHINDRA BANK

C-27, G BLOCK, BANDRA KURLA COMPLEX,

BANDRA (E),

MUMBAI – 400051 PETITIONER NO. 19

PRASAD LANKE

EXECUTIVE VICE PRESIDENT

KOTAK MAHINDRA BANK

C-27, G BLOCK, BANDRA KURLA COMPLEX,

BANDRA (E),

MUMBAI – 400051 PETITIONER NO. 20

MANISH KARDILE

GROUP EXECUTIVE VICE PRESIDENT

YES BANK LIMITED

15th FLOOR, TOWER 2,

INDIABULLS FINANCE CENTER,

SENAPATI BAPAT MARG,

ELPHINSTONE WEST

MUMBAI-400013 PETITIONER NO.21

BIMAL BHATTACHARYA

EXECUTIVE VICE PRESIDENT (FINANCE & ACCOUNTS)

AXIS BANK LTD

C-2, WADIA INTERNATIONAL CENTER

6TH FLOOR,

PANDURANG BUDHKAR MARG

WORLI,

MUMBAI-400025 PETITIONER NO. 22

PRASHANT KADAM

SENIOR VICE PRESIDENT

AXIS BANK LTD

C-2, WADIA INTERNATIONAL CENTER

6TH FLOOR,

PANDURANG BUDHKAR MARG

WORLI,

MUMBAI-400025 PETITIONER NO. 23

ANANYA SUNEJA,

HEAD FINANCE DEPARTMENT,

DEUTSCHE BANK AG

2ND FLOOR, BLOCK B1

NIRLON KNOWLEDGE PARK

WESTERN EXPRESS HIGHWAY

GOREGAON (E)

MUMBAI PETITIONER NO. 24

RAJESH PRABHU

EX-DIRECTOR (FINANCE)

DEUTSCHE BANK AG

2ND FLOOR, BLOCK B1

NIRLON KNOWLEDGE PARK

WESTERN EXPRESS HIGHWAY

GOREGAON (E)

MUMBAI PETITIONER NO. 25

AMIT PATWARDHAN

HEAD OF TAX, INDIA

HSBC BANK LTD

52/60, HSBC BUILDING

MAHATMA GANDHI ROAD, FORT,

MUMBAI-400001 PETITIONER NO. 26

ANAND SHUKLA

SENIOR VICE PRESIDENT-TAXATION

HSBC BANK LTD

52/60, HSBC BUILDING

MAHATMA GANDHI ROAD, FORT,

MUMBAI-400001 PETITIONER NO. 27

SANGEETA MHATRE

EX-HEAD OF TAX

HSBC BANK LTD

52/60, HSBC BUILDING

MAHATMA GANDHI ROAD, FORT,

MUMBAI-400001 PETITIONER NO. 28

CG PINTO

EX-GENERAL MANAGER – TAXATION

CORPORATION BANK, HO,

P.B. 88, MANGLA DEVI

TEMPLE ROAD, PANDESHWAR,

MANGALORE – 575001 PETITIONER NO. 29

R NATARAJAN

EX-GENERAL MANAGER – TAXATION

CORPORATION BANK, HO,

P.B. 88, MANGLA DEVI

TEMPLE ROAD, PANDESHWAR

MANGALORE – 575001 PETITIONER NO. 30

M B GANESH

EX-GENERAL MANAGER – TAXATION

CORPORATION BANK, HO,

P.B. 88, MANGLA DEVI

TEMPLE ROAD, PANDESHWAR,

MANGALORE – 575001 PETITIONER NO. 31

SHRI PANKAJ KHATRI

AGM, BANK OF BARODA

C-26, G-BLOCK,

BANDRA KURLA COMPLEX,

MUMBAI-400051 PETITIONER NO. 32

SHRI ASHOK DANGAICH

DGM, BANK OF BARODA

C-26, G-BLOCK,

BANDRA KULRA COMPLEX,

MUMBAI-400051 PETITIONER NO. 33

ROHIT GUPTA

ASSITANT GENERAL MANAGER, ICICI BANK

ICICI BANK TOWERS,

BANDRA KURLA COMPLEX,

BANDRA,

MUMBAI-400051 PETITIONER NO. 34

JEETENDRA VEDNERE

ASSISTANT GENERAL MANAGER, ICICI BANK

ICICI BANK TOWERS,

BANDRA KURLA COMPLEX,

BANDRA,

MUMBAI-400051 PETITIONER NO. 35

SHIVA PRASAD DASH

MANAGER (FINANCE)

STANDARD CHARTERED BANK

23-25, MG ROAD, FORT,

MUMBAI-400001 PETITIONER NO. 36

SHRI BHUSHAN DESAI

EX-MANAGER (FINANCE)

STANDARD CHARTERED BANK

23-25, MG ROAD, FORT,

MUMBAI-400001 PETITIONER NO. 37

ABDULLA Y PETTIWALA

EX-HEAD (CORPORATE

TAX) 58/70, PIPEWALA

BUILDING, SB ROAD,

COLABA,

MUMBAI-400005 PETITIONER NO. 38

INDIAN BANKS' ASSOCIATION

6th FLOOR, WORLD TRADE CENTER,

CENTER 1 BUILDING,

WORLD TRADE CENTER COMPLEX,

CUFFE PARADE,

MUMBAI – 400005 PETITIONER NO. 39

VERSUS

1. UNION OF INDIA,
   THROUGH SECRETARY
   MINISTRY OF FINANCE
   DEPARTMENT OF REVENUE
   NEW DELHI-110001 RESPONDENT NO. 1

2. DIRECTOR GENERAL OF
   GOODS AND SERVICES TAX INTELLIGENCE
   WEST BLOCK 8,
   WING 3, 1ST FLOOR,
   SECTOR I, RK PURAM,
   NEW DELHI–110066 RESPONDENT NO. 2

3. THE CENTRAL BOARD OF
   INDIRECT TAXES AND CUSTOMS
   NORTH BLOCK,
   DEPARTMENT OF REVENUE,
   MINISTRY OF FINANCE,
   GOVERNMENT OF INDIA,
   NEW DELHI – 110001 RESPONDENT NO. 3

4. ADDITIONAL DIRECTOR GENERAL
DIRECTORATE GENERAL OF
GOODS AND SERVICES
TAX INTELLIGENCE,
DELHI ZONAL UNIT,
WEST BLOCK 8, WING 3,
1ST FLOOR, SECTOR-1, R.K.PURAM,
NEW DELHI-110066 RESPONDENT NO. 4

5. ADDITIONAL DIRECTOR
GENERAL (ADJUDICATION)
DIRECTORATE GENERAL OF
GOODS AND SERVICE TAX
INTELLIGENCE (HEADQUARTERS)
2ND FLOOR, WEST BLOCK-8, WING NO.06
R.K.PURAM, SECTOR-1
NEW DELHI-110066 RESPONDENT NO. 5

6. GOODS AND SERVICES TAX COUNCIL
5TH FLOOR, TOWER II
JEEVAN BHARTI BUILDING
JANPATH ROAD, CONNAUGHT PLACE
NEW DELHI-110001 RESPONDENT NO. 6

CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OF CERTIORARI OR ANY OTHER ORDER OR DIRECTION TO DECLARE SECTION 66E(e) OF THE FINANCE ACT, 1994 AND SECTION 7(1A) READ WITH CLAUSE 5(E) OF SCHEDULE II OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AS ARBITRARY, AMBIGUOUS, VAGUE, INCAPABLE OF GIVING OUT A MEASURABLE VALUE AND THEREFORE VIOLATIVE OF ARTICLE 14, ARTICLE 19(1)(G) AND ARTICLE 265 OF CONSTITUTION OF INDIA, 1950.

CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OR ANY OTHER ORDER OR DIRECTION TO QUASH AND SET ASIDE THE IMPUGNED SHOW CAUSE NOTICES ISSUED TO PETITIONER NO. 1 TO PETITIONER NO. 38.

CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OF PROHIBITION OR ANY OTHER WRIT IN THE NATURE OF PROHIBITION OR ANY OTHER ORDER OR

DIRECTION TO PROHIBIT THE RESPONDENT NO. 2 AND ANY OTHER OFFICERS OF RESPONDENT NO. 3 FROM INITIATING ANY FURTHER PROCEEDINGS INCLUDING ISSUE OF SUMMONS, LETTERS OF ENQUIRIES, LETTERS CALLING FOR DATA AND INFORMATION, ETC WITH RESPECT TO ACTIVITIES COVERED UNDER THE IMPUGNED SHOW CAUSE NOTICES.

CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OR ANY OTHER ORDER OR DIRECTION TO THE RESPONDENT NO. 6 TO ISSUE NECESSARY CLARIFICATION AND DIRECTION PROHIBITING THE GST AUTHORITIES IN STATES, CENTER AND UNION TERRITORIES FROM INITIATING ANY FURTHER INVESTIGATION OR INQUIRY FOR LEVY OF GST ON THE ACTIVITIES COVERED UNDER THE IMPUGNED SHOW CAUSE NOTICES.

CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OF DECLARATION OR ANY OTHER WRIT IN THE NATURE OF DECLARATION THEREOF OR ANY

OTHER ORDER OR DIRECTION TO DECLARE THAT NO TAX UNDER THE ERSTWHILE FINANCE ACT, 1994 AND UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND ALLIED LEGISLATIONS CAN BE LEVIED ON THE ACTIVITIES ON WHICH SERVICE TAX IS PROPOSED TO BE LEVIED UNDER THE IMPUGNED SHOW CAUSE NOTICES ISSUED TO PETITIONER NO. 1 TO PETITIONER NO. 38.

CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OF CERTIORARI OR ANY OTHER WRIT IN THE NATURE OF CERTIORARI THEREOF OR ANY OTHER ORDER OR DIRECTION TO READ DOWN RULE 9(A) READ WITH RULE 2(H) OF THE PLACE OF PROVISION OF SERVICES RULES, 2012 RULES IN SO MUCH AS THE IMPUGNED SHOW CAUSE NOTICES IMPOSE A SERVICE TAX LEVY ON SERVICES PROVIDED BY BRANCHES OF THE PETITIONER NO. 3 TO PETITIONER NO. 5, PETITIONER NO. 8 TO PETITIONER NO. 10 AND PETITIONER NO. 12 LOCATED IN THE STATE OF JAMMU & KASHMIR,

I.E., OUTSIDE THE "TAXABLE TERRITORY" AS DEFINED UNDER SERVICE TAX LAWS.

CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT OF CERTIORARI OR ANY OTHER WRIT IN THE NATURE OF CERTIORARI THEREOF OR ANY OTHER ORDER OR DIRECTION TO DECLARE NOTIFICATION NO. 14/2017-CENTRAL TAX DATED 01.07.2017 WHEREFROM THE RESPONDENT NO. 4 HAS DERIVED POWER TO ISSUE THE IMPUGNED SHOW CAUSE NOTICES AS ULTRA VIRES THE PROVISIONS OF SECTION 3 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017.

TO,

THE HON'BLE CHIEF JUSTICE OF THE HIGH COURT OF DELHI AND HIS LORDSHIP'S COMPANION JUSTICES OF THIS HON'BLE COURT.

THE HUMBLE PETITION OF THE PETITIONER ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

Given the voluminous nature of the petition and the document annexed thereunder, for the sake of convenience and reference of the Hon'ble Judges, the Petitioners have provided herein a short table of contents:

1. The Petitioners are filing the present writ petition for the issuance of the following writs:

a. A writ of certiorari or any other order or direction to declare Section 66E(e) of the Finance Act, 1994 and Section 7(1A) read with Clause 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 as arbitrary, ambiguous, vague, incapable of giving out a measurable value and therefore violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950.

b. A writ or any other order or direction to quash and set aside the following Show Cause Notices and the demand made thereunder:

   i. Show Cause Notice bearing No. DZU / INV / D / PNB/ 536 / 2015 / 3059 dated 20.04.2018 issued to Petitioner No. 1.

   ii. Show Cause notices which have been sequentially numbered starting from DZU / INV / D / PNB / 536 / 2015 / 3060 to DZU / INV

/ D / PNB / 536 / 2015 / 3133, all dated 20.04.2018 issued to Circle offices of Petitioner No. 1.

iii. Show Cause Notice bearing No. DZU/INV/ST/G/539/2015/2760 dated 14.04.2018 issued to Petitioner No. 2.

iv. Show Cause Notice bearing No. DZU//INV//B/Kotak/544/2015/ 2771 dated 14.04.2018 issued to Petitioner No. 3.

v. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1984 dated 14.03.2018 issued to Petitioner No. 4.

vi. Show Cause Notice bearing No. DZU / INV / ST / F / 550 / 2015 / 2732 dated 12.04.2018 issued to Petitioner No. 5.

vii. Show Cause Notice bearing No. DZU / INV / ST / J / 541 / 2015 / 2572 dated 06.04.2018 issued to Petitioner No. 6.

viii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2495 dated 04.04.2018 issued to Petitioner No. 7.

ix. Show Cause Notice bearing No. DZU / INV / D / K / 542 / 2015 / 3175 dated 24.04.2018 issued to Petitioner No. 8.

x. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3021 dated 19.04.2018 issued to Petitioner No. 9.

xi. Show Cause Notice bearing No. DZU / INV / ST / I / 552 / 2015 / 3437 dated 27.04.2018 issued to Petitioner No. 10.

xii. Show Cause Notice bearing No. DZU / INV / ST / F / 549 / 2015 / 3347 dated 25.04.2018 issued to Petitioner No. 11.

xiii. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015

/ 3321 dated 25.04.2018 issued to Petitioner No. 12.

xiv. Show Cause Notice bearing No. DZU / INV / ST / J / 540 / 2015 / 3331 dated 25.04.2018 issued to Petitioner No. 13.

xv. Show Cause Notice bearing No. DZU / INV / D / PNB / 536 / 2015 / 3134 dated 20.04.2018 issued to Petitioner No. 14.

xvi. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2761 dated 14.04.2018 issued to Petitioner No. 15.

xvii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2762 dated 14.04.2018 issued to Petitioner No. 16.

xviii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2763 dated 14.04.2018 issued to Petitioner No. 17.

xix. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2764 dated 14.04.2018 issued to Petitioner No. 18.

xx. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2773 dated 14.04.2018 issued to Petitioner No. 19.

xxi. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2772 dated 14.04.2018 issued to Petitioner No. 20.

xxii. Show Cause Notice bearing No. DZU / INV / ST /I /552/2015/3438 dated 27.04.2018 issued to Petitioner No. 21.

xxiii. Show Cause Notice bearing No. DZU / INV / ST/F/ 550/2015/2733 dated 12.04.2018 issued to Petitioner No. 22.

xxiv. Show Cause Notice bearing No. DZU / INV / ST/F/ 550 / 2015 /

2734 dated 12.04.2018 issued to Petitioner No. 23.

xxv. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2573 dated 06.04.2018 issued to Petitioner No. 24.

xxvi. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2574 dated 06.04.2018 issued to Petitioner No. 25.

xxvii. Show Cause Notice bearing No. DZU / INV / ST/I/ 551 / 2015 / 2496 dated 04.04.2018 issued to Petitioner No. 26.

xxviii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2497 dated 04.04.2018 issued to Petitioner No. 27.

xxix. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2498 dated 04.04.2018 issued to Petitioner No. 28.

xxx. Show Cause Notice bearing No. DZU / INV / ST/K/ 542 / 2015 / 3176 dated 24.04.2018 issued to Petitioner No. 29.

xxxi. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3177 dated 24.04.2018 issued to Petitioner No. 30.

xxxii. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3178 dated 24.04.2018 issued to Petitioner No. 31.

xxxiii. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3022 dated 19.04.2018 issued to Petitioner No. 32.

xxxiv. Show Cause Notice bearing No. DZU / INV / D/BOB/ 535 / 2015 / 3023 dated 19.04.2018 issued to Petitioner No. 33.

xxxv. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015

/ 3322 dated 25.04.2018 issued to Petitioner No. 34.

xxxvi. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3324 dated 25.04.2018 issued to Petitioner No. 35.

xxxvii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 / 3332 dated 25.04.2018 issued to Petitioner No. 36.

xxxviii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 /3333 dated 25.04.2018 issued to Petitioner No. 37.

xxxix. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1985 dated 14.03.2018 issued to Petitioner No. 38.

For sake of brevity the Show Cause Notices issued to the Petitioner No. 1 to Petitioner No. 38 have been hereinafter collectively referred to as "impugned Show Cause Notices".

Further, the Petitioner No. 1 to Petitioner No. 13 have been hereinafter collectively referred to as "Petitioner Banks".

c. A writ of prohibition or any other writ in the nature of prohibition or any other order or direction to prohibit adjudication of the following Show Cause Notices by the respective Respondents as mentioned herein:

i. Show Cause Notice bearing No. DZU / INV / D / PNB/ 536 / 2015 / 3059 dated 20.04.2018 issued to Petitioner No. 1 and to be adjudicated by Respondent No. 5.

ii. Show Cause notices which have been sequentially numbered starting from DZU / INV / D / PNB / 536 / 2015 / 3060 to DZU / INV / D / PNB / 536 / 2015 / 3133, all dated 20.04.2018 issued to Circle offices of Petitioner No. 1 and to be adjudicated by Respondent No. 5.

iii. Show Cause Notice bearing No. DZU/INV/ST/G/539/2015/2760 dated 14.04.2018 issued to Petitioner No. 2 and to be adjudicated by Respondent No. 5.

iv. Show Cause Notice bearing No. DZU//INV//B/Kotak/544/2015/ 2771 dated 14.04.2018 issued to Petitioner No. 3 and to be adjudicated by Respondent No. 5.

v. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1984 dated 14.03.2018 issued to Petitioner No. 4 and to be adjudicated by Respondent No. 5.

vi. Show Cause Notice bearing No. DZU / INV / ST / F / 550 / 2015 / 2732 dated 12.04.2018 issued to Petitioner No. 5 and to be adjudicated by Respondent No. 5.

vii. Show Cause Notice bearing No. DZU / INV / ST / J / 541 / 2015 / 2572 dated 06.04.2018 issued to

Petitioner No. 6 and to be adjudicated by Respondent No. 5.

viii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2495 dated 04.04.2018 issued to Petitioner No. 7 and to be adjudicated by Respondent No. 5.

ix. Show Cause Notice bearing No. DZU / INV / D / K / 542 / 2015 / 3175 dated 24.04.2018 issued to Petitioner No. 8 and to be adjudicated by Respondent No. 5.

x. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3021 dated 19.04.2018 issued to Petitioner No. 9 and to be adjudicated by Respondent No. 5.

xi. Show Cause Notice bearing No. DZU / INV / ST / I / 552 / 2015 / 3437 dated 27.04.2018 issued to Petitioner No. 10 and to be adjudicated by Respondent No. 5.

xii. Show Cause Notice bearing No. DZU / INV / ST / F / 549 / 2015 / 3347 dated 25.04.2018 issued to Petitioner No. 11 and to be adjudicated by Respondent No. 5.

xiii. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3321 dated 25.04.2018 issued to Petitioner No. 12 and to be adjudicated by Respondent No. 5.

xiv. Show Cause Notice bearing No. DZU / INV / ST / J / 540 / 2015 / 3331 dated 25.04.2018 issued to Petitioner No. 13 and to be adjudicated by Respondent No. 5.

xv. Show Cause Notice bearing No. DZU / INV / D / PNB / 536 / 2015 / 3134 dated 20.04.2018 issued to Petitioner No. 14 and to be adjudicated by Respondent No. 5.

xvi. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2761 dated 14.04.2018 issued to

Petitioner No. 15 and to be adjudicated by Respondent No. 5.

xvii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2762 dated 14.04.2018 issued to Petitioner No. 16 and to be adjudicated by Respondent No. 5.

xviii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2763 dated 14.04.2018 issued to Petitioner No. 17 and to be adjudicated by Respondent No. 5.

xix. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2764 dated 14.04.2018 issued to Petitioner No. 18 and to be adjudicated by Respondent No. 5.

xx. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2773 dated 14.04.2018 issued to Petitioner No. 19 and to be adjudicated by Respondent No. 5.

xxi. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2772 dated 14.04.2018 issued to Petitioner No. 20 and to be adjudicated by Respondent No. 5.

xxii. Show Cause Notice bearing No. DZU / INV / ST /I /552/2015/3438 dated 27.04.2018 issued to Petitioner No. 21 and to be adjudicated by Respondent No. 5.

xxiii. Show Cause Notice bearing No. DZU / INV / ST/F/ 550/2015/2733 dated 12.04.2018 issued to Petitioner No. 22 and to be adjudicated by Respondent No. 5.

xxiv. Show Cause Notice bearing No. DZU / INV / ST/F/ 550 / 2015 / 2734 dated 12.04.2018 issued to Petitioner No. 23 and to be adjudicated by Respondent No. 5.

xxv. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2573 dated 06.04.2018 issued to Petitioner No. 24 and to be adjudicated by Respondent No. 5.

xxvi. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2574 dated 06.04.2018 issued to Petitioner No. 25 and to be adjudicated by Respondent No. 5.

xxvii. Show Cause Notice bearing No. DZU / INV / ST/I/ 551 / 2015 / 2496 dated 04.04.2018 issued to Petitioner No. 26 and to be adjudicated by Respondent No. 5.

xxviii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2497 dated 04.04.2018 issued to Petitioner No. 27 and to be adjudicated by Respondent No. 5.

xxix. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2498 dated 04.04.2018 issued to

Petitioner No. 28 and to be adjudicated by Respondent No. 5.

xxx. Show Cause Notice bearing No. DZU / INV / ST/K/ 542 / 2015 / 3176 dated 24.04.2018 issued to Petitioner No. 29 and to be adjudicated by Respondent No. 5.

xxxi. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3177 dated 24.04.2018 issued to Petitioner No. 30 and to be adjudicated by Respondent No. 5.

xxxii. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3178 dated 24.04.2018 issued to Petitioner No. 31 and to be adjudicated by Respondent No. 5.

xxxiii. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3022 dated 19.04.2018 issued to Petitioner No. 32 and to be adjudicated by Respondent No. 5.

xxxiv. Show Cause Notice bearing No. DZU / INV / D/BOB/ 535 / 2015 / 3023 dated 19.04.2018 issued to Petitioner No. 33 and to be adjudicated by Respondent No. 5.

xxxv. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3322 dated 25.04.2018 issued to Petitioner No. 34 and to be adjudicated by Respondent No. 5.

xxxvi. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3324 dated 25.04.2018 issued to Petitioner No. 35 and to be adjudicated by Respondent No. 5.

xxxvii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 / 3332 dated 25.04.2018 issued to Petitioner No. 36 and to be adjudicated by Respondent No. 5.

xxxviii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 /3333 dated 25.04.2018 issued to

Petitioner No. 37 and to be adjudicated by Respondent No. 5.

xxxix. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1985 dated 14.03.2018 issued to Petitioner No. 38 and to be adjudicated by Respondent No. 5.

d. A writ of certiorari or any other writ in the nature of certiorari thereof or any other order or direction to read down Rule 9(a) read with Rule 2(h) of the Place of Provision of Services Rules, 2012 rules in so much as the impugned Show Cause Notices impose a Service Tax levy on services provided by branches of the Petitioner No. 3 to Petitioner No. 5, Petitioner No. 8 to Petitioner No. 10 and Petitioner No. 12 located outside the "taxable territory" as defined under Service Tax laws i.e. the in State of Jammu & Kashmir to customers located outside the "taxable territory", i.e. in the State of Jammu & Kashmir.

e. A writ of certiorari or any other writ in the nature of certiorari thereof or any other order or direction to declare Notification No. 14/2017- Central Tax dated 01.07.2017 as ultra vires the provisions of Section 3 of the Central Goods and Services Tax Act, 2017.

f. A writ of prohibition or any other writ in the nature of prohibition or any other order or direction to prohibit the officers of Respondent No. 2 and the subordinate officers of Respondent No. 3 from initiating any further proceedings including issue of summons, letters of enquiries, letters calling for data and information, etc. with respect to the issues raised in the Show Cause Notices (issued to Petitioner No. 1 to Petitioner No. 38).

g. A writ or any other order or direction to the Respondent No. 6 to issue necessary direction, clarification and recommendation prohibiting the GST authorities in States, Center and Union Territories from initiating any further investigation or inquiry for levy of GST on the activities covered under the impugned Show Cause Notices.

h. A writ of declaration or any other writ in the nature of declaration, to declare that no Service Tax under the erstwhile Finance Act, 1994 (hereinafter referred to as "Finance Act") and / or Goods and Services Tax (hereinafter referred to as "GST") under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") or Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act" which also should be read to include a reference to the pari materia State GST legislations) can be levied on the activities on which Service Tax is sought to be levied under the impugned Show Cause Notices issued to Petitioner No. 1 to Petitioner No. 38 and other members of the Petitioner No. 39 Association.

A true copy of the Show Cause Notices issued to Petitioner No. 1 to Petitioner No. 38 have been enclosed as **Annexure P-1 (colly)**.

2. The Petitioner Banks in this batch include nationalized as well as private banks (both domestic and foreign) serving the needs of millions of customers in India.

3. As per the impugned Show Cause Notices the demand has been raised for the period, in case of, Petitioner No. 1 to Petitioner No. 5, Petitioner No. 9 and Petitioner No. 12 is from July 2012 to 31 March 2017. Further, the demands on Petitioner No. 6 to Petitioner No. 8, Petitioner No. 10, Petitioner No. 11 and Petitioner No. 13, have been raised for the period July 2012 to 30 June 2017. The Respondent No. 4 vide the impugned Show Cause Notices have sought to levy Service Tax on customers savings and current accounts with a requirement to maintain Minimum Average Balance (MAB) or Average Monthly Balance (AMB) or Average Quarterly Balance

(AQB) (hereinafter collectively referred to as 'MAB'). In the impugned Show Cause Notices, the Respondent No. 4 has contended that the "commitment" of the Petitioner Banks to provide certain services to an account holder, holding an account with a feature of MAB constitutes a "service", against the "undertaking" or "commitment" of the account holder to maintain the MAB which according to the impugned Show Cause Notices constitutes "consideration". This allegation is de-hors the reality whether the account holders have availed and the Petitioner Banks have actually rendered the services offered and whether the account holders have in fact maintained the MAB.

4. The Petitioner Banks along with its Association (i.e. Indian Banks' Association, Petitioner No. 39) are, therefore, approaching this Hon'ble High Court under Article 226 of the Constitution of India, 1950 (hereinafter referred to as "Constitution of India") for the following reasons:

i. The impugned proceedings are ab initio void and totally lacking in jurisdiction.

ii. It is not an assessee specific issue but an industry issue rocking the entire banking industry in the country.

iii. The impact of these proceedings will cripple many of the banks and without exception going to affect millions of customers who are account holders, that is to say, almost every citizen of this country who has a bank account.

iv. The proceedings are ex-facie violative of Article 19(1)(g) of the Constitution of India as it interferes with the right of the Petitioner Banks to carry on trade and business besides being violative of Article 265 of the Constitution of India and in plain contravention of the Finance Act, 1994 (hereinafter referred to as "Finance Act").

v. The Petitioners through its Association has already exhausted various alternate remedies by trying to seek appropriate resolution to the issue through representations and discussions, including representation and discussions before the Respondent No. 3 (i.e. CBIC), the highest administrative authority under the Finance Act as well as before the officers of the PMO, Ministry of Finance, Department of Financial Services, Revenue Secretary and Reserve Bank of India. Therefore, any adjudication by the authorities, that is, Respondent No. 5 would be illusory since authorities above them have partaken in the discussion and have not resolved this issue.

vi. The Petitioner Banks do not have any efficacious and effective alternate remedy but for approaching this Hon'ble Court under its writ jurisdiction. The Petitioner Banks in the present petition have challenged the constitutionality of Section 66E(e) of the Finance Act and corresponding Section 7(1A) read with

Clause 5(e) of Schedule II to the CGST Act, and it is a settled legal principle that an adjudicating authority cannot adjudicate a matter involving challenge to the statute under which the said authority has been created. Further, the Respondent No. 4 has acted without jurisdiction, since the Notification No. 14/2017-Central Tax dated 01.07.2017, under which the impugned Show Cause Notices have been issued, is in violation of the provisions of Section 3 of the CGST Act. Hence, the present petition is maintainable as the Petitioners do not have an alternate efficacious and effective remedy.

vii. The issue being a purely legal issue is of a continuing nature and has an impact in both the pre-GST and GST era and involves simultaneous taxation by both the Central and State Governments across the country.

viii. The issue does not involve any disputed facts. The facts and the business model remain undisputed in the impugned Show Cause Notices. However the inferences drawn are completely in violation of the provisions of Finance Act, and a breach of the Constitutional mandate.

ix. The sensitivity and impact of this issue is on the whole banking system affecting the citizens who are account holders on a day to day basis. In the interest of both the Petitioners and the Respondents, the issue in question requires a quick and immediate resolution.

x. All the Respondents who are arrayed are situated in New Delhi and therefore well within the jurisdiction of this Hon'ble Court.

xi. Since the issue is continuing in nature, the Petitioners have not restricted the prayer only to quashing the impugned Show Cause Notices but have also sought for a resolution under the GST regime since proceedings slowly have started to emanate from taxing authorities from different places.

xii. The Petitioners reiterate the indispensable need for a quick resolution of the dispute which would prevent multiplicity of proceedings, delayed and protracted proceedings and uncertainty on the issue for a long time, any of which singularly or collectively, will impact the entire banking system, create significant uncertainty and affect millions of citizens who are account holders.

5. In these circumstances the Petitioners are raising the following substantial questions of law of Constitutional and public importance:

a. Whether Section 66E(e) of the Finance Act and Section 7(1A) read with Clause 5(e) of Schedule II to the CGST Act, which stipulates that the activity of 'agreeing to the obligation to do an act' constitutes a 'service' / supply of service, is constitutional and in consonance with the principles enshrined under Article 14, Article 19 and Article 265 of the Constitution of India, 1950?

b. When provisions of Finance Act, 1994 has been legislated tracing its source of power to entry 97, list I of the Seventh Schedule of the Constitution of India and, when section 65B(44) defines a "service" including a provider and recipient of service, whether is it open for the Respondents to substitute or amend these provisions of law through a Show Cause proceedings?

c. When it is a well settled principle of law through the judgments of the Constitutional Bench in **Mathuram Agrawal v. State of Madhya Pradesh, (1999) 8 SCC 667** and another decision of the Hon'ble Supreme Court in the case of **Govind Saran Ganga Saran v. Commissioner of Tax AIR 1985 SC 1041** which have brought out the canons of taxation to be:

i. taxable event,

ii. the person on whom the levy is imposed,

iii. rate of tax, and

iv. measure of tax

whether it is open to the Respondents to initiate or interpret a transaction which fails to meet these threshold requirements and consider it as taxable transaction?

d. When the decision of the Hon'ble Supreme Court in **C.I.T., Bangalore v. B.C. Srinivasa Shetty 125 ITR 294** has held that when the computation mechanism fails then the levy also fails, whether is it open for the Respondents to initiate proceedings to not only tax a non-taxable transaction but to add new perspectives to Rule 3(a) and Rule 3(b) of the Service Tax (Determination of Value Rules), 2006 ('Valuation Rules') which tantamount to quasi-judicial drafting, an exercise clearly impermissible under the Constitution?

e. Whether the Respondents are correct in assuming a non-taxable transaction as taxable, a service recipient as a service provider, a transaction or activity as consideration and, when the rendition of an activity is free of consideration, deem it as an unascertainable consideration and fix a notional value to it, thus violating the bare provisions of the Finance Act, 1994 and of the Central Goods and Services Tax Act, 2017 and allied legislations?

f. Whether the services provided by the branches of the Petitioner Banks located in Jammu & Kashmir to their customers also located in Jammu & Kashmir, would be taxable as per the provisions stipulated under the Finance Act, 1994, especially when the Finance Act, 1994 itself is not applicable to the State of Jammu & Kashmir?

g. Whether the Respondent No. 4 possessed the requisite powers in terms of Notification No. 14/2017-Central Tax dated 01.07.2017 read with Section 3 of the CGST Act to issue the impugned Show Cause Notices to the Petitioner Banks, for demanding Service Tax under the Finance Act, 1994?

h. Whether the impugned proceedings are ab initio void and non-est in light of the clarification issued by the Respondent No. 3 (i.e. CBIC) vide Frequently Asked Questions on Banking and Financial Services, namely FAQ No. 32 holding that free services being services sans consideration are not liable to GST, recognizing the fact that services can be rendered both under the pre-GST and GST regime, free of consideration and what is taxable is only when consideration is paid for the service and the consequential rules of valuation also need to be read in line with the provision of law, whereas the Respondents have imputed a notional value invoking the Valuation Rules under the Finance Act, 1994?

6. For ease of reference and sake of convenience, we have reproduced below the extracts of the relevant provisions from various statutes being relied upon by the Petitioners and the Respondent No. 4 in its impugned Show Cause Notices, as under:

The provisions which have been relied upon by both the Petitioners and the Respondent No. 4:

“**Service Tax Provisions:**

(30) interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred

or in respect of any credit facility which has not been utilized."

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment; (c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1. — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

'Explanation 2. - For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include —

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —

(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in 7 organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;. (Finance Act 2016)

(b) by a foreman of chit fund for conducting or organising a chit in any manner.;

Explanation 3. — For the purposes of this Chapter,—

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4. — A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

(51) “taxable service” means any service on which service tax is leviable under section 66B;

SECTION 66B. Charge of service tax on and after Finance Act, 2012 — There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

SECTION 66D. Negative list of services.—

(n) services by way of—

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

SECTION 66E. Declared services. — The following shall constitute declared services, namely:—

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

SECTION 67.Valuation of taxable services for charging service tax. — (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall

be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a)“consideration” includes —

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

(b) * * *]

(c)"gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

Service Tax (Determination of Value) Rules, 2006

3. Manner of determination of value.– Subject to the provisions of section 67, the value of taxable service, where such value is not ascertainable, shall be

determined by the service provider in the following manner:–

(a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

Place of Provision of Service Rules, 2012

2. Definitions.-

In these rules, unless the context otherwise requires,-

(b) “account” means an account bearing interest to the depositor, and includes a non- resident external account and a non-resident ordinary account;

(h) “location of the service provider” means-

(a) where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the service provider is not covered under sub-clause (a)-

(i) the location of his business establishment; or

(ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

(iii) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and

(iv) in the absence of such places, the usual place of residence of the service provider.

9. Place of provision of specified services.-

The place of provision of following services shall be the location of the service provider:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;

Provisions of Central Goods and Services Tax Act, 2017:

2. In this Act, unless the context otherwise requires,--....

(31) "consideration" in relation to the supply of goods or services or both includes--

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

....

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

7. (1) For the purposes of this Act, the expression "supply" includes--

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply or services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),--

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

SCHEDULE II

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

5. Supply of services

The following shall be treated as supply of services, namely:-

....

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and....

Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017

In exercise of the powers conferred by 31[sub-section (3) and sub-section (4) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and section 148] of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl. No.	**Chapter, Section, Heading, Group or Service Code (Tariff)**	**Description of Services**	**Rate (percent.)**	**Condition**
27	Heading 9971	Services by way of- (a) extending deposits, loans or advances in so far as the consideration is	Nil	Nil

		represented by way of interest or discount (other than interest involved in credit card services);		

The additional provisions which have been relied only by the Respondent No. 4 in its impugned Show Cause Notices:

"**Service Tax provisions**

SECTION 66C. Determination of place of provision of service.—

(1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided

or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

(2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory."

SECTION 68. Payment of service tax. —

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section[66B] in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of [such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the

rate specified in section [66B] and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

SECTION 70. Furnishing of returns. —

(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding twenty thousand rupees, for

delayed furnishing of return, as may be prescribed.

(2) The person or class of persons notified under sub-section (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. —

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show

cause why he should not pay the amount specified in the notice

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months", the words "five years" had been substituted.

SECTION 75. Interest on delayed payment of service tax.—

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette for the period by which such crediting of the tax or any part thereof is delayed;

Provided that in the case of a person who collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government, on or before the date on which such payment is due, the Central Government may, by notification in the Official Gazette, specify such other rate of interest, as it may deem necessary:

Provided further that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent. per annum.

SECTION 76. Penalty for failure to pay service tax.—

(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilfulmis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-

section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent. of the amount of such service tax :

Provided that where service tax and interest is paid within a period of thirty days of —

(i)the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

(2) Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub- section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted 23 from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

SECTION 77. Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. —

(1) Any person, —

(a) who is liable to pay service tax or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to a penalty which may extend to ten thousand rupees;

SECTION 78. Penalty for failure to pay service tax for reasons of fraud, etc. —

(1) Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax :

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the 24 date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent. of the service tax so determined

Provided further that where service tax and interest is paid within a period of thirty days of —

the date of service of notice under the proviso to (i) sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;

(ii)the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period

Explanation. — For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of accounts shall be considered as the specified records.

SECTION 78A. Penalty for offences by director, etc., of company —

Where a company has committed any of the following contraventions, namely :—

(a) evasion of service tax; or

….then any director, manager, secretary or other officer of such company, who at the time of such contravention was in charge of, and was responsible to, the company for the conduct of business of such company and was knowingly concerned with such contravention, shall be liable to a penalty which may extend to one lakh rupees.

SECTION 83. Application of certain provisions of Act 1 of 1944.— The provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- sub-section (2A) of section 5A, sub-section(2) of section 9A, 9AA, 9B, 9C,

9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.

Service Tax Rules, 1994:

Rule 4. Registration –

(1)..

(2) Where a person, liable for paying service tax on a taxable service

(i) provides such service from more than one premises or offices; or

(ii) receives such service in more than one premises or offices; or,

(iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralized billing system or centralized accounting system in respect of such service, and such centralized billing or centralized accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralized billing or centralized accounting systems are located.

(7) Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately to the Superintendent of Central Excise.

Central Excise Act, 1944

Section 14. Power to summon persons to give evidence and produce documents in inquiries under this Act. -

(1) Any Central Excise Officer duly empowered by the Central Government in this behalf, shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or

any other thing in any inquiry which such officer is making for any of the purposes of this Act. A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(2) All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required:

Provided that the exemptions under Sections 132 and 133 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(3) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (45 of 1860).

Central Goods and Services Tax Act, 2017

174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985

(hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses 10 of 1897. Act, 1897 with regard to the effect of repeal.

RBI Circulars:

Ref No. DBOD. Dir. BC. 53 / 13.10.00 / 2002-03 dated 26.12.2003 The banks have been prescribing the minimum balance to be maintained taking into consideration the cost involved in maintaining and servicing such accounts...

First Bi-monthly Monetary Policy Statement, 2014-15 dated 01.04.2014- ...Instead of levying penal charges for non-maintenance of minimum balance in ordinary savings bank accounts, banks should limit services available on such accounts to those available to Basic Savings Bank Deposit Accounts and restore the services when the balances improve to the minimum required level.

RBI/2014-15/308

DBR.Dir.BC.No.47/13.03.00/2014-15

dated 20.11.2014- In the event of a default in maintenance of minimum balance/average minimum balance as agreed to between the bank and customer, the bank should notify the customer clearly by SMS/ email/ letter etc. that in the event of the minimum balance not being restored in the account within a month from the date of notice, penal charges will be applicable

RBI/DBR/2015-16/19 Master Direction DBR. Dir. No.84/13.03.00/2015-16 March 03, 2016

3. Definitions (a) In these Directions, unless the context otherwise requires, the terms herein shall bear the meanings assigned to them below:

(iii) "Current Account" means a form of non-interest bearing demand deposit where from withdrawals are allowed any number of times depending upon the balance in the account or up to a particular agreed amount. and shall also be deemed to include other deposit accounts which are neither Savings Deposit nor Term Deposit;

(xvi) “Savings deposit” means a form of interest bearing demand deposit which is a deposit account whether designated as “Savings Account”, “Savings Bank Account”, “Savings Deposit Account”, “Basic Savings Bank Deposit Account (BSBDA)” or other account by whatever name called which is subject to the restrictions as to the number of withdrawals as also the amounts of withdrawals permitted by the bank during any specified period;

RBI/2009-10/202 DBOD. Leg. No. BC. 55 / 09.07.005 / 2009-10 dated October 30, 2009- In this connection, we clarify that since the interest on

Fixed Deposit account is credited to the Savings Bank accounts as per the mandate of the customer, the same should be treated as a customer induced transaction. As such, the account should be treated as operative account as long as the interest on Fixed Deposit account is credited to the Savings Bank account. The Savings Bank account can be treated as inoperative account only after two years from the date of the last credit entry of the interest on Fixed Deposit account.

RBI/2014-15/227 UBD.BPD.Cir.No.14/12.05.001/2014-15 dated September 11, 2014- In this connection, we clarify that since dividend on shares is credited to Savings Bank accounts as per the mandate of the customer, the same should be treated as a customer induced transaction. As such, the account should be treated as operative account as long as the dividend is credited to the Savings Bank account. The Savings Bank account can be treated as inoperative account only after two years from the date of the last credit entry of the dividend, provided there is no other customer induced transaction.

FAQ relating to Basic Savings Bank Deposit Account-

11. Query

What kinds of services are available free in the 'Basic Savings Bank Deposit Account'?

Response

The services available free in the 'Basic Savings Bank Deposit Account' will include deposit and withdrawal of cash; receipt / credit of money through electronic payment channels or by means of deposit / collection of cheques at bank branches as well as ATMs.

13. Query

Whether banks are free to offer more facilities than those prescribed for 'Basic Savings Bank Deposit Account'?

Response

Yes. However, the decision to allow services beyond the minimum prescribed has been left to the discretion of the banks who can either offer additional services free of charge or evolve requirements including pricing structure for additional value-added services on a reasonable and transparent basis to be applied in a non-discriminatory manner with prior intimation to the customers. Banks are required to put in place a reasonable pricing structure for value added services or prescribe minimum balance requirements which should be displayed prominently and also informed to the customers at the time of account opening. Offering such additional facilities should be non - discretionary, non-discriminatory and transparent to all 'Basic Savings Bank Deposit Account' customers. However such accounts enjoying additional facilities will not be treated as BSBDAs.

Indian Contract Act provision:

2(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;"

A true copy of the relevant provisions of the Finance Act, 1994 and the rules made thereunder is enclosed as **Annexure P – 2 (colly)**.

7. Petitioner No.1 is Punjab National Bank, a body corporate duly constituted under the provisions

of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its head office at Plot No. 4, Sector 10, Dwarka, New Delhi – 110075, which was founded in 1894. It is to be noted that the Respondent No. 4 has issued a separate Show Cause Notice to each circle office of the Petitioner No. 1 Bank. Consequently, a total of 75 Show Cause Notices demanding Service Tax of a cumulative amount of INR 970,06,31,481 along with applicable interest and penalty have been issued by the Respondent No. 4 to the Petitioner No. 1 Bank. The serial numbers of the Show Cause Notices issued to the Petitioner No. 1 Bank are ranging from DZU/INV/D/PNB/536/2015/3059 to DZU / INV / D / PNB / 536 / 2015 / 3133 and all the notices are dated 20.04.2018.

8. Petitioner No. 2 is State Bank of India, which is also a member of the Petitioner No. 39. It is an Indian public sector bank engaged in providing banking and financial services having number of branch offices in Delhi. The bank descends from the Bank of Calcutta, founded in 1806, making

it the oldest commercial bank in the Indian subcontinent. The Petitioner No. 2 has received a Show Cause Notice bearing DZU/INV/ST/G/539/2015/2760 dated 14.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 3,41,04,90,875 along with applicable interest and penalty.

9. The Petitioner No. 3 is Kotak Mahindra Bank, which is also a member of the Petitioner No. 39. It is an Indian private sector bank having number of branch offices in Delhi. It offers a wide range of banking products and financial services for corporate and retail customers through a variety of delivery channels and specialized subsidiaries in the areas of personal finance, investment banking, general insurance, life insurance, and wealth management. The Petitioner No. 3 has received a Show Cause Notice bearing DZU/ INV / B / Kotak / 544 / 2015 / 2771 dated 14.04.2018 from the Respondent No. 4, thereby, demanding Service

Tax amounting to INR 10,77,71,07,670 along with applicable interest and penalty.

10. The Petitioner No. 4 is HDFC Bank Ltd., which is also a member of the Petitioner No. 39. The Petitioner No. 4 is an Indian banking and financial services company having number of branch offices in Delhi. The Petitioner No. 4 is India's largest private sector lender by assets and also has presence in Bahrain, Hong Kong and Dubai. The Petitioner No. 4 has received a Show Cause Notice bearing F.No.DZU/ INV / B / HDFC / 531 / 2015 / 1984 dated 14.03.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 62,88,29,26,385/ along with applicable interest and penalty.

11. The Petitioner No. 5 is Axis Bank Ltd, which is also a member of the Petitioner No. 39. The Petitioner No. 5 is the third-largest bank among the private-sector banks in India and offers a comprehensive suite of financial products. The Petitioner No. 5 sells financial services to large and mid-size corporates, small and mid-sized

enterprises and retail businesses and has number of branch offices in Delhi. The Petitioner No. 5 has received a Show Cause Notice bearing DZU / INV / ST / F / 550 / 2015 / 2732 dated 12.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 33,23,39,97,514 along with applicable interest and penalty.

12. The Petitioner No. 6 is Deutsche Bank AG, which is also a member of the Petitioner No. 39. The Petitioner No. 6 is a German multinational investment bank and financial services company headquartered in Frankfurt, Germany. The Petitioner No. 6 is operational in 58 countries with a large presence in Europe, the Americas and Asia. The Petitioner No. 6 also has a branch office in Delhi and has received a Show Cause Notice dated 06.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 35,02,45,551 along with applicable interest and penalty.

13. The Petitioner No. 7 is The Hongkong and Shanghai Bank Corporation Limited, which is also a member of the Petitioner No.39. The Petitioner No. 7 is a British multinational banking and financial services holding company. It was ranked as the 7th largest bank in the world in 2018. The Petitioner No. 7 has a branch office in Mumbai, India and has received a Show Cause Notice bearing DZU / INV / ST / I / 551 / 2015 / 2495 dated 04.04.2018 from the Respondent No.7, thereby, demanding Service Tax amounting to INR 128,31,03,192 along with applicable interest and penalty.

14. The Petitioner No. 8 is Corporation Bank, which is also a member of the Petitioner No. 39. The Petitioner No. 8 is a public-sector bank company and is headquartered in Mangalore, India. The Petitioner No. 8 offers a variety of services like e-banking, consumer banking, corporate banking, finance and insurance, investment banking, mortgage loans, asset management, wealth management, etc. and has number of branch offices in Delhi. The Petitioner No. 8 has received

a Show Cause Notice bearing DZU / INV / ST / K / 542 / 15 / 3175 dated 24.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 2,64,16,12,953 along with applicable interest and penalty.

15. The Petitioner No. 9 is Bank of Baroda, which is also a member of the Petitioner No. 39. The Petitioner No. 9 is an Indian multinational, public sector banking and financial services company. It is owned by the Government of India. The Petitioner No. 9 was nationalized on 19.07.1969, by the Government of India and was designated as a profit-making public sector undertaking. The Petitioner No. 9 has also received a Show Cause Notice bearing DZU / INV / D / BOB / 535 / 2015 / 3021 dated 19.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 9,02,77,02,824 along with applicable interest and penalty.

16. The Petitioner No. 10 is Yes Bank Limited, which is also a member of the Petitioner No. 39. The

Petitioner No. 10 is India's fourth largest private sector bank and has number of branch offices in Delhi. The Petitioner No. 10 has also received a Show Cause Notice bearing DZU / INV / ST / I / 552 / 2015 / 3437 dated 27.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 2,64,24,36,322 along with applicable interest and penalty.

17. The Petitioner No. 11 is Citibank N.A., which is also a member of the Petitioner No. 39. The Petitioner No. 11 is the consumer division of financial services multinational Citigroup and was founded in 1812 as the City Bank of New York. Citibank provides credit cards, mortgages, personal loans, commercial loans, and lines of credit. The Petitioner No. 11 has a number f offices in Delhi. The Petitioner No. 11 has also received a Show Cause Notice bearing DZU / INV / ST / F / 549 / 2015 / 3347 dated 25.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 666,15,35,661 along with applicable interest and penalty.

18. The Petitioner No. 12 is ICICI Bank Limited, which is also a member of Petitioner No. 39. The Petitioner No. 12 is an Indian multinational banking and financial services company headquartered in Mumbai, Maharashtra and has a number of branch offices in Delhi. In 2018, the Petitioner No. 12 was ranked as the second largest bank in India in terms of assets and market capitalisation. The Petitioner No. 12 has also received a Show Cause Notice bearing DZU / INV / B / ICICI / 530 / 2015 / 3321 dated 25.04.2018 from the Respondent No. 4, thereby, demanding Service Tax amounting to INR 3515,25,00,008 along with applicable interest and penalty.

19. Petitioner No. 13 is Standard Chartered Bank who is also a member of Petitioner No. 39. Petitioner No. 13 is a British multinational bank with branches and offices all across the world. In India, Petitioner No. 13 has been in operation since 1858 and has over 100 branches across 43 cities. The Petitioner No. 13 has been the recipient of many awards and recognition in

India for its excellent banking services. The Petitioner No. 13 has also received a Show Cause Notice bearing DZU/INV/ST/J/540 2015/3331 dated 25.04.2018 from Respondent No. 4, thereby demanding service tax of INR 3,33,83,77,118/- along with applicable interest and penalty.

20. Petitioner No. 14 is the Chief Manager (Finance & Taxation) of Petitioner No. 1 Bank. The statements of Petitioner No. 14 had been recorded on various dates and basis the same, the Respondent No. 4 has proceeded to levy personal penalty on Petitioner No. 14 under Section 78A of Finance Act, 1994 *vide* SCN F.No. DZU / INV / D / PNB / 536 / 2015 / 3134 dated 20.04.2018. It has been alleged therein that the Petitioner No. 14 at the relevant point of period was in charge of the conduct of the business of Petitioner No. 1 and has knowingly evaded payment of service tax, thereby rendering himself liable for personal penalty under Section 78A of Finance Act, 1994.

21. Petitioner No. 15 was the Chief General Manager of Petitioner No. 2 from 01.07.2014 to 30.09.2014. The Respondent No. 4 *vide* Show Cause Notice F.No. DZU / INV / ST / G / 539 / 2015 / 2761 dated 14.04.2018 alleged that Petitioner No. 15 was in charge of the affairs of Petitioner No. 2 and had deliberately evaded service tax by filing incorrect returns. Accordingly, personal penalty has been imposed under Section 78A of the Finance Act, 1994.

22. Petitioner No. 16 was the Chief General Manager Petitioner No. 2 from 01.10.2014 to 31.03.2017. The Respondent No. 4 *vide* Show Cause Notice F.No.DZU/INV/ST/G/539/2015/2762 dated 14.04.2018 alleged that Petitioner No. 16 was in charge of the affairs of Petitioner No. 2 during the relevant period and had deliberately evaded service tax by filing incorrect returns. Accordingly, personal penalty has been imposed under Section 78A of the Finance Act, 1994.

23. Petitioner No. 17 was the Head of Taxation of Petitioner No. 2 from 01.07.2012 to 04.10.2015.

The Respondent No. 4 *vide* Show Cause Notice F. No. DZU / INV / ST / G / 539 / 2015 / 2763 dated 14.04.2018 alleged that Petitioner No. 17 was in charge of the affairs of Petitioner No. 2 and had deliberately evaded service tax by filing incorrect returns. Accordingly, personal penalty has been imposed under Section 78A of the Finance Act, 1994.

24. Petitioner No. 18 was the Head of Taxation of Petitioner No. 2 from 05.10.2015 to 31.03.2017. The Respondent No. 4 *vide* Show Cause Notice F.No.DZU/INV/ST/G/539/2015/2764 dated 14.04.2018 alleged that Petitioner No. 18 was in charge of the affairs of Petitioner No. 2 and had deliberately evaded service tax by filing incorrect returns. Accordingly, personal penalty has been imposed under Section 78A of the Finance Act, 1994.

25. Petitioner No. 19 is the Group Vice President of Petitioner No. 3 and was earlier associated with ING Vysya Bank which merged with Petitioner No.3. *Vide* the Show Cause Notice F. No. DZU

/INV /B /Kotak/ 544/ 2015/ 2773 dated 14.04.2018, Respondent No. 4 has observed that Petitioner No.19 was in charge of the affairs of ING Vysya Bank had knowingly and intentionally filed incorrect ST-3 returns to evade payment of tax and is therefore liable to personal penalty under Section 78A of Finance Act, 1994.

26. Petitioner No. 20 is the Executive Vice President of Petitioner No. 3. *Vide* the Show Cause Notice F. No. DZU / INV / B / Kotak / 544 / 2015 / 2772 dated 14.04.2018, Respondent No. 4 has observed that Petitioner No.20 was in charge of the affairs of Petitioner No.3 from 01.07.2012 onwards. It has been therein alleged that Petitioner No. 20 had knowingly and intentionally filed incorrect ST-3 returns to evade payment of tax and is therefore liable to personal penalty under Section 78A of Finance Act, 1994.

27. Petitioner No. 21 is the Group Vice President of Petitioner No. 10. *Vide* Show Cause Notice F. No.

DZU / INV / ST/I/ 552/ 2015/3438 dated 27.04.2018, Respondent No. 4 has observed that Petitioner No.21 was in charge of the affairs of Petitioner No.10 from July 2012 to June 2017. It has been therein alleged that Petitioner No. 21 had knowingly and intentionally filed incorrect ST-3 returns to evade payment of tax and is therefore liable to personal penalty under Section 78A of Finance Act, 1994.

28. Petitioner No. 22 is the Executive Vice President of Petitioner No. 5. *Vide* Show Cause Notice F. No. DZU / INV /ST/ F/ 550/ 2015 / 2733 dated 12.04.2018, Respondent No. 4 has observed that Petitioner No.22 was in charge of the affairs of Petitioner No.5 from 2013-14 to 2016-17. It has been therein alleged that Petitioner No. 22 had knowingly and intentionally filed incorrect ST-3 returns to evade payment of tax and is therefore liable to personal penalty under Section 78A of Finance Act, 1994.

29. Petitioner No. 23 was the Senior Vice President of Petitioner No. 5. *Vide* Show Cause Notice F.

No. DZU / INV /ST/ F/ 550/ 2015 / 2734 dated 12.04.2018, Respondent No. 4 has observed that Petitioner No.23 was in charge of the affairs of Petitioner No. 5 from July 2012 to March 2013. It has been therein alleged that Petitioner No. 23 had knowingly and intentionally filed incorrect ST-3 returns to evade payment of tax and is therefore liable to personal penalty under Section 78A of Finance Act, 1994.

30. Petitioner No. 24 is the Head, Finance Department of Petitioner No. 6. *Vide* Show Cause Notice F. No. DZU/ INV/ STJ/ 541/ 15/ 2573 dated 06.04.2018, Respondent No. 4 has alleged that Petitioner No. 24 was in charge of the conduct of the business of Petitioner No. 6 from 01.07.2012 onwards and by not discharging the service tax obligations knowingly, have rendered herself liable for personal penalty under Section 78A of the Finance Act, 1994.

31. Petitioner No. 25 was Ex-Director (Finance) of Petitioner No. 6 from 01.07.2012 to 30.09.2013

responsible for filing the returns. Show Cause Notice F.No. DZU/INV/ST/J/541/15/2574 dated 06.04.2018 issued by Respondent No. 4 has alleged that during the relevant period, Petitioner No. 6 deliberately evaded payment of tax and Petitioner No. 25 being in charge of the affairs of the business at that point of time is also personally liable under Section 78A of Finance Act, 1994.

32. Petitioner No. 26 is the Head of Tax India of Petitioner No. 7. The Show Cause Notice F.No.DZU/INV/ST/1/551/2015/2496 dated 04.04.2018 issued by Respondent No.4 alleges that from October 2014 to July 2017, returns of the Petitioner No. 7 were filed by the Petitioner No. 26. That the Petitioner No. 26 had knowingly filed incorrect returns on behalf of Petitioner No. 7 and evaded payment of service tax. Accordingly, personal penalty has been sought to be levied under Section 78A of Finance Act, 1994.

33. Petitioner No. 27 was the Senior Vice President-Taxation of Petitioner No.7 and was in charge of affairs of Petitioner No. 7 from April 2013 to September 2014. *Vide* Show Cause Notice F.No.DZU/INV/ST/1/551/2015/2497 dated 04.04.2018 issued by Respondent No.4, it has been alleged that Petitioner No. 27 during the relevant period had knowingly evaded service tax and therefore has proposed to levy personal penalty under Section 78A of Finance Act, 1994.

34. Petitioner No. 28 is the Ex-Head of Tax of Petitioner No.7 and was in charge of affairs from July 2012 to March 2013. *Vide* Show Cause Notice F.No.DZU/INV/ST/1/551/2015/2498 dated 04.04.2018 issued by Respondent No.4, it has been alleged that Petitioner No. 28 during the relevant period had knowingly filed incorrect returns on behalf of Petitioner No. 7 and intentionally evaded service tax. Accordingly, personal penalty under Section 78A of Finance Act, 1994 has been levied.

35. Petitioner No. 29 was the Ex-General Manager-Taxation of Petitioner No. 8 from July 2012 to April 2015. The Show Cause Notice F.No.DZU/INV/ST/K/542/15/3176 dated 24.04.2018 has alleged that Petitioner No. 29 was in charge of filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

36. Petitioner No. 30 was the Ex-General Manager-Taxation of Petitioner No. 8 from June 2015 to May 2016. The Show Cause Notice F.No.DZU/INV/ST/K/542/15/3177 dated 24.04.2018 has alleged that Petitioner No. 30 was in charge of filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

37. Petitioner No. 31 was the Ex-General Manager-Taxation of Petitioner No. 8 from June 2016 to June 2017. The Show Cause Notice F.No.DZU/INV/ST/K/542/15/3178 dated

24.04.2018 has alleged that Petitioner No. 31 was in charge of filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

38. Petitioner No. 32 is the AGM of Petitioner No. 9 Bank. Petitioner No. 32 was responsible for the affairs of Petitioner No. 9 Bank in 2013-14 and 2016-17. The Show Cause Notice F.No.DZU/INV/D/BOB/535/2015/3022 dated 19.04.2018 has alleged that Petitioner No. 32 was in charge of filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

39. Petitioner No. 33 is the DGM of Petitioner No. 9 Bank. Petitioner No. 33 was responsible for the affairs of Petitioner No. 9 Bank in 2014-15 and 2015-16. The Show Cause Notice F.No.DZU/INV/D/BOB/535/2015/3023 dated 19.04.2018 has alleged that Petitioner No. 33 was in charge of filing the ST-3 returns and has

intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

40. Petitioner No. 34 is the Assistant General Manager of Petitioner No. 12 Bank. Petitioner No. 34 was responsible for the affairs of Petitioner No. 12 Bank from July 2012 to March 2013 and also in 2015-16. The Show Cause Notice F.No.DZU / INV / B / ICICI / 530 / 2015 / 3322 dated 25.04.2018 has alleged that Petitioner No. 34 was in charge of filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

41. Petitioner No. 35 is the Assistant General Manager of Petitioner No. 12 Bank. Petitioner No. 34 was responsible for the affairs of Petitioner No. 12 Bank from 2016-17 onwards. The Show Cause Notice F.No. DZU / INV / B / ICICI / 530 / 2015 / 3324 dated 25.04.2018 has alleged that Petitioner No. 35 was in charge of

filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

42. Petitioner No. 36 is the Manager (Finance) of Petitioner No. 13 Bank. Petitioner No. 36 was responsible for the affairs of Petitioner No. 13 Bank from October 2012 to June 2017. The Show Cause Notice F. No. DZU / INV / ST / J / 540 / 2015 /3332 dated 25.04.2018 has alleged that Petitioner No. 36 was in charge of filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

43. Petitioner No. 37 is the Ex-Manager (Finance) of Petitioner No. 13 Bank. Petitioner No. 37 was responsible for the affairs of Petitioner No. 13 Bank from July 2012 to September 2012. The Show Cause Notice F. No. DZU / INV / ST / J / 540 / 2015 / 3333 dated 25.04.2018 has alleged that Petitioner No. 37 was in charge of filing the

ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

44. Petitioner No. 38 is the Head (Corporate Tax) of Petitioner No. 4 Bank. Petitioner No. 38 was responsible for the affairs of Petitioner No. 4 Bank from 2012 onwards. The Show Cause Notice F.No.DZU/ INV / B / HDFC / 531 / 2015 / 1985 dated 14.03.2018 has alleged that Petitioner No. 38 was in charge of filing the ST-3 returns and has intentionally evaded payment of tax by filing incorrect returns. Accordingly, personal penalty under Section 78A has been imposed.

45. The Petitioner No. 39 is Indian Bank Association, which is an association with 144 banks as its members. (hereinafter referred to as the “Member Banks”). Members include Public Sector Banks, Private Sector Banks, branches of Foreign Banks operating in India, Co-operative Banks and Regional Rural Banks. Petitioner No.

39 is a voluntary organization of Banks and functions as a think tank for Banks in the matters of concern for the whole banking sector. It also provides expertise to the Government of India vis-à-vis matters relating banking industry and the execution of Government policies and schemes. The Petitioner No. 39 has been functioning since 1946 and is recognized as an association of persons for the purpose of Income Tax bearing Permanent Account Number AAAAI0812R and is also registered for the purposes of GST in the State of Maharashtra bearing GSTN 27AAAAI0812R1ZJ. The Petitioner No. 39 is a recognized body of Banks and has earlier been parties to various writ petitions across various High Courts in India including this Hon'ble High Court in the writ petition titled as A.K. Wadhwa v. Central Bank of India & Ors., WP (C) 7414/2014 filed before this Hon'ble Court.

46. Respondent No. 1 is the Union of India, being represented through the Secretary, Department of Revenue, Ministry of Finance. Respondent No.

1 is responsible for implementing the Finance Act, 1994 ("Finance Act"), for the purpose of levying Service Tax on the assessees engaged in providing services. Respondent No. 1 is also responsible for the implementation of the provisions of the IGST Act and the CGST Act. As per the CGST Act any supply made for consideration by a registered person to another registered person would be taxable under the said Act.

47. Respondent No. 2 is the Director General of Goods and Services Tax Intelligence. The Respondent No. 2 and its designated officers have issued the impugned Show Cause Notices to the member banks of the Petitioner No. 39 Association (which also includes the remaining Petitioners), thereby, demanding total Service Tax of approximately INR 18110,26,67,554 crores from the Petitioner banks.

48. Respondent No. 3 is the Central Board of Indirect Taxes and Customs (CBIC) (earlier called the Central Board of Excise and Customs

or CBEC) represented through its Chairman. Respondent No. 3 is the highest administrative body responsible for formulating the policies in respect of and implementing the provisions of Customs Act, 1962, The Central Excise Act, 1994, Chapter V of the Finance Act, 1994, and now the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax, Act, 2017 ("GST"). Respondent No. 2, Respondent No. 4 and Respondent No. 5 are subordinate to Respondent No. 3.

49. Respondent No. 4 is the Additional Director General, Directorate General of GST Intelligence. The Respondent No. 4 is the authority which has issued the impugned Show Cause Notices to the Petitioner Banks for demanding Service Tax along with applicable interest and penalty. The Respondent No. 4 has also sought to impose personal penalties upon the senior personnel of the Petitioner Banks, namely Petitioner Nos. 14 to 38.

50. Respondent No. 5 is the Additional Director General (Adjudication), Directorate General of GST Intelligence. The Respondent No. 5 is the adjudicating authority who will adjudicate the impugned Show Cause Notices issued by the Respondent No. 4.

51. Respondent No. 6 is the Goods & Services Tax Council (hereinafter referred to as "GST Council") being represented through its Chairman. GST Council is a Constitutional Body constituted under Article 279A of the Constitution of India for making recommendations to the Union and State Government on issues related to GST. The GST Council is chaired by the Union Finance Minister and other members are the Union State Minister of Revenue or Finance and Ministers in-charge of Finance or Taxation of all the States.

52. Prior to proceeding with the chain of events that leads to the filing of the present writ petition, it is necessary to understand the activities and transactions being undertaken by the Petitioner

Banks. It is to be noted that a Bank (including the Petitioner Banks) typically provides catena of banking services to its customers. In relation to the Current Account and Savings Account services which are relatable to the impugned Show Cause Notices, the major services can be classified into taxable and exempt, which have been tabulated as under:

Taxable services (where charges and fees are recovered)	**Non-taxable services**
Operation of Current Accounts and Savings Accounts - Deposit and Withdrawal of Funds - Cheque book issuance - Debit Cards - Issuance of demand drafts / pay orders - Cheque collection - Outward NEFT / RTGS / IMPS - Travelers cheque encashment	Lending where the Bank earns an interest income

- Passbook issuance charges - Home banking facility - Stop payment requests - Standing instructions - Cheque bounce charges - Charges for card / ATM transactions - Foreign currency conversion - Issuance of Bank Guarantees - Issuance of Letters of Credit - Loan processing charges - Foreign remittance charges	

53. As per the aforementioned table a Bank (including the Petitioner Banks) generally provides taxable services and exempt services. For the purposes of the present Writ Petition, the Petitioners have focused specifically on the facts relating to the alleged services which have been disputed in the impugned Show Cause Notices.

54. For a better understanding the Petitioners have explained the entire process involving the provision of disputed "services" in the following paragraphs:

a. The customer who wishes to open a bank account approaches the desired bank. For ease of understanding and for sake of brevity we have made reference to the process followed by Petitioner No. 1 (i.e. Punjab National Bank), Petitioner No. 2 (i.e. State Bank of India) and Petitioner No. 3 (i.e. Kotak Mahindra Bank Limited), and have also discussed the relevant terms and conditions stipulated by the above three banks, in this regard. For sake of convenience in explaining the process, we have collectively referred to Petitioner No. 1, Petitioner No. 2 and Petitioner No. 3 as "Banks". Let us assume that the customer approaches either of the three Banks i.e. either Petitioner No. 1, or, Petitioner No. 2, or, Petitioner No. 3, for opening the bank account. Since all the three Banks offer a variety of bank accounts, therefore, the Banks, first explain the different varieties of bank accounts and also inform the customer about the features / facilities / services that are offered by the Banks as a part of each kind of bank account. Further, the Banks also explain the different terms and conditions that are attached with each kind of bank account. This is done so as to enable the customer to choose the bank account that satisfies his / her requirements. As an illustration, a true copy of the Schedule of Charges showing the different types of accounts and the features / facilities offered by the Banks has been enclosed as **Annexure P – 3 (colly)**.

b. Once the customer finalizes the kind of bank account which he / she wishes to open with either of the Banks, then such Bank provides an Account Opening Form (hereinafter referred to as "AOF") to the customer. The AOF is a form which is required to be filled by the customer and is to be submitted to the Bank along with the relevant documents as mentioned in the said AOF. A true copy of sample AOF issued by the Banks have been enclosed as **Annexure P – 4 (colly)**.

c. An AOF is a form which has various blank fields, wherein, the customer is required to mention his / her details like name (of the account holder), address (of the account holder), date of birth (of the account holder), PAN (if any), etc. The AOF also provides the terms and conditions that are required to be adhered by both the Banks and the customer. These terms and conditions categorically prescribe the responsibilities / obligations of each party (i.e. the Bank and the customer), and mandates that each party should adhere to their respective obligations.

d. Further, it is relevant to note that the AOF also stipulates certain declarations, which are to be mandatorily signed by the customers. Therefore, it can be stated that the AOF, a signed copy of which is required to be submitted to the bank, is a contract between the customer and the bank for the purpose of opening the bank account. This contract is governed by the terms and conditions mentioned in the AOF.

e. Prior to proceeding further it is necessary to understand the responsibilities / obligations that are stipulated in the 'terms and conditions'. For the sake of understanding we have discussed the terms and conditions that form part of the AOF, which is filled for opening a 'current bank account' in the Banks. We have listed the responsibilities / obligations provided in the AOF, as under:

Relevant terms and conditions prescribed by Petitioner No. 1 (i.e. Punjab National Bank):

"TYPE OF ACCOUNT: I/We wish to open the following type of account (select one)

Saving Fund Account	Vidyarthi/ Salary/total freedom salary/ Mitra/ Shikshak/ Rakshak/Pensioners/ others
PNB Prudent Sweep SF	Sweep In and Out Facility Requested for .... days
PNB Smart Banking CA	
Recurring Deposit	Mthly. Instalment Rs ...... No. of instalment .... interest rate ...... %
Flexi-Recurring Deposit	Mthly. Core Amount Rs ...... No. of instalment .... interest rate ...... %
Term Deposit (FD)	Anupam/ Sugam / Tax saver/ other FDs (specify) ...... Please fill Annexure 1 also
Current Account	
DD / Cash Credit	

Declaration from the customer side that:

"I agreed to be bound by the terms and conditions as outlined in the Annexure II- Section (a) and by the rules of Punjab National Bank and the RBI (and subsequent amendments)"

Terms & Conditions, forming a part of the AOF:

"//We confirm having received, read and understood (a) the accounts rules and hereby agree to be bound by the terms & conditions outlined in these rules which governs the account(s) which I/We am/are opening/will open with Punjab National bank and {b) amendments to the rules made from time to time and those relating to various services availed by me/us when displayed by the bank on its notice board or on its website and those relating to various services offered by the Bank including but not limited to Debit card, Credit card, Internet banking, Mobile Banking, SMS alerts and other facilities listed in this form. //We are aware that the usage of these facilities is governed by the terms and conditions which are contained in the brouchers of the Bank issued from time to time/displayed on the website www.pnbindia.in, the sire maintained by Punjab National bank and I/we have reviewed the contents of the same. I I We understand that the bank may at its absolute discretion discontinue any of the services completely or partially without any notice to me/us. !!We agree that the bank may debit my account for service charges as applicable from time to time."

Relevant terms and conditions prescribed by Petitioner No. 2 (i.e. State Bank of India)

Declarations mentioned in the AOF issued by Petitioner No. 2 (i.e. State Bank of India):

"4. I/We affirm and declare that I/We have read over and understood the rules and regulations of the State Bank of India ("Bank") and those relating to various services offered by the Bank including but not limiting to debit card / internet banking / SMS banking / Tele-banking / Mobile Banking / Virtual Banking and any other facilities. I/We agree to abide by the same as amended / modified from time to time by the Bank / Regulator / Government published through circulars, notifications, notice board / websites / newspaper publications, etc. I/We waive the rights, if any, to have personal notice in respect of such amendments / modifications. I/We agree that the transactions and requests executed in my/our account(s) by me/authorized person through internet, mobile, tele-banking or virtual banking under my/our User ID and password/PIN/OTP will be legally binding on me/us & I/We am/are responsible for the maintenance of secrecy and confidentiality of the authentication credentials and any other information/ details/OTP/PIN, etc., in such matters. I/We agree that Bank has got all the rights to debit my/our account for any service charge, expenses or other dues which the Bank is entitled/liable to recover from me.

I/We also authorise the Bank and agree to close/ discontinue my account without any notice to me in case of any violation of laws/rules/regulations or terms and conditions of maintaining the account. I/We hereby undertake to inform the Bank on any change in my communication address or constitution, and I/We shall submit address proof in case of transfer of my account from one branch to another branch.

....

17. I/We have been advised of Monthly average/ minimum balance requirement for the account to be opened and given to understand these requirements are subject to revision/change and such revision/change will be uploaded on the Bank's site which will be acceptable to me as a notice to that effect...."

Relevant terms and conditions prescribed by Petitioner No. 3 (i.e. Kotak Mahindra Bank Limited)

"Customer Acknowledgement and Savings and Current Bank Rules

1….

5. Computation of AMB/AQB is the summation of end of day balances for the period (month/quarter)/number of days of the said period (month/quarter). Prefer GFSC for details on non-maintenance charges.

6…

I/We specifically understand and accept the following:

1. I/We have subscribed for the product with Kotak Mahindra Bank Limited ("KMBL") and as on date the applicable AQB/MAB for the same is Rs INR…..

2. I/We have read, understood and agree the General Schedule of Features and Charges as applicable to the above

Product subscribed by me/us/. I understand that the Bank reserves the right to revise its service charges as laid down in GSFC.

3. ...”

CUSTOMER DECLARATION-CURRENT/SAVINGS ACCOUNT

“...The particulars contained herein shall be valid for all accounts opened by me/us or to be opened by me/us hereafter either singly or with other(s) and/or by me/us in any representative capacity with the Bank unless informed otherwise. I/We have obtained, understood and agree the Terms & Conditions governing the opening of an account with Kotak Mahindra Bank Ltd (the Bank) and those relating to various services including but not limited to a) ATM b)Phone Banking c) Debit Card d) Net Banking e)Payment Gateway f) Kotak Bill g) SMS Banking h) Alert service i) Fixed Deposits/ Recurring Deposits

i) Fixed Deposits/ Recurring Deposits…"

f. On the basis of the above, it can be stated that the customer, who wishes to open a 'current bank account' in either of the Banks, then such customer is required to maintain Average Monthly Balance / Average Quarterly Balance (hereinafter referred to as "AMB" and "AQB", respectively). In case the customer fails to maintain the AMB / AQB then, the customer would be liable to pay certain penalty / non-maintenance charges to the Banks, as per the General Schedule of Features and Charges (of the respective Banks). Further, the Banks would provide certain features / facilities / services (like ATM, Phone Banking, Debit Card, Net Banking, Payment Gateway, Bill, SMS Banking, Alert service, etc.) to the customer to enable him / her to operate the bank account.

For ease of reference, the Petitioners in the succeeding paragraphs of this petition have referred the terms AMB/AQB and the concept of requirement of maintaining the minimum balance in the account as 'Minimum Average Balance' (hereinafter referred to as "MAB").

g. The Petitioners would like to bring to the kind attention of this Hon'ble Court that the requirement of MAB is applicable in all the Petitioner Banks.

h. At this juncture, the Petitioners would also like to bring to the kind attention of this Hon'ble Court that in case the customer fails to maintain the MAB, then, the Banks would impose a non-maintenance charge / penalty on the customer. However, the Banks would not stop offering the features / facilities / services to the customer. The terms of the Contract between the Banks and the customer nowhere provides that maintenance of MAB is a necessary condition for availment of the facilities extended along with the bank account.

i. Therefore, once the customer has perused all the terms and conditions and has tendered confirmation to the same by affixing his / her signature on the AOF, then, the Bank (chosen by the customer) proceeds with the verification of the information provided by such customer in his / her AOF.

j. Post the verification of information provided by the customer, the Bank (chosen by the customer) opens the account in the name mentioned in the AOF and provides a welcome kit to the customer. The welcome kit includes a debit card and its password, a cheque book, details regarding internet banking, etc.

k. Post opening of the bank account and receipt of the welcome kit, the customer activates the debit card and has the freedom to operate the account as per his choice. He may choose to make deposits instantly or at his will. The facilities provided along with the account helps the customer to operate the account and provides them the freedom to use their deposits. In case the MAB is less than the amount mentioned against the type of bank account, then a penalty / non-maintenance charge is levied by the Bank (chosen by the customer).

55. The aforesaid chain of events clearly depicts the procedure followed by all the Petitioner Banks which leads to opening of a bank account with them. It is now pertinent to examine and understand the chain of events that has led to the filing of the present petition which is as follows:

(i) Petitioners No. 1 to Petitioner No. 13 are engaged in providing wholesale banking, retail banking, treasury, loans and credit card services. For the said services, the Petitioner Banks were registered with service tax authorities, for discharging Service Tax, wherever applicable on the charges and fees received by them.

(ii) For a better understanding of the facts and the issue involved we have discussed the specific facts relating to Petitioner No. 1, Petitioner No. 2 and Petitioner No. 3 below, which lead to the issuance of the Show Cause Notices, under separate heads. Since the facts in other Show Cause Notices impugned in the present writ petition are similar to the Show Cause Notices issued to Petitioner No, 1, Petitioner No. 2 and Petitioner No. 3, providing a common cause of action, the facts pertaining to the other Show Cause Notices have not been reproduced herein for the sake of clarity and brevity.

(iii) Facts relating to the Petitioner No. 1:

a. As stated above, the Petitioner No. 1 (i.e. the Punjab National Bank) is engaged in providing banking and financial services.

b. The Petitioner No. 1 is also undertaking a similar transaction as has been explained in paragraph 54 of this writ petition.

c. On receiving an intelligence about the non-payment of Service Tax in relation to the accounts with the feature of MAB, an investigation was initiated against the Petitioner No. 1, by Respondent No. 4.

d. The Respondent No. 4 examined the sample AOF forms made available by the Petitioner No. 1 and examined the declarations stated therein. The Respondent No. 4 especially focused on the declaration stating that the customer is required to maintain MAB to avail the facilities and the customers agree to pay the penalty if such MAB is not maintained. This particular aspect has been alleged to be a service in terms of the provisions provided under the Finance Act, 1994.

e. The Respondent No. 4 has also recorded the statement of Mr. Deepak Taneja, Chief Manager (Finance and Taxation). It is relevant to mention here that Mr. Taneja in his statement categorically stated the Petitioner No. 1 bank does not discontinue any features / facilities / service in case of non-maintenance of MAB. Mr. Taneja also stated that the Petitioner No. 1 has discharged its Service Tax obligations on the amount recovered from the customers for non-maintenance of MAB.

f. Basis the review of documents and information provided by the Petitioner No. 1, and the statements given by

Petitioner No. 1's personnel, the Respondent No. 4 alleged that the Petitioner No. 1 recurrently commits to provide the features / services / benefits as per the features of the relevant bank account, in lieu of, a recurrent understanding / commitment from the customer that he is required to maintain a stipulated MAB.

g. The Respondent No. 4 has alleged that the commitment of the customers to maintain MAB is in the nature of consideration for the facilities / features / services that are agreed to be provided by the Petitioner No. 1 Bank. Consequently, the Respondent No. 4 has categorized the rendition of features / facilities / services by the Petitioner No. 1 as a service of '*agreeing to the obligation to do an act*' under Section 66E(e) of Finance Act.

h. The Respondent No. 4 also relied on RBI Circular No. DBR.Dir.BC.No. 47/13.03.00/2014-15 dated 20.11.2014 to allege that there exists contractual agreement between the customers and the Petitioner No. 1 which embodies the service levels and access to functionalities basis the nature of the account kept and the maintenance of MAB. It has also been alleged by Respondent No. 4 that the maintenance of MAB is in the nature of account service fee for providing facilities or features to the customers.

i. The Petitioner No. 1 would also like to bring to the kind attention of this Hon'ble Court that the Respondent No. 4 has relied on the statements of other Petitioner Banks, to allege that the charges levied for non-maintenance of MAB are commensurate with the cost associated for maintaining such accounts.

j. The Respondent No. 4 has further alleged that since the provision of services is for a consideration which is not ascertainable (i.e. consideration by way of the customer's undertaking/ committing to maintain MAB, which is non-monetary in nature), the same needs to be valued in terms of Section 67(1)(iii) of Finance Act read with Rule 3(b) of the Service Tax (Determination of Value) Rules, 2006 ("Valuation Rules"). Accordingly, as per Rule 3(b) of the Valuation Rules, the Respondent No. 4 has determined the 'consideration' to be the highest penal charges that is imposed by the Petitioner No. 1 in case of non-maintenance of MAB by a customer in that category of accounts.

k. Accordingly, the Respondent No.4 has issued Show Cause Notice dated 20.04.2018, to the Petitioner No. 1, thereby, asking to show cause as to why the following should not be recovered from the Petitioner No. 1:

- Service Tax (including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess) amounting to INR 9,70,06,31,481 (including the Service Tax component demanded from 75 circle offices of Petitioner No.1)
- Interest under Section 75 of the Finance Act.
- Penalty under Sections 76, 77 and 78 of the Finance Act.

l. Additionally, the Respondent No. 4 has also directed Mr. Deepak Taneja, working as a Chief Manager (Finance and Taxation) in the Petitioner No. 1 Bank, to show cause as to why penalty under Section 78A of the Finance Act should not be imposed upon him, in respect of each circle office of the

Petitioner No. 1 Bank, mentioned in Table G available at internal pages 32 to 36 of the Show Cause Notice.

m. It is to be noted that the Respondent No.4 has also issued separate Show Cause Notices to 75 Circle offices of Petitioner No.1 across various States. The allegations in those notices are similar to the allegations discussed in the foregoing paragraphs. Therefore, for sake of brevity the Petitioners have not discussed the allegations raised in all the remaining 75 Show Cause Notices issued to the Circle offices of the Petitioner No. 1 Bank.

(iv) Facts relating to the Petitioner No. 2:

a. The Petitioner No. 2 provides multiple options to its customers in the banking services. For e.g. the customers of Petitioner No. 2 can choose from various kinds of bank accounts like Savings Account, Current Account, Corporate Salary Account, etc. Thus, Petitioner No. 2 caters to all kinds of needs and demands of its customers.

b. Each type of bank account is offered with a distinct set of features / facilities to the account-holders (e.g. ATM usage, cheque books, demand drafts, debit cards etc.) depending on the variant product features. These features / facilities are provided by the Petitioner No. 2 as a part and parcel of the bank account and no consideration / fee is charged by the Petitioner No. 2 for such features (or services).

c. Further, certain types of bank accounts prescribe the condition of maintaining the Average Quarterly Balance ("AQB") or Average Monthly Balance ("AMB") (hereinafter referred to as 'Minimum Average Balance' or 'MAB'). MAB means that the account holder (i.e. the customer of the

Petitioner No. 2) is required to maintain a minimum balance in the account every quarter/month (as the case may be). In case the average quarterly / monthly balance in the account goes below the prescribed limit, then, Petitioner No. 2 would impose a penalty on its account holders. On such penal charge, the Petitioner No. 2 has paid Service tax.

d. The Petitioner No. 2 would like to bring to the kind attention of this Hon'ble Court that the penalty charges imposed by it, on the account holder (i.e. the customers) who fail to maintain the MAB, are not collected as a consideration for the provision of features / benefits / services provided by it to its customers as a part of the bank account.

e. On the basis of an intelligence, the Respondent No. 4 initiated an investigation against the Petitioner No. 2 seeking details of the services provided by it and the charges recovered from the account holders. As a part of the investigation, the Respondent No. 4 called for various documents in relation to the requirement for maintaining MAB. The Respondent No. 4 also summoned Petitioner No. 2's senior personnel to tender statement in relation to functioning of various accounts and the mechanism behind computation of MAB and the penal charges imposed by the Petitioner No. 2.

f. The Respondent No. 4 also examined the Account Opening Forms ("AOF") filled by the customers at the time of opening the bank account and alleged that as per the terms and conditions stipulated in the AOF, the customers are required to maintain the MAB in their bank account. Failure in maintenance of MAB by the customers attracts a penalty which is levied by Petitioner No. 2.

g. The Respondent No. 4 alleged that the commitment to provide the features / services / benefits as per the specific bank account is in the nature of a service, and more specifically a service in the nature of 'agreeing to the obligation to do an act' under Section 66E(e) of the Finance Act, in lieu of, a 'consideration' in the form of commitment by the customers to maintain the MAB. As per the Respondent No. 4 the customer's understanding of maintaining the stipulated MAB (in the account) represents (non-monetary) 'consideration', for the features / benefits / services that are provided by the Petitioner No. 2.

h. Accordingly, the Respondent No. 4 has categorized the features / benefits / services (i.e. services available such as free ATM withdrawal, free cheque book etc.), provided by the Petitioner No. 2, as 'declared services' of 'agreeing to the obligation to refrain from an act, or to tolerate an act, or a situation, or to do an act', in lieu of, customer's commitment to maintain the stipulated MAB.

i. The Respondent No. 4 has further alleged that since the provision of services is for a consideration which is not ascertainable (i.e. consideration by way of the customer's undertaking/ committing to maintain MAB, which is non-monetary in nature), the same needs to be valued in terms of Section 67(1)(iii) of Finance Act read with Rule 3(b) of the Service Tax (Determination of Value) Rules, 2006 ("Valuation Rules"). Accordingly, as per Rule 3(b) of the Valuation Rules, the Respondent No. 4 has determined the 'consideration' to be the highest penal charges that is imposed by the Petitioner No. 2 in case of non-maintenance of MAB by a customer in that category of accounts.

j. Accordingly, the Respondent No. 4 has issued a show cause notice dated 14.04.2018 to the Petitioner No. 2, thereby, asking to show cause as to why the following should not be recovered from the Petitioner No. 2:

- Service Tax (including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess) amounting to INR 341,04,90,875
- Interest under Section 75 of the Finance Act.
- Penalty under Sections 76, 77 and 78 of the Finance Act.

k. Additionally, the Respondent No. 4 has also directed Mr. PVBN Murthy and Mr. Sushil Kumar Shah to show cause as to why penalty under Section 78A of the Finance Act, should not be imposed upon each of them.

(v) Facts relating to the Petitioner No. 3:

a. The Petitioners would like to bring to the kind attention of this Hon'ble Court that the services provided by the Petitioner No. 3 are similar to the ones that are provided by Petitioner No. 1 and Petitioner No. 2, as described above. Although the Petitioner No. 3 offers different variety of bank accounts (under different names), however, the basic transaction remains the same.

b. At the cost of repetition, but, for sake of clarity we have reiterated the basic transaction. The customer fills an AOF for the purpose of opening a bank account in the Petitioner No. 3 bank. As per the terms and conditions of the AOF the Petitioner No. 3 bank offers a set of features / benefits / services to the customer as a part and parcel of the bank account. Separately, the customer also agrees to maintain the MAB in the bank account, as per the terms and conditions and prescribed standards / features provided in the AOF. In case the customer fails to maintain the MAB then, the Petitioner No. 3 Bank imposes a penal charge on the said customer. Petitioner No. 3 is continues to provide the features / facility / services even if the customer fails to maintain the MAB. On such penal charge, the Petitioner No. 3 has paid Service tax.

c. The Respondent No. 4 initiated an investigation against the Petitioner No. 3. During the investigation the Respondent No. 4 had examined the filled AOFs, circulars issued by the Reserve Bank of India and had also summoned senior personnel of Petitioner No. 3.

d. On the basis of the investigation, the Respondent No. 4 alleged that the features / facilities / services offered by the Petitioner No. 3 Bank are a service in the nature of 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' under Section 66E(e) of the Finance Act, in lieu of, a 'consideration' in the form of commitment by the customers to maintain the MAB.

e. The Respondent No. 4 has further alleged that since the 'consideration' is non-monetary, therefore, the same has to be valued as per Section 67(1)(iii) of the Finance Act read with Rule 3(b) of the Valuation Rules. Accordingly, the Respondent No. 4 has determined the value to be the highest non-maintenance charge specified by the Petitioner No. 3 (i.e. the highest penalty imposed by Petitioner No. 3 for non-maintenance of MAB).

f. In addition to the above, the Respondent No. 4 has also alleged that the Petitioner No. 3 has not deposited Service Tax on the alleged services provided from its branch offices located in Jammu & Kashmir. The Respondent No. 4 has argued that the Petitioner No. 3 has obtained centralized registration of service tax which has included the addresses of its branches in Jammu & Kashmir. As per the Place of Provision of Services Rules, 2012 (“POPS Rules”) the ‘location of the service provider’ in case of centralized registration is the location of the office which has obtained central registration i.e. the head office located in Mumbai. Further, as per Rule 9(a) of the POPS

Rules the ‘place of provision’ of services provided by a bank to an account holder would be the place of the service provider. Thus, as per the Respondent No. 4 the ‘place of provision’ of services provided by the Petitioner No. 3 would be deemed to be Mumbai, and hence taxable under the Finance Act.

g. Consequently, the Respondent No. 4 has issued a show cause notice dated 14.04.2018 to the Petitioner No. 3, thereby, asking to show cause as to why the following should not be recovered from the Petitioner No. 3:

- Service Tax (including Education Cess, Secondary and Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess) amounting to INR 1077,71,07,670
- Interest as per Section 75 of the Finance Act.
- Penalty under Sections 76, 77 and 78 of the Finance Act.

Additionally, the Respondent No. 4 has also directed Mr. Prasad Lanke and Mr. Sagar Nath Khawre to show cause as to why penalty under Section 78A of the Finance Act, should not be imposed upon each of them.

(vi) At this juncture, we would like to bring to the kind attention of this Hon'ble Court that the issue with respect to the demand of Service Tax on the services offered by the branches of the banks located in Jammu & Kashmir to the customers also located in Jammu & Kashmir has only been raised in the Show Cause Notices issued to Petitioner No. 3 to Petitioner No. 5, Petitioner No. 8 to Petitioner No. 10 and Petitioner No. 12.

(vii) The Respondent No. 4 has conducted similar investigations on several other members of the Petitioner No. 39 and has issued Show Cause Notices raising similar allegations as discussed in the foregoing paragraphs, thereby, accumulating the total demand of Service Tax to INR 18110,26,67,554 crores on the Petitioner Banks alone, so far.

(viii) Subsequent to the issuance of the impugned Show Cause Notices the Petitioners filed a number of representations before the following the authorities:

a. Shri Arun Jaitley, Hon'ble Minister of Finance, Ministry of Finance.
b. Mr. Ashok Narian, Chief General Manager, Reserve Bank of India, Consumer Education and Protection Department.
c. Hon'ble Chief General Manager, Department of Banking Regulation, Reserve Bank of India.
d. Mr. Brajendra Navnit, Hon'ble Joint Secretary, Prime Minister's Office.
e. Hon'ble Chairman, Central Board of Indirect Taxes and Customs,

Department of Revenue, Ministry of Finance (i.e. the Respondent No. 3).

f. Mr. G.C. Murmu, Hon'ble Special Secretary (Revenue).

g. Mr. Ajay Bhushan Pandey, Hon'ble Secretary, Department of Revenue, Ministry of Finance.

h. Mr. Ravi Mittal, Hon'ble Additional Secretary, Banking, Department of Financial Services, Government of India, Ministry of Finance.

i. Mr. Rajiv Kumar, Hon'ble Secretary, Department of Financial Services, Government of India, Ministry of Finance.

j. Mr. Amitabh Kumar, Hon'ble Joint Secretary, TRU-II, Government of India, Ministry of Finance.

k. Mr. John Joseph, Hon'ble Member (Budget), Central Board of Indirect Taxes and Customs.

l. Mr. Hasmukh Adhia, Hon'ble Secretary, Ministry of Finance.

(ix) We have annexed a true copy of all the representations filed before the aforementioned authorities as **Annexure P – 5 (colly)**.

(x) It is clearly evident that the Respondent has issued the impugned Show Cause Notices without understanding the transactions being undertaken by the Petitioner Banks and has issued the said Notices without any application of mind.

(xi) Further, prior to the issuance of the impugned Show Cause Notices, on 01.07.2017, the Goods and Services Tax (hereinafter referred to as "GST") regime was implemented in India and accordingly, the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") and the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the 'IGST Act') its allied legislations were brought into effect.

(xii) As per Section 7 read with Section 9 of the CGST Act, a supply is taxable only if it has been made for a consideration, except of the supplies, which are listed under Schedule I of the CGST Act. Therefore, the presence of 'consideration' is a necessary concomitant for a 'supply' to be taxable, under the CGST Act.

(xiii) Further, reference may also be made to Section 15 of the CGST Act, which provides for the determination of 'value of supply'. As per this section, if the parties are un-related and the price is the sole consideration, then, the 'value of supply' shall be the price paid or payable, for the supply. In this regard, the Respondent No. 3 issued a dossier providing clarifications in the form of Frequently Asked Questions (hereinafter referred to as the "FAQ"). FAQ No. 32 deals with the question that whether value of services be enhanced by invoking the Central Goods and Services Tax Rules, 2017 ("CGST Rules") in case of services provided by banks at a concessional / differential rate to a recipient other than 'related party'. The Respondent No. 3 has clarified that 'No' the value cannot be enhanced. For ease of reference we have enclosed the relevant portion of the FAQs issued by the Respondent No. 3 as **Annexure P – 6**.

(xiv) Despite the clarifications issued by the Respondent No. 3, the Additional Commissioner (A.E.), CGST & C.Ex., Mumbai East and Senior Intelligence Officer, Directorate General of GST Intelligence, Puducherry Regional Unit, who are officers of Respondent No. 3 situated in different parts of the country, have initiated investigations under the CGST Act too, against the Members of the Petitioner No. 39, in order to try to levy GST on the same transactions on which the impugned Show Cause Notices have been issued, basis similar arguments as used for trying to levy service tax under the impugned Show Cause Notices. True copy of the letters dated 21.08.2018 issued by Additional Commissioner (A.E.), CGST & C.Ex., Mumbai East to Petitioner No. 12, Petitioner No. 6 and Petitioner No. 11 and also the letter dated 09.05.2019 issued by the Senior Intelligence Officer, Directorate General of GST Intelligence, Puducherry Regional Unit to Petitioner No. 3 have been annexed as **Annexure P – 7 (colly)**.

(xv) Aggrieved by the arbitrary and unreasonable allegations raised by the Respondent No. 4 in the impugned Show Cause Notices, as well as the institution of the investigation under the CGST Act for trying to levy GST on the same activities on which demand of Service Tax has been raised in the impugned Show Cause Notices, the Petitioners have filed the present Writ Petition on the following grounds. Each ground is independent and is without prejudice to the other grounds.

GROUNDS

It is submitted that in the following paragraphs the Petitioners have put-forth various grounds and submissions for challenging the levy of Service Tax under the provisions of the Finance Act and levy of GST under the provisions of the CGST Act on the features / benefits / services offered by the Petitioner Banks. It is submitted that the grounds / submissions made specifically for challenging the levy of Service Tax in reference to the Finance Act may also be read mutatis mutandis as submissions by the Petitioners for challenging the levy of GST under the CGST Act. Consequently, the grounds taken by the Petitioners for challenging the levy of GST, have not been repeated herein for sake of brevity, for challenging the levy of GST on the features / benefits / services offered by the Petitioner banks.

Further, as a consequence of the above, it is submitted that the reference to Section 66E(e) of the Finance Act may also be read as a reference to Section 7(1A) read with Schedule II, clause 5(e) of the CGST Act, since the said provisions of the CGST Act are pari materia to the aforementioned provisions of the Finance Act. Further, a reference to Section 66D(n)(i) of the Finance Act be read as a reference to serial no. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, since the aforesaid provisions are pari materia to each other.

As stated in the facts, requirement of maintaining the MAB is applicable to the bank accounts, such as savings account and current account, in a particular bank. However, the Petitioner Banks offer different variants of the accounts which offer different features / benefits / services. The MAB requirements in these different variants of savings or current accounts will vary. In addition to these variants, there are the Basic Savings Bank Deposit Accounts (BSBD) and Salary Accounts including those for Government employees, defence personnel, etc, which generally do not provide for maintenance of any minimum balance. The different variants of the accounts (offered by a few Petitioner Banks) can be seen in the Schedule of Charges enclosed in Annexure P-3. Therefore, for avoiding any complications and for sake of convenience, any ground / submission taken vis-à-vis the requirement of MAB in an account variant shall also be applied mutatis mutandis to alleged services apropos other kinds and variants of Bank accounts. All similarly situated account holders, other than current account holders, enjoy the same rate of interest on the amounts deposited in the accounts. No interest is paid to the holders of current accounts on account of the restriction placed by RBI, wherein, no interest can be provided for a current account. Reliance in this regard is placed on Master Direction DBR.Dir.No.84/13.03.00/2015-16 dated 03.03.2016 as updated on 22.02.2019. Copy of the Master Direction DBR.Dir.No.84/13.03.00/2015-16 dated 03.03.2016 as updated on 22.02.2019 is enclosed as **Annexure P – 8**.

In addition to the above, it is submitted that the Respondent No. 4 vide the impugned show Cause Notices has demanded Service Tax also on Salary Accounts or other similar accounts and programs offered by the Petitioner Banks, which do not contain / prescribe the condition of maintaining MAB in the account. Therefore, without prejudice to the submissions made in the succeeding paragraphs of the petition, to the extent the demand of Service Tax under the impugned Show Cause Notices pertains to such accounts, the same are anyway liable to be quashed and set-aside, since the allegations under the impugned Show Cause Notices are solely premised on the presence of the MAB condition. Consequently, the impugned Show Cause Notices, to the extent it relates to Salary Accounts or other similar programs offered by the Petitioner Banks, ought to be anyway quashed and set-aside.

A. Section 66E(e) of the Finance Act as well as Section 7(1A) read with Clause 5(e) of Schedule II of the CGST Act are arbitrary, ambiguous, vague, incapable of giving out a measurable value and hence, violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950

A.1 It is submitted that Section 66E(e) of the Finance Act reads as under:

> "66E. Declared services.
> The following shall constitute declared services, namely:-
> ..."

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;"

Further, it is submitted that a similar entry has been provided under Section 7(1A) read with Clause 5(e) of the Schedule II of the CGST Act, whereby, the activity of "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" has been categorized as a 'supply of service'.

A.2 It is submitted that the Respondent No. 4 has relied on this Entry to construe MAB to be an 'agreement to the obligation to do an act' and also as a consideration for rendition of services by the Bank. This Entry suffers the following infirmities:

1. It is capable of being construed as a service, as a condition to the contract and now even as consideration by the Respondents.

2. It is inconceivable for something to be a service, a condition to the contract and also a consideration simultaneously.

3. Each one is exclusive to the other; when something is a service it can't be consideration and vice versa. When something is a service it can't be a condition for the contract and vice versa.

4. This also leads to further infirmity of identifying intrinsic value as a consideration. So a single entry namely of Section 66E(e) cannot be read as a service, a condition to the contract and as consideration capable of an intrinsic measurable value.

A.3 This entry therefore is arbitrary, ambiguous, vague, incapable of giving out a measurable value and therefore violative of Article 14, 19(1)(g) and Article 265 of Constitution of India. This entry is therefore has to be declared unconstitutional and ultra vires the Constitution of India.

B. The Petitioner respectfully submits that the entire proceedings are non-est, are ab initio

void lacking totally in jurisdiction besides interfering with the fundamental right to carry on trade and business and therefore impugnable before the Hon'ble Court for the following reasons:

B.1 The following are the undisputed positions by both the Petitioners and the Respondents, aspects which are not disputed in the impugned Show Cause Notices.

i. The starting point of the transaction under discussion is opening a bank account by the customer.

ii. All the customers without any discrimination are entitled to avail the bouquet of services offered by each Petitioner Bank. Despite any categorization in terms of rural or urban, etc. similar bouquet of services are still made available to the entire class falling within that category.

iii. To reiterate, all the features / facilities / services are made available to all the customers falling under the respective categories of bank accounts and the customer is given the free will to choose the offering at its discretion and the Petitioners do not interfere in any manner.

iv. It is the customer who brings the money by way of deposit as far as the impugned transactions are concerned. The quantum, the frequency and the discretion to the deposit or withdraw remains unfettered in the hands of the customer.

v. MAB forms part of the terms and conditions of the respective account opening contract leading to opening of the account and deposit of funds.

vi. These terms and conditions remain the same and is made available to all the customers falling within the same category.

vii. In other words the features / facility / services is available to all in the same category and the discretion is with the customer to avail it or not.

B.2 In light of the aforesaid it is more important to highlight that the Petitioners do not thrust a MAB proposal on any customer so as to assume any consequent benefits or consideration.

B.3 Consequently it is self-evident and remains undisputed that the features / facility / services is available to all in the category and the discretion is wholly with the depositor or the customer and not the Petitioner Banks and the Petitioner Banks in no manner influence, impose or insist MAB with the customers.

C. Having seen the transactional flow, the Petitioners are duty bound to bring on record the derivative benefits and the beneficiaries out of the transactions

C.1 It is submitted that a bank account containing deposits forms the fulcrum of the transaction.

C.2 It is submitted that this deposit is brought into the bank only by the customer and in turn he is assured of a consideration in the form of interest.

C.3 Consequently three things are clear, (i) the customer provides the service of depositing monies into the bank and receives a consideration in the form of interest; (ii) the service providers are customers of the bank and the Petitioner Banks are the recipient; and (iii) the consideration that flows for the services is interest. Once this is accepted and not disputed, it is self-evident that Finance Act has indeed taken this whole transaction out of its ambit by classifying this service in the negative list in terms of Section 66D(n)(i) (relevant portion has been extracted in the foregoing paragraphs of this Writ Petition).

C.4 It is submitted that any service which falls under the negative list goes out of the purview of the Finance Act. It is made clear that these are not transactions exempt from Service Tax. These are transactions which being non-taxable, go out of the purview of the applicability of the Finance

Act. For the purpose of convenience this is described as Transaction No. 1.

C.5 Coming to the second limb (hereinafter referred to as "Transaction 2") of the same transaction, it is submitted that a customer who exercises the choice of an MAB in the particular category maintains that minimum balance and should the customer fail to maintain the balance, the account holder is visited with a penalty in terms of the same contract entered into at the time of the opening the account. Consequently non-maintaining the MAB results in penalty. Here again the triple requirement of Service Tax gets satisfied. Maintaining an MAB is nothing but maintaining a deposit in a bank account and such a maintenance of deposit entitles the customers to the interest due on it. Non-maintenance if held to be a breach is visited with penalty. In other words for 'agreeing to maintain a deposit', the account holder is entitled to interest and breach is visited with penalty. The consideration paid at the first instance is interest which is under the negative list. The consideration paid by the depositor for the breach partakes the character of penalty. If consideration flows from the bank it partakes the character of interest and therefore goes into the negative list and gets out of the Service Tax net. Since the consideration for the breach, in the form of penalty, is paid by the depositor to the bank and hence not an interest, the transactions have to suffer a Service Tax, which it indeed suffers and the same is not disputed.

C.6 It is submitted that if one would combine both the Transactions 1 and 2 together, the inevitable inferences which would flow out are:

i. The customer is rendering the service of depositing the money and the bank as a recipient of service pays consideration in the form of interest, which is governed by the negative list and thus outside the purview of Finance Act.

ii. The terms and conditions of maintaining a MAB is common to all the customers falling under the category and consequently one which maintains MAB by way of that deposit also is compensated by the Petitioner Banks by paying interest which is again not liable to Service Tax.

iii. What is most important to highlight is the Petitioner Banks do not thrust or compel any one to maintain MAB, it is the choice of the customer. Secondly, whether a customer maintains MAB or not, the deposits under that category enjoys the same rate of interest. It is not the case of the Respondents that a higher rate of interest is being paid to a depositor who holds MAB in that category. That is not the case in any of the transactions impugned before this Hon'ble Court.

iv. Assuming but not admitting, should a higher rate of interest be paid for a MAB that would also partake the character of interest which again stands excluded, which any how is not the case.

v. Lastly, non-maintenance of MAB results in a consideration to the Petitioner Banks from the customers in the form of penalty. Even this can also partake the character of interest paid to the bank because the source continues to remain as deposits and the character of the derivative can only be interest. This should also, by the same interpretation, get excluded from the service tax net since Section 66D(n)(i) of the Finance Act does not restrict the exclusion only for interest paid by the bank to the customer. In any case, since Petitioner Banks have termed it as penalty, the same is suffering Service Tax.

C.7 It is made clear that even in the case of a default or breach of MAB requirement, the customer or the account holder continues to receive interest on the deposits held by the Petitioner Banks. Petitioner Banks do not stop paying interest on the balance in the account in cases of default; default is visited with penalty and Service Tax on it has been discharged already.

C.8 In short, the transaction of putting a deposit into a bank account has two consequences, holding the deposit results in interest which is out of the Service Tax purview; breach is visited with penalty on which Service Tax has been discharged; thus this transaction does not generate any other aspect or aspects to be examined under the lens of Service Tax.

C.9 It is further submitted that the assumptions drawn in the impugned Show Cause Notices alleging “stickiness” and behavioral perspectives of the depositor under the MAB category is clearly an overreach and not warranted in law. This proceeds on the assumption that MAB gives certainty and assurance of liquidity in the hands of the petitioner banks through the customer deposit. This aspect of supposed certainty is simply fallacious since there is no restriction, limitation or constraint either in the withdrawal or keeping an excess deposit over and above MAB. There can be no assumption that the declared MAB at every given point of time is a liquidity available in the hands of the banks, since every bank handles thousands and millions of customers at a time and any account holder is free to breach the requirement of maintaining the MAB and continue to receive the services, and is only slapped with a penalty in case of non-maintenance of MAB. An assured liquidity is a misnomer since it is not sufficient that a Bank has an assured liquidity. There is no contract with the customer in translating an assured liquidity into assured results and assured benefits, which is tangible or measurable. MAB is also a form of deposit and funds are fungible and every deposit enjoys same rate of interest. Consequently the impugned Show Cause Notices are totally silent, and rightly so, since no intrinsic or tangible benefits accrue either to the customers or to the Banks in terms of MAB as there is neither enhanced interest payment benefiting the depositor nor depleted interest benefiting the Bank. Neither does the bank take custody of the money disabling the customer from withdrawing it nor does the customer loose the eligibility to features / facilities / services by breaching the MAB condition.

D. The impugned Show Cause Notices do not dispute both the occurrence of these transactions and the consequential tax implications, however, it overlooks this to advance its own independent case and the Petitioner Banks are therefore duty bound to address this understanding of the Respondents

D.1 It is submitted that the case of the Respondent No. 4, in short, is as follows:

As per the terms and conditions (provided at para 54 of the Writ Petition (internal page 6 of the Show Cause Notice issued to Petitioner No. 1, page 1 and 2 of the Show Cause Notice issued to Petitioner No. 2 and page 4 and 12 of the Show Cause Notice issued to Petitioner No. 3)) of the AOF, the customer has agreed to maintain a MAB and in response to this agreement, the

Petitioner Banks offer rendering free services and therefore the same needs to be taxed.

D.2 It is submitted that two aspects are brought on record to test two issues namely, firstly identifying who is the service provider and who is the service recipient, and secondly what is the service and the corresponding consideration.

D.3 It is submitted that according to the Respondent No. 4, the customer in terms of the contract has agreed to maintain a minimum balance and the Petitioners Banks in terms of the same contract has agreed to provide a set of services free of charge. Taking these two aspects one is forced to pose the first question, who is the service provider and the service recipient in this transaction. The Respondents claim that maintaining a MAB is consideration received by the Petitioner Banks. However such a commitment is a declared service in terms of Section 66E(e) and therefore the millions of customers holding bank accounts in the various Petitioner Banks become the service providers.

If customer are service providers and the services rendered by the bank becomes the consideration then it is needless to say that the impugned proceedings against the Petitioner Banks are totally misconceived and misdirected, ab initio void and without jurisdiction since the transactions are domestic transactions and the taxability, if any, is on the shoulders of the service provider namely the customers.

D.4 In the alternative it is submitted that if the Petitioner Banks are assumed to be the service providers of a declared service of agreeing to do an act and the customers are by default identified as service recipients, the proceedings are again misconceived, non-est, ab initio void and lacking totally in jurisdiction, for the following reasons:

i. It is nobody's case in the impugned Show Cause Notices that the Petitioner Banks are charging one set of consideration for agreeing to provide a list of services and another set of consideration for actually providing the service. In such transactions it may be possible to tax the consideration towards agreeing to provide a service and the consideration for actually providing the service as two separate taxable events. Whereas in the instant case, the impugned Show Cause Notices are ex-facie silent in identifying two such separate activities and two such separate considerations for it to be taxed. Therefore it is a gross misconception to assume that the Petitioner Banks are service providers.

ii. It is the consistent case of all the Petitioners, which remains undisputed, that the list of services is available to all MAB account holders in a category and any one can be a MAB account holder and the Petitioner Banks do not pick and choose. Banks can therefore never be a service provider at the first instance.

D.5 If by any stretch of imagination the Petitioner Banks are held to be a service providers then by default the customers become the service recipient in which case there must be a consideration flowing from the customer to the Petitioner Banks. What is that consideration? First of all is there at all any consideration and if so then, what is that consideration? And further what is the value and quantum of the consideration? Any assumptions in this direction will be a journey or exploration chasing one myth after the other for the following reasons:

i. If the MAB deposit is assumed to be the consideration then it is elementary that such a consideration should belong to the Petitioner Banks which is not a commercial reality. For MAB to be a 'consideration' it should be irretrievably parted by the customer and irrevocably received by the Petitioner Banks. Petitioner Banks are merely a custodian or trustee of the deposit and a customer and his deposit is treated only as creditors repayable.

ii. If MAB is a consideration then the depositor should not have the power to withdraw the funds by his choice anytime. If anyone were to read the terms and conditions then there is no obligation or a compulsion by the Banks (on the customers) to maintain MAB so as to put a complete freeze of the amount, disentitling the customer from withdrawal. There is no such condition to bring this transaction even symptomatically near the "declared service" contemplated under Section 66E(e) of the Finance Act.

iii. It is the complete discretion and choice of the customer to deposit funds into the accounts and customers, without any discrimination as MAB or non-MAB accounts, enjoy a consideration from the Petitioner Banks in the form of interest, carrying identical rates (for similarly situated customers). No extra interest is paid to a MAB account holder. It is therefore very clear that there is no agreement or a compulsion or a thrusted obligation necessitating any payment or consideration by the Petitioner Banks to the customer.

D.6 It is submitted that if by any stretch of imagination, the commitment to provide an MAB per se is considered to be a consideration then the customer should have been disempowered or disentitled to withdraw the deposit at his own will and the MAB should have been a frozen obligation in the hands of the customer disentitling him of those sums and making them irretrievable for agreed time period, which is not the case. There is no positive commitment in the nature of an obligation or an agreement to provide an MAB which results in any tangible benefits which remain exclusive and unique to those customers. The following is humbly submitted for abundant clarity:

i. MAB account in a category do not carry any special interest, they carry the same interest as any other non-MAB account in the category.

ii. MAB account holders are not disabled or crippled from withdrawing their amounts.

iii. One who commits a default to his MAB account continue to receive the set of services from the bank. In other words no discrimination is resorted to between the MAB account holder and a default MAB account holder. Services continue to be rendered to both.

iv. For the act of default in maintaining the MAB, the account holder is charged penalty and Service Tax is discharged in the same.

v. The only consideration received from an MAB account holder is the penalty in case of a breach, everything else remains unchanged between an MAB holder and a defaulter. At the risk of repetition it is reiterated that even a default MAB holder continues to receive a set of services agreed by the Petitioner Banks to be provided to the said account holder.

vi. There is no consideration whatsoever either received or found to be embedded in the whole set of transactions between the Petitioner Banks and the customers.

vii. This will or choice of the customer if breached carries a penalty which the customer has paid to the bank and this consideration has already suffered Service Tax.

viii. Simply put, the transactions between the parties should generate a consideration for it to be taxed and taking every limb of the transaction it is clear (a) MAB per se is not a consideration. (b) MAB and Non-MAB accounts carry same rate of interest and therefore there is no additional payout or consideration by the Petitioner Banks or the customer (c) breach of MAB is visited with penalty which is liable to tax and the same has suffered Service Tax.

ix. There is no other consideration flowing from the depositor to the bank to hold the Petitioner Banks liable to service tax.

x. By any stretch of imagination, if free services are presumed to be a consideration or compensation for the customer for agreeing to hold an MAB, then such a consideration if any had to be taxed only in the hands of the millions of customer who are holding MAB, because the transaction is a domestic transaction taxable, if at all, on a forward charge basis and not on reverse charge basis.

E. **It is submitted that after having dealt with the various sights and perspectives of the transactions the Petitioners are duty bound to explain the nature and status of the activities that is being rendered to its customers who happen to be MAB holders.** The transaction flow is as follows:

i. The one which connects the Petitioner Banks and its customers is the bank account.

ii. There are various categories or variants of bank accounts with underlying schemes with each one of them.

iii. No distinction, discrimination or exclusion is resorted to between one customer and the other customer within the same category.

iv. An illustration would drive home the concept resorted to by the Petitioner Banks – A manufacturer cum seller or a trader of goods is entitled to offer discounts either as cash discounts, trade discount, quantity discounts or discounts in the form of kind to the buyers. A discount goes to reduce the price of the transactions in the hand of the trader and enhances the purchasing power in the hands of the buyer and therefore not taxable.

v. It is settled law that discounts per se are free from taxation and by no stretch of imagination one can assume or even contend that such a discount is a service rendered by a buyer of goods to the seller or traders and therefore would become a separate transaction liable to Service Tax.

vi. The Petitioner Banks having explained the transaction in detail in previous paragraphs will now sum up to say that when the schemes of eligibility of becoming an MAB holder or remaining a non-MAB holder (defaulting on the requirement) is available to all customers within that category and when Petitioner Banks do not discriminate and it is the customers who exercise their free will or choice of becoming an MAB holder (maintaining the MAB), the attendant services rendered by the Petitioner Banks is nothing but in the nature of free service or discounted service since the contracts do not even remotely conceive a consideration for such a rendition of services.

vii. It is settled law that a free service is out of the purview of the tax network both under

Finance Act and the current GST regime. For any reason if the transaction is ascribed as a status of a discounted services, these are again free services since there is no underlying consideration for the transaction. The rules and norms of discounts are too well settled through repeated court rulings. Discounts, the settled principle is, should be available to all, though not necessarily availed by all. The Petitioner Banks have followed this guiding principle without deviation since the schemes of MAB has common and universal application amongst all the customers falling under the category. One who avails MAB gets a set of free services and the Petitioners at the risk of repetition, punctuate this aspect that it remains free services; the MAB otherwise carry the same rate of interest and default in maintaining the MAB is visited with penalty on which Service Tax is duly charged. The agreement does not envisage any other form of consideration flowing from the depositor to the bank and therefore the transaction remains only as free services.

F.1 Coming to the aspect of Valuation, it is submitted that the principles are again too well settled namely:

i. Value, if any, identified by the contracting parties forms the basis to determine the consideration;

ii. If contract does not envisage any consideration towards rendition of the service then it becomes a case of free services.

iii. If a contract conceives a hidden consideration or the benefit of the consideration agreed between the parties remains unascertainable then only the Valuation Rules come into play to determine the value of the services,

iv. But for resorting to the last option, the transaction has to pass two stages namely the contracting parties should have identified the consideration at the first instance and second, in case it remains unascertainable the same can be determined.

F.2 It is submitted that when the contracting parties do not identify a consideration then it becomes a case of no consideration and not a transaction where there is a consideration which is unascertainable. The two are not the same.

F.3 In extreme cases, even if an attempt is made, it may not be possible to even ascertain the consideration. It may become incalculable or unascertainable even in cases of invocation of Valuation Rules.

F.4 It is submitted that the impugned Show Cause Notices have chosen to invoke the third principle amongst the four stated above, overlooking the fact that the transaction indeed falls in the category of the second, since the customer who holds MAB enjoys uninterrupted interest payments on the value of deposit and does not enjoy an additional interest nor is he paid a lesser interest by the bank so as to draw any incidental or intrinsic benefit for its own being. The interest against any deposit including the MAB remains the same. Consequently any rendition of services can only be free services or discounted services. The impugned Show Cause Notices would also fail the fourth principle even if an assumed or a notional consideration is attempted to be attributed, since holding an MAB per se does not result in any direct tangible or intrinsic benefit because the money does not belong to the bank and there is no limitation or hold on the withdrawal of the MAB by the customers. If an assumption is made that those monies / funds allow the banks to deploy them for their business activities, the same is available even against non-MAB account funds. So either which way it shows MAB and non-MAB accounts go to serve the same end uses or purposes namely:

i. As far as the customer is concerned he is entitled to the same rate of interest.

ii. As far as the Petitioner Banks are concerned they are entitled to deploy both MAB account and non-MAB account funds for the same end use since money is fungible.

iii. In the absence of any clear freeze on the deposits or any payment of higher interest either to the customer or a lower interest which might intrinsically benefit the Bank, a case of a consideration being conceived by the contracting parties for the transactions under question, is simply illusory stemming out of a figment of imagination.

G. That there is no effective and efficacious alternate remedy available to the Petitioners than to approach this Hon'ble Court by way of the present writ petition

G.1 It is submitted that, the Petitioners are constrained to approach this Hon'ble Court as there is no effective and efficacious remedy available to the Petitioners in respect of impugned Show Cause Notices and the Petitioners are left with no alternative. The Petitioners, immediately upon receipt of the impugned Show Cause Notices had filed numerous representations highlighting the patently illegal and incoherent notices issued and had also approached various authorities for redressal and clarity of the issue. However, no response has been received by the Petitioners and the Respondent No. 5 has begun pressing for filing of replies thereto and adjudicating the same. Considering the ramification of the demands, including interest and penalties, the Petitioners submit that this Hon'ble Court ought to exercise its power under Article 226 of the Constitution of India, 1950 to decide the present writ petition.

G.2 It is submitted that the Petitioners have approached the highest administrative authority by way of representations as well as personal discussions to address the issue and no response or action has been forthcoming. Therefore, approaching the Respondent No. 5 for adjudication of the impugned Show Cause Notices would not serve any purpose. Submissions in this regard are as under:

a. The Petitioners have approached all the authorities starting from the Respondent No. 3 (i.e. the CBIC who has vide a notification granted powers to Respondent No. 4 to issue the impugned Show Cause Notices) as well as the officers of the PMO, Ministry of Finance, Department of Financial Services, Revenue Secretary and the Reserve Bank of India., as can be discerned from the details mentioned in the facts above.

b. The Petitioners through its Association has already exhausted various alternate remedies by trying to seek appropriate resolutions through representation and discussions including representation and discussions before the Respondent No. 3 (i.e. CBIC), the highest administrative authority under the Finance Act as well as before the officers of the PMO, Ministry of

Finance, Department of Financial Services, Revenue Secretary and the Reserve Bank of India.

c. In the aforesaid facts and circumstances, if the Petitioner Banks approach the Respondent No. 5 for adjudication of the impugned Show Cause Notices, then, it would be a mere exercise in futility and would be illusory. It would be impossible for the Respondent No. 5 to provide a relief to the Petitioner Banks. Adjudication of the Show Cause Notices and raising of demands would only result in protracted litigation and sustained demands on an on-going basis.

G.3 Therefore, in light of the aforesaid it is submitted that the Petitioners do not have an effective and efficacious alternate remedy and hence, the present petition is a fit one for this Hon'ble Court to exercise its writ jurisdiction under Article 226 of the Constitution of India and grant adequate relief to the Petitioners as per the prayers made herein.

G.4 It is further submitted that the Courts have often held that the bar of alternative remedy cannot operate in the following four contingencies:

a. Where the petition has been filed for the enforcement of any of the Fundamental Rights.

b. Where there has been a violation of the principle of natural justice.

c. Where the order or proceedings are wholly without jurisdiction.

d. Where the vires of an Act is challenged.

G.5 It is submitted that in the present case two among the afore-stated four contingencies, namely initiation of proceedings without jurisdiction and challenge to the vires of an Act, gets satisfied for this Hon'ble Court to invoke its writ jurisdiction and decide the issue under consideration on merits and grant adequate relief in terms of the prayer made herein.

G.6 It is submitted that the Respondent No. 4 has also demanded Service Tax on the alleged services provided by the branches of the Petitioner Banks located in the State of Jammu & Kashmir to the customers also located in the State of Jammu & Kashmir. The service provider and service recipient, as is evident, are located in the State of Jammu & Kashmir and hence, the services are also consumed there. It is pertinent to note that as per Section 64 of the Finance Act the services provided in the State of Jammu & Kashmir are outside the ambit of Chapter V of the Finance Act, 1994 and hence, prima facie not-taxable.

G.7 It is submitted that vide the impugned Show Cause Notices the Respondent No. 4 has attempted to levy Service Tax on the services provided from and in the State of Jammu & Kashmir by placing reliance on Rule 9(a) read with Rule 2(h) of the Place of Provision of Service Rules, 2012 (hereinafter, "POPS Rules"), which is prima facie ultra vires Section 64 of the

Finance Act and the entire scheme of Service Tax Law in India.

G.8 It is submitted that Rule 9(a) read with Rule 2(h) of the POPS Rules in case of services rendered by a banking company in the State of Jammu & Kashmir is *ultra vires* the Finance Act, 1994 in as much as the services provided in the State of Jammu & Kashmir are beyond the taxable jurisdiction as per the provisions under Chapter V of the Finance Act. Submissions in this regard are as under:

a. It is submitted that Section 65B (51) of the Finance Act defined the expression 'taxable service' to mean any service on which Service Tax is leviable under Section 66B. Section 66B is the charging provision which provides as follows:- "there shall be levied a tax (hereinafter referred to as the Service Tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed."

b. A plain reading of the charging provision, Section 66B of the Finance Act, brings out the following facets:

(i) Service Tax is leviable on the value of all services "other than those services specified in the negative list." The negative list of services are set out in Section 66D of the Finance Act, inserted again with effect from 1st July, 2012.

(ii) Such service should be "provided or agreed to be provided" by one person to another and tax will be collected in such manner as may be prescribed.

(iii) Such service should be provided or agreed to be provided in the "taxable territory".

c. The expression 'taxable territory' has been defined under Section 65B(52) to mean "the territory to which the provisions of this Chapter apply." Section 64(1) of the Finance Act states that Chapter V "extends to the whole of India except the State of Jammu and Kashmir." Thus, on a collective reading of Section 66B read with Section 64(1) and Section 65B(52) it becomes clear that Service Tax is leviable only on services provided or agreed to be provided in the 'taxable territory' i.e. the whole of India except Jammu and Kashmir. It is submitted that such service alone is 'taxable service' which is defined under Section 65B(51) to mean that "any service on which Service Tax is leviable under Section 66B." That is to say, services rendered outside the taxable territory of India would not be a 'taxable service' for the purposes of the Finance Act. This is of utmost significance since the entire Chapter V applies, in terms of Section 64(3) of the Finance Act only to "taxable services provided on or after the commencement of this Chapter."

d. Thus, it is submitted that as per the scheme of the Finance Act, the services, if any provided outside the taxable territory and also consumed outside the taxable territory would not be leviable to service tax. The same has also been recognized by the judgment of the Hon'ble Supreme Court in the case of **All India Federation of Tax Practitioners v. Union of India reported in 2007 (7) S.T.R. 625**:

> "In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is a value added tax."

e. It is submitted that in the present case, the alleged services by the Petitioner is being provided from the branches in Jammu & Kashmir to customers located in Jammu & Kashmir, however, on account of the inclusion of the addresses of the branches in Jammu & Kashmir in the Centralised Registration Certificate of the Petitioner Banks, the Respondent No. 4 has sought to demand tax by relying on the definition of “location of provider of service” under Rule 9(a) of the POPS Rules read with Rule 2(h) of the POPS Rules, the said services are sought to be treated as being provided in the taxable territory at the location of the service provider and hence taxable. That is to say, by virtue of Rule 9 (a) of the POPS Rules, a specific deeming fiction has been carved out for services provided by a banking company whereby though the alleged services are being consumed outside India the same will be brought within the service tax net. However, in the present case, the services are provided by the branches in Jammu & Kashmir and, therefore, the action of the Respondent No. 4 seeking to invoke the provisions of 9(a) read with Rule 2(h) of the POPS Rules is unjustified and illegal.

f. Basis the foregoing, it is submitted that Rule 2(h) and 9 (a) of the POPS Rules could not have been relied upon by the Respondent No. 4 to levy service tax on alleged services provided by the Petitioner Banks from branches in Jammu & Kashmir to customers located in the State of Jammu & Kashmir, in as much as the same would be ultra vires the Finance Act, as discussed above. In any case, it is submitted that such a dispensation carved out by Rule 9 (a) read with Rule 2(h) of the POPS Rules to tax services provided from and consumed outside India by deeming them to be provided in India is also in complete variance with the underlying scheme and objective of the levy of service tax. Therefore, Rule 9(a) read with Rule 2(h) of the POPS Rules should be read down in so much as the impugned Show Cause Notices impose a Service Tax levy on services provided by branches of the Petitioner No. 3 to Petitioner No. 5, Petitioner No. 8 to Petitioner No. 10 and Petitioner No. 12 located outside the "taxable territory" i.e. the State of Jammu & Kashmir to customers who are also located outside the "taxable territory", i.e. the State of Jammu & Kashmir.

G.9 Therefore, in light of the aforesaid it is submitted that Rule 9(a) read with Rule 2(h) of the POPS Rules is ultra vires Section 64 of the Finance Act. Accordingly, it is submitted that the Respondent No. 5 being an authority created by the statute does not possess the power to adjudicate the present matter which involves challenge to the constitutionality of the POPS Rules, and hence, the present petition is a fit one for this Hon'ble Court to exercise its writ jurisdiction under Article 226 of the Constitution of India and grant adequate relief to the Petitioners as per the prayers made herein.

G.10 It is further submitted that the bar of alternate remedy as stated earlier is not applicable in the present case as the impugned Show Cause Notices have been issued without jurisdiction.

G.11 It is submitted that the Respondent No. 4 has issued the impugned Show Cause Notices on an illegal exercise of the powers wrongly delegated to him by the Respondent No. 3.

G.12 It is submitted that the Notification vide which the Respondent No. 4 was granted power to issue the impugned Show Cause Notices has been illegally issued under Section 3 and Section 5 of the CGST Act. The submissions in this regard are as under:

a. It is submitted that Notification No. 14-2017-Central Tax dated 01.07.2017 has been issued under Section 3 read with

Section 5 of the CGST Act and also under Section 3 of the IGST Act. As per this Notification the Respondent No. 3 (i.e. the Central Board of Indirect taxes and Customs) has appointed the Directorate General of Goods and Services Tax Intelligence, Directorate General of Goods and Services Tax and Directorate General of Audit as central tax officers and has invested them with all the powers under the CGST Act (and the IGST Act) as are exercisable by the central tax officers. Accordingly, as per serial no. 4 of this Notification the Respondent No. 4 has been invested with the powers of Commissioner under the CGST Act.

b. It is submitted that Section 3 of the CGST Act provides that the Government shall by way of a notification appoint the officers. Thus, as per Section 3 of the CGST Act the power to appoint the officers and for issuance of the notification in this regard, exclusively lies with the Government. The provisions specifically and categorically empowers the Government to undertake the task of appointing the officers through a notification. For ease of reference we have extracted the relevant portion of the Notification No. 14/2017, as under:

> "MINISTRY OF FINANCE
>
> DEPARTMENT OF REVENUE
>
> CENTRAL BOARD OF EXCISE AND CUSTOMS
>
> New Delhi: 01.07.2017
>
> NOTIFICATION No. 14/2017-Central Tax
>
> G.S.R. 818(E) - In exercise of the powers conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Board of Excise and Customs hereby appoints the officers in the Directorate General of Goods and Services Tax Intelligence, Directorate

General of Goods and Services Tax and Directorate General of Audit as specified in column (2) of the Table below, as central tax officers and invests them with all the powers under the Central Goods and Services Tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under, throughout the territory of India, as are exercisable by the central tax officers of the corresponding rank as specified in column (3) of the said Table, namely:- ....”

c. It is submitted that the Notification No. 14/2017-Central Tax dated 01.07.2017 has been issued by the Respondent No. 3 (i.e. the Central Board of Indirect Taxes and Customs) and has not been issued by the Government. Therefore, the Notification No. 14/2017, issued under Section 3 of the CGST Act, is illegal as the same has been issued in absolute contravention of the provisions stipulated under Section 3 of the CGST Act. Hence, the Notification No. 14/2017 is illegal and arbitrary being issued in violation of the provisions of Section 3 of the CGST Act.

d. Consequently, it is submitted that the powers bestowed upon the Respondent No. 4, vide serial No. 4 of the Notification No. 4/2017, are also illegal and without the authority of law. Resultantly, the impugned Show Cause Notices have been issued without jurisdiction by an authority, which does not possess the necessary power in terms of the provisions of the CGST Act, and hence, the impugned Show Cause Notices are liable to be quashed and set-aside on this ground alone.

G.13 Therefore, in light of the aforesaid it is submitted that the impugned Show Cause Notices have been issued by the Respondent No. 4 without the authority of law, and hence, the present petition is a fit one for this Hon'ble Court to exercise its writ jurisdiction under Article 226 of the Constitution of India and grant adequate relief to the Petitioners as per the prayers made herein.

G.14 It is further submitted that it is a settled position of law that if the dispute is only with respect to the interpretation of law and does not involve settlement of facts, then, the said issue can be decided by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **State of U.P. & Others v. M/s India Hume Pipe Co. Ltd., (1977) 2 SCC 724**. In this case the Hon'ble Supreme Court observed that the High Court was justified in entertaining the writ petition since the issue involved was a question of law.

G.15 It is submitted that in the present case also there is no dispute with regard to the facts of the case namely the nature of the alleged services provided by the Petitioner Banks. The only dispute is with regard to the taxability of the alleged services within the framework of the Finance Act. Therefore, the present case is fit one to be entertained by this Hon'ble Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

G.16 It is submitted that the issue involved in the impugned Show Cause Notices will also have grave impact and consequences in the GST regime, since the provisions under the CGST Act are similar to the provisions provided under the Finance Act in the context of the present facts. This is evident from the fact that many of Petitioner Banks have received enquiry notices / letters demanding information under the GST regime.

G.17 It is submitted that if the Petitioner Banks start collecting GST on the free features / facilities / services that are offered to the customers then, it would cause significant burden to the customers. The customers would be burdened with the heavy cost of taxes / GST, even when no charge is collected by the Petitioner Banks for such features / facilities / services. Since some banks and not all banks have received the show cause notices, there is a likelihood that the customers upon such GST being charged from them may choose to shut their account and move to the banks who have yet not received the show cause notices, thereby, causing loss to the Petitioner Banks and other member banks of the Petitioner No. 39 Association who have received such show cause notices.

G.18 In light of the aforesaid it is submitted that it is utmost necessity that clarity on the aforesaid issue is laid down at the earliest so as to avoid any unnecessary and prolonged litigation as also severe discomfort to the public in general. The said objective cannot be achieved through the prescribed procedure by way of filing reply before the Respondent No. 5. Hence, the alternate remedy being not an effective and efficacious solution of the problem at hand the interference of this Hon'ble Court by invoking its writ jurisdiction under Article 226 has been sought by the Petitioners.

G.19 It is submitted that the Constitution Bench of the Hon'ble Supreme Court in the case of **Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I Calcutta & Anr., AIR 1961 SC 372**, had observed that where an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, then, the Hon'ble High Court has the power to issue appropriate orders or directions to prevent such consequences.

G.20 Placing reliance on the aforesaid judgment of the Hon'ble Supreme Court it is submitted that the bar to alternate remedy is not efficacious in the present facts and circumstances, and hence, this Hon'ble Court ought to exercise its jurisdiction under Article 226 of the Constitution and grant reliefs to the Petitioners in terms of the prayers made herein.

G.21 It is further submitted that the impugned Show Cause Notices issued by the Respondent No. 4 are also premeditated and conclusive in nature and no useful purpose would be achieved by approaching the adjudicating authorities. The entire edifice of the impugned Show Cause Notices is that the activity or transaction undertaken by the Petitioners qualify as a declared service in the nature of 'agreeing to the obligation to do an act'. It has been argued by the Petitioners that the transaction does not qualify as a 'service' within the meaning of Section 65B(44) and hence, no useful purpose would be served by relegating the Petitioners Banks before the adjudicating authority (i.e. the Respondent No. 5).

G.22 Therefore, in light of the above it is submitted that this Hon'ble Court ought to exercise its writ jurisdiction under Article 226 of the Constitution of India and provide adequate reliefs to the Petitioner Banks in terms of the prayer made herein.

H. That the impugned Show Cause Notices have been issued without jurisdiction since the services being offered by the Petitioner Banks are exempt from the levy of Service Tax in terms of Section 66D(n)(i) of the Finance Act and the service if any is being provided by the customers and not the Petitioner Banks

H.1 It is submitted that the impugned Show Cause Notices should also fail for the reasons that should it be construed as taxable services then these services rendered by the Petitioner Banks have a direct nexus to the deposits and therefore any assumed, notional or a deemed consideration would only be in the nature of interest or discount which stands excluded from the purview of taxation in terms of Section 66D(n)(i) of the Finance Act. These services are rendered, according to the Respondents, against the MAB which is nothing but extending the services of deposit and, therefore, in terms of 66D(n)(i) of the Finance Act, the transaction will go out of the purview of the Service Tax net.

H.2 Likewise it is submitted that that these services have a direct nexus to the deposits which are nothing but money transactions and they again go out of the purview of Service Tax in terms of Section 65B(44)(a)(iii), which exclude transactions in money.

H.3 It is further submitted that Explanation 2 to Section 65B(44) carving out the exceptions to the "transactions in money or actionable claim" do not apply to the present case. Consequently the impugned notices needs to be quashed for this reason.

H.4 It is submitted that in light of the above the entire proceedings should fail being outside the purview of taxation and hence without jurisdiction for the following reasons:

i. If the transaction is seen from the customers' angle then every deposit by the customer whether it is in a MAB account or non MAB account carries the same rate of interest as a consideration. The customer becomes the service provider. The bank becomes the recipient of service and the interest payment partakes the character as consideration. The entire transaction is outside the service tax network since it stands excluded by 66D(n)(i) and also exempt under the GST as per serial no. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

ii. Having submitted that MAB account holders and non – MAB account holders are treated at par when it comes to payment of interest. A default in MAB carries penalty and penalty is a consideration paid by the customer to the bank and consequently Petitioner Banks in the capacity as a service provider had already discharged the Service Tax even though it may be open or possible to contend that even this transaction is not liable to tax as the said payment in real sense is in the nature of interest and therefore stands excluded under Section 66D(n)(i) of the Finance Act and as per serial no. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

iii. If MAB is held to be an agreement to provide a minimum average balance then such an activity is performed only by the customer and he becomes the service provider because the assumed commitment or an agreement to provide the MAB is something which can be performed only by the customer and the one who provides the service becomes the service provider and therefore by default Petitioner Banks become a service recipient. In the circumstances the proceedings against the Petitioner Banks have to fail for two reasons:

a. The transaction under question are domestic transactions liable to tax on forward charge basis and therefore the impugned proceedings, if any, ought to have been initiated against the customers and not the Petitioner Banks.

b. Even such a proceeding would fail to stand scrutiny since no consideration is being passed on from the Petitioner Banks to the customers.

c. In any case, the proceedings against the Petitioner Banks are totally misdirected and without jurisdiction.

iv. The impugned Show Cause Notices after conceding the fact that it is the customer who is in a position to maintain an MAB and therefore perform any attendant obligations to it suddenly turns around to say that such an act or a possible obligation becomes a consideration for the set of free services offered by the Petitioner Banks. This assumption is clearly unsustainable and beyond reach and violates Article 265 of the Constitution of India, Entry 97, List I of the Seventh Schedule of the Constitution of India and, in the absence of any charging or machinery provisions to capture such a transaction to tax, also contravenes the Finance Act.

v. It is too well settled and also a simple principle of law that an activity or a 'transaction' cannot simultaneously partake the character of a 'consideration'. It is impossible for it to be both a 'transaction' and a 'consideration' and it is impermissible to substitute a 'transaction' into 'consideration'. Both these exercises are in gross violation of the constitutional mandate and plainly contravenes the provisions of Finance Act.

vi. The Petitioner Banks also submit that if offer or rendition of services by the Banks is considered to be provision of 'service' and Banks as the service providers, there is no corresponding 'consideration' agreed or even contemplated to be paid by the customers to the Banks. The customers do not pay any consideration to the Petitioner Banks by holding the MAB. This is a fact which has not been disputed in the impugned Show Cause Notices and therefore there is no consideration.

vii. On the contrary an MAB is nothing but a deposit and therefore like a non-MAB accounts, it carries the same rate of interest and consequently MAB, similar to amounts in the non-MAB accounts, has to be treated only as a deposit and the service provider is the customer and the interest payment stands excluded under section 66D(n)(i) of the Finance Act and exempted under GST as per serial no. 27 of the Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

viii. It is also clear from the terms of the agreement that no MAB account scheme or variant permits the Petitioner Banks to freeze the funds resulting in temporary disentitlement or an inability attached from withdrawing the funds. Any balance in a MAB account, like a non-MAB account, can be withdrawn by the customer at his sweet will and choice. The MAB is not irretrievably parted by the customer and not irrevocably received by the Petitioner Bank as consideration. In the absence of a freeze or a containment, an assumption of an obligation to perform an act or an agreement to perform an act does not exist. Finally, a default of an MAB results in penal consequences and the same has already suffered tax.

ix. In the totality of circumstances one is at a complete loss to understand in what way does the customer pay 'consideration' to the Bank towards these free services.

x. It is a plain economic principle that money is fungible. Consequently, any deposit whether it is in a MAB account or in a non-MAB account goes into the common pool for deployment and there is no agreement or condition in the contract that MAB funds / deposits would be deployed in a particular way which would intrinsically yield a benefit different from a Non-MAB deployment. There is no such perception that even remotely exists between the contracting parties or as a part of the economic planning of the Petitioner Banks. Therefore, even a notional and a deemed consideration does not exist in the transactions impugned in the Show Cause Notices.

xi. When tested from all the angles, it provides the following irresistible conclusions:

a. Balances in MAB accounts, like non-MAB accounts, earn the same rate of interest.

b. The customer does not pay any consideration to the banks by holding an MAB.

c. There is no agreement between the banks and the customer that MAB funds would be deployed to generate a higher yield so as to intrinsically benefit the banks, MAB balances and non-MAB balances goes to the same end uses.

d. There is no restriction or containment withholding the right of the depositor in withdrawing an amount otherwise held in a MAB account. He is free to withdraw and continues to enjoy the free services. In other words free services do not get stopped at the instance of withdrawals made under MAB nor does withdrawal of MAB suffer any reduced rate of interest. Consequently holding MAB neither intrinsically nor even notionally generates any consideration to the free services rendered.

e. There is yet another angle to bring out the fallacy in the case sought to be set up by the Respondent No. 4. An account holder who has agreed to an

MAB account variant / scheme is free either to withdraw or to keep a deposit in excess of the MAB. In other words there is no contract between the parties to tie the customer down to a specific amount which stands frozen, amounts which are disentitled temporarily from the clutches of the customer. Similarly, additional deposit over and above the MAB is again the free choice of the customer carrying the same rate of interest, giving the same liberty to the customer to withdraw the same at will and to the Petitioner Banks to deploy it for its purposes. Whether it is shortage of an MAB or an excess of MAB, the contracting parties have not conceived any corresponding quid pro quo which should benefit either the customer or the Petitioner Banks. There is no agreement that the amounts over and above MAB will carry some special interest or will be deployed in more productive purposes and even in such cases the intrinsic benefit will accrue to the customer. Likewise, in a similar way, even the free set of services in the stipulated category would remain the same for any customer in that category maintaining just an MAB or defaulting in maintaining an MAB or one who maintains in excess of an MAB.

f. Finally, a default in maintaining MAB is penalized and that is the consideration flowing from the customer to the bank which has already suffered Service Tax.

H.5 In light of the above analysis it is submitted that resort to the invocation of the Valuation Rules is clearly misplaced and erroneous. Invocation of Valuation Rules presupposes an undisputed finding that there is in fact a consideration embedded to the transaction which remains unascertainable. Such a transaction is clearly distinct and distinguishable from a transaction of services which are rendered free. A free service pre-supposes the fact that the contracting parties have not agreed for a consideration. Invocation of Valuation Rules to such transaction is plainly without jurisdiction.

I. No discernible service and no consideration

I.1 It is a trite in law that in order for a levy of tax to be operative and valid, four essential components must be provided in the enacting statute creating the tax/impost i.e. the taxable event attracting the levy, the person on whom the levy is imposed and who is obliged to pay the tax, the rate at which the tax is imposed and the fourth is the measure or value to which the rate will be applied for computing the tax liability. In this regard, reference is placed upon the decision of the Hon'ble Supreme Court in the case of **Govind Saran Ganga Saran v.**

Commissioner of Tax AIR 1985 SC 1041 wherein it was held as follows:-

> "6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative schema defining any of those components of the levy will be fatal to its validity."

I.2 It is submitted that in the present case all the four essentials as indicated in the aforesaid ruling are not present. There is neither an event nor a measure prescribed under the statute for levy of Service Tax in the present case. The Petitioners in no way can be said to be providing a service of 'agreeing to the obligation to do an act' to their customers as has been alleged by the Respondent No. 4 in the impugned Show Cause Notices. The grounds in this regard are as under:

(a) The Respondent No. 4 in the impugned Show Cause Notices has alleged that the various features / benefits that are provided by the Petitioners to their customers qualify as a service of 'agreeing to the obligation to do an act', provided in lieu of the MAB agreed to be maintained, which qualifies as the 'consideration' for the said service

(b) It is submitted that the Respondent No. 4 has completely misinterpreted and misapplied the activities / services provided by the Petitioner Banks to their customers by seeking to take within its fold any condition precedent, subject to which the services are provided.

(c) It is submitted that the wordings of clause (e) of Section 66E of the Finance Act are significant. The words 'agreeing' means to consent or to mutually decide on. 'Obligation' means constraining power of a law, duty, contract or a binding agreement. The two words used in conjunction with one another, followed by the words 'to refrain', 'to tolerate' or 'to do' an act signifies an agreement to allow, permit or undertake an act, activity or action to or for another. As per the Education Guide, under this entry, the following activities if carried out by a person for another for consideration would be treated as provision of service:

- Agreeing to the obligation to refrain from an act.
- Agreeing to the obligation to tolerate an act or a situation.
- Agreeing to the obligation to do an act.

(d) It is submitted that the Finance Act does not contain any definition of the term

'Obligation'. Therefore, it would be relevant to examine the definition of the said term under other legislations / judicial pronouncements and understand its dictionary meaning. The Hon'ble High Court of Andhra Pradesh in the case of **Hyderabad Stock Exchange Ltd. v. Rangnath Rathi & CO**, **AIR (1958) AP 43** has held that 'An obligation is a tie or a bond which constraints a person to do or suffer something'. The term 'Obligation' has been defined under Section 2(a) of the Specific Relief Act, 1963 as follows:

> "2. Definitions.
>
> (a) "Obligation" includes every duty enforceable by law;"

As per the Black's law dictionary, the term "Obligation" has been defined as:

> "A legal or a moral duty to do or not do something."

As per Wharton's law lexicon, the term 'Obligation' has been defined as:

"An act, which binds a person to some performance; or for the performance of a covenant etc."

(e) It is submitted that on a conjoint reading of the aforementioned definitions, it is clear that an 'Obligation' is imposition of duty to perform an agreed act or a covenant, which is enforceable under law. Thus, to qualify as a service as envisaged under Section 66E of the Finance Act, the following conditions ought to be satisfied:

- There should be agreement between parties towards discharging a contractual / agreement-linked obligation by the supplier of service;
- The obligation should be to either 'refrain from an act' or to 'tolerate an act or a situation';
- The obligation should be discharged in lieu of certain consideration.

(f) It is submitted that apropos the offering of free services with no enforceable or binding nature of an MAB maintenance, an assumption of a rendition of a service for a consideration is totally misplaced. Such offerings cannot be treated as service itself as the same is not in the nature of an independent 'obligation to do an act'. Further, the conditions subject to which such offerings are made can in no way be treated as 'consideration'. If the interpretation adopted by the Respondent No. 4 in the impugned Show Cause Notices is accepted, then it would lead to an absurdity and would render the definition of 'service' under section 65B(44) of the Finance Act meaningless.

(g) It is therefore submitted that the interpretation adopted in the impugned Show Cause Notices is based on wrong interpretation of law and is manifestly arbitrary and unreasonable and the impugned Show Cause Notices have been issued with a confiscatory approach merely to generate a source of revenue without any basis in law.

(h) It is submitted that the scope of 'agreeing to the obligation to refrain from an act, or to tolerate an act, or a situation, or to do an act' as a declared service under clause (e) of section 66E should be provided a reasonable interpretation and not an absurd, limitless connotation that can capture every form of human/corporate interaction. The said phrase can only be read to cover independent agreements in the nature of non-compete contracts; grant of right of way; termination agreements, confidentiality /non-disclosure agreements etc. A banking service contract (or any other commercial contract) cannot be artificially bifurcated by using clause (e) of section 66E to artificially extract specific obligations and treat them as a service separate from the main service and levy tax on the same separately. For example, many commercial contracts may contain clauses imposing a confidentiality obligation on parties – that specific clause cannot be extracted and relied upon separately from the main contract in question to argue that it is a separate service and ought to be taxed separately under clause (e) of section 66E.

(i) In the present case, when an account holder opens an account, he would always become entitled to various features / facilities / offerings, such as depositing funds and withdrawal thereof. These activities of depositing and withdrawing funds would enable the account holder to operate its account and cannot separately be classified as 'services' under Section 66E(e) of the Finance Act. Therefore, the impugned Show Cause Notices and the ongoing investigations are liable to be quashed and set-aside on this ground alone.

(j) It is further submitted that the Respondent No. 4 has failed to understand that a particular event can either be treated as an 'activity' or a 'consideration' and has wrongly proposed to levy Service Tax by interchangeably terming the alleged event of maintenance of MAB by the customers as an activity as well as a consideration. In essence, the Respondent No. 4 has failed to understand that if the commitment of the Petitioner Banks to provide the features / facilities / services is to be equated as an activity in the nature of 'agreeing to the obligation to do an act' then, even the commitment of the customer to maintain a particular MAB should also necessarily qualify as an activity in the nature of 'agreeing to the obligation to do an act'.

(k) It is submitted that if the interpretation adopted by the Respondent No. 4 were to be followed, then, both the commitments by the Petitioner Banks as well as their customers would qualify as an activity and not as a consideration. Activities of similar nature cannot partake the character of a consideration for the purpose of levy of Service Tax.

(l) It is submitted that service, if any, is being provided by the customer in the nature of an obligation to maintain a MAB and Service Tax, if any, should be demanded from such customers.

I.3 It is further submitted that in the present set of facts and circumstances even the fourth essential does not get fulfilled, namely there is no measure of consideration. It is submitted that the methodology adopted by the Respondent No. 4 for the purpose of ascertaining the value of the alleged services provided by the Petitioner-Banks is patently erroneous, unreasonable and fundamentally devoid of any rationale, for the following reasons:

a. The Respondent No. 4 has failed to take into account those cases or situations where the customers (i.e. account holders) have denied the availment of the free features / facilities / services that are offered by the Petitioners. As per the legal principle envisaged under the Finance Act, 1994 [especially under the definition of the term ‘service under Section 65B(44)], cases or situations where the customers have not opted for the free features / facilities /services then, there is no ‘service’ that has been provided by the Petitioner Banks to their customers. Accordingly, no Service Tax can be levied on such transactions.

b. The Petitioner Banks have in any case deposited full Service Tax on the penal charges that are collected by them from the customers who are unable to maintain the MAB. Therefore, to the extent the demand of Service Tax includes even those customers / accounts with respect to which the Petitioners have already deposited the Service Tax, the same is illegal as it would lead to double taxation. It is a settled legal principle that the Respondent no. 4 cannot tax the same amount twice.

c. The Respondent No. 4 has wrongly and arbitrarily ascribed the highest penalty charged for non-maintenance of MAB in a particularly category of account held by the customers for determination of the value / 'consideration' to those cases where the customers (of the Petitioner-Banks) are duly maintaining the MAB. The Respondent No. 4 in its impugned Show Cause Notices has not been able to ascertain any 'consideration' in the specific cases where the customers are maintaining the MAB. It is submitted that in such cases, there is no flow of any other 'consideration' from the said customers to the Petitioners. Consequently, no Service Tax can be demanded by the Respondent No. 4. Thus, the Respondent No. 4 has failed to identify such cases where the customers have been duly maintaining the MAB and has blindly raised the demand of Service Tax on a value, which has been determined arbitrarily and without following the due process of law.

I.4 In light of the aforesaid it is submitted that there is no taxable service which is being provided by the Petitioner Banks to their customers by way of providing features / facilities / services linked to the deposit accounts maintained by the customers. Hence, the impugned Show Cause Notices are liable to be quashed on this ground alone.

J. That the Respondent No. 4 has grossly erred in referring to 'Consideration' under the Indian Contract Act, 1872 to ascribe a value to the alleged services

J.1 It is submitted that the reliance placed by the Respondent No. 4 on Section 2(d) of the Indian Contract Act, 1872 ("Contract Act") defining consideration is wholly misplaced. Section 2(d) of the Contract Act construes the act or abstinence or promise as consideration, whereas Section 66E(e) and under Section 7(1A) read with Schedule II clause 5(e) of CGST Act construes ‘the obligation to do an act’ as an activity or service and the consideration received for such an activity is alone liable to Service Tax. Further, as per Section 2(31) of the CGST Act, a monetary value is to be ascribed for such act which alone is liable to GST. Both the Petitioners and the Respondents are governed by the provisions of the Finance Act and the CGST Act; when law mandates a set of activity as service it is not open to the Respondent No. 4 to construe that as a consideration.

J.2 It is further submitted that the Respondent No. 4 has referred to the meaning of 'consideration' under the Contract Act erroneously to conclude that maintenance of AMB is a 'consideration' under the Finance Act.

J.3 It is submitted that the Respondent No. 4 has erred in making reference to the Contract Act. The Contract Act governs matter relating to effecting valid contracts and enforcement thereof, void contracts, performance, breach of contract, indemnities, agency, etc.

J.4 Section 2(d) of the Contract Act provides that "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise". Section 2(e) of the Contract Act provides that "every promise or a set of promises forming consideration for each other is an agreement". Further, Section 2(h) provides that, "an agreement enforceable by law is a contract;".

J.5 It is submitted that for a valid agreement or contract there should exist amongst others, 'consideration'. Consideration, for the purpose of the Contract Act may also be a promise. On the other hand for the purposes of the Finance Act, consideration has to be an amount charged, billed or payable for a service.

J.6 It is submitted that aforesaid principle can be explained by way of an illustration as provided below:

Mr. A agrees to sell his car to Mr. B for Rs.100,000 under the Contract Act, there are '2 considerations' (i.e. promises)

- Sale of the car by A to B (consideration from A to B)
- Payment of the price by B to A (consideration from B to A)

In the aforesaid illustration, for the purpose of levy of indirect taxes, there would be only one transaction, that is, sale of the car by A to B. The consideration would be the amount paid by B to A towards the sale price of the car.

J.7 Hence, it is submitted that the provisions of Contract Act are in relation to contracts and matters relating thereto and hence, cannot be blindly applied to the facts and circumstances involved in the present case. Accordingly, the contention that maintaining MAB is a consideration for ‘agreeing to provide services in relation to the account’ is wrong and liable to be set-aside along with the impugned Show Cause Notices.

K. That the action of Respondent No. 4 in issuing the impugned Show Case Notices is arbitrary and without basis in law in as much as the impugned Show Cause Notices have completely lost sight of the settled position of law distinguishing 'consideration under a contract' from a 'condition of a contract'

K.1 It is submitted that the value of taxable services for charging Service Tax has to be determined as per the provisions of Section 67 of the Finance Act.

K.2 Basis the reading of Section 67, it can be stated that:

- Service tax is charged on the 'gross amount charged'. The 'gross amount charged' should be in respect of the service which is sought to be taxed as per Section 67(1) (i).
- Where the consideration cannot be ascertained, the same will be determined in the manner prescribed under the Service Tax (Determination of Value) Rules, 2006 ("Valuation Rules").

- Under explanation to Section 67, consideration includes the amount which is payable for the services.

K.3 It is submitted that on a combined reading of the provisions referred above, it would be evident that Service Tax can only be levied on the amount 'charged' or 'payable' for the service. Service Tax cannot be charged on any notional or intangible amount or factors. Further, it is evident that the 'consideration' charged should have a direct nexus with the services. In case there is no nexus or link between the 'service' and its 'consideration', then, there can be no levy of Service Tax. Further, the Valuation Rules cannot override section 67 of the Finance Act. Reliance may be placed on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Service Tax v. M/s Bhayana Builders (P) Ltd.**, **Civil Appeal Nos. 1335-1358 and reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Union of India & Ors. v. M/s Intercontinental**

Consultants and Technocrats Pvt. Ltd., 2018 10 GSTL 401 (SC).

K.4 It is submitted that in the present case the Respondent No. 4 has sought to assign a notional 'consideration' for the service / features / benefits that are offered or provided by the Petitioners. The maintenance of the MAB has no bearing or connection with the services being provided by the Petitioners. The existence of 'consideration' cannot be presumed in a particular cash flow or a transaction. Thus, it is submitted that the Respondent No. 4 has grossly erred in ascribing a notional 'consideration' to the services / features / benefits being offered or provided by the Petitioners, and hence, the impugned Show Cause Notices are liable to be quashed.

K.5 It is further submitted that in any case the commitment to maintain MAB cannot be equated with 'consideration' as there does exist an option to commit a breach to both the parties. A particular activity can be said to be a commitment only if the same cannot be breached. Further, the facilities provided along with the opening of the account which are being termed as services are still made available to the customer even if the commitment to maintain the MAB is breached. Levy of charges / penalty on non-maintenance of MAB does not result in the commitment of maintenance of MAB being fulfilled and the customer, even post payment of such penalty, may still not maintain the MAB while continuing to receive the features / facilities / services. Therefore, the statement in the impugned Show Cause Notices that there is a commitment on part of the customers to maintain a MAB for receipt of the services by the Petitioner Banks is a presumption and not a validated fact which is based on erroneous understanding and interpretation of law.

K.6 Without prejudice to the above, it is submitted that maintenance of MAB is a mere 'Condition of a contract', which is different from 'Consideration for a contract'.

K.7 It is submitted that as per Halsbury's Law on Contracts [2012 Vol. 22 5th Edition], 'consideration' and 'condition of a contract' is distinguished in the following terms:

> "a promise made by a party may be subject to a condition precedent, and in those circumstances the consideration given for the promise must be distinguished from the condition to which that promise is made subject."

In the present case the customers have, as per the terms and conditions of the AOF, promised to maintain the MAB, and in case of failure to maintain the MAB, the customers have to pay certain charges as penalty. The requirement for maintaining MAB is only a term / condition mentioned in the AOF for the category / variant of the account chosen by the customer.

The Respondent No. 4 has miserably failed to distinguish between the condition to maintain MAB and the consideration (if any) charged by the Petitioners for the services / features / benefits granted to the customers.

K.8 It is also submitted that an Australian GST Ruling (GSTR 2001/6) has discussed this issue in detail and has explained the distinction between the 'condition of a contract' and 'consideration'. As per this ruling 'Condition of a contract' is a clause in a contract or agreement indicating that a certain contingency may modify the principal obligation in some way, 'Consideration' on the other hand is a matter of inducement for something promised, something valuable given as recompense for a promise, which causes the promise to be become binding as a contract. For ease of reference we have extracted the relevant portion of the Australian Goods and Service Tax Ruling 2001/6:

> "Eddie Engineer ('Eddie') agrees to supply services to Mountain Miners ('Mountain') at a rate of $100 per hour. Under the agreement, Eddie must perform the services on Mountain's premises in Melbourne. Mountain agrees to allow Eddie to use its computer facilities,

stationery and safety equipment on Mountain's premises to perform the services. Mountain also agrees to fly Eddie to Melbourne and provide accommodation and meals during the period Eddie performs the services.

There is monetary consideration for Eddie's services ($ 100 per hour). The provision of the use of computer facilities, stationery and safety equipment and the transport, accommodation and meals is not part of the price paid for the services as it is not a payment or of value to Eddie in return for his services. They are rather conditions of the contract that go to defining the supply made by Eddie, and are used in providing the services, rather than being supplied to Eddie in return for the services. They do not provide economic value to Eddie in return for his supply. The provision of these things in these circumstances is not consideration in connection with the supply by Eddie. There is no non-monetary consideration for Eddie's supply.”

K.9 Thus, it is submitted that in the present case, the undertaking/ commitment by the customers to maintain MAB is only a ‘Condition of Contract’ in as much as failure to maintain MAB would result in levy of penal charges. However, undertaking/ commitment by the customers to maintain MAB is not a ‘consideration’ for the simple reason that provision of the features / facilities / services by the Petitioner Banks is not made contingent to the maintenance of MAB by the customers.

K.10 In support of the above contention, reference is made to the impugned Show Cause Notices [specifically paragraph 9(e) of the show cause notice issued to the Petitioner No. 2], wherein, it has been clearly mentioned that the Petitioners do not cease to provide the value added services where customers do not maintain MAB. Failure to maintain MAB does not mean that a customer is not entitled to be provided a service or otherwise. If any account holder/ customer fails to maintain MAB, the services as per product feature are not discontinued. Non-maintenance of MAB only attracts penal charges but does not result in discontinuation of a service. Hence, it clearly establishes that undertaking / commitment by the customers to maintain MAB is not a 'consideration' for the provision of value added services.

K.11 It is further submitted that in essence there is only one service which is envisaged under the contract (i.e. the AOF) between the Petitioner Banks and the customers. Penalty envisaged under the contract (i.e. AOF) for non-maintenance of MAB is for breach of the contract, which in no way can be equated as a 'consideration' for any other service. Therefore, the contracts cannot be artificially bifurcated to carve out a separate service only for the purpose of levying Service Tax.

K.12 Applying the aforesaid rationale as deduced under the GST Laws in foreign jurisdictions in similar activities as in the impugned Show Cause Notices, it is submitted that in the present case also the customers continue to receive the services/features/benefits from the Petitioner Banks even in cases where there is failure to maintain the MAB. This fact has been duly recorded in the impugned Show Cause Notice (specifically at paragraph no. 9(e) of the show cause notice dated 14.04.2018 issued to Petitioner No. 2). Therefore, fact of non-maintenance of MAB and consequential imposition of penal charges does not have any impact on the rights and privileges granted to the customers by the Petitioner-Banks. Hence, the impugned Show Cause Notices and the proceedings initiated under the GST regime ought to be quashed and set-aside.

K.13 It is submitted that the Australian decisions cited in the submissions above will have a persuasive value since the provisions stipulated under the New Tax System (Goods and Services Tax) Act, 1999 (hereinafter referred to as "Australian GST Act") are pari materia to the provisions provided under the CGST Act. In this regard reference may be made to Section 9(10)(2)(g) of the Australian GST Act which defines the term 'supply' and includes within it 'an entry into, or release from, an obligation…to do anything'. For ease of reference, we have extracted the relevant extract of the provision as under:

> "9-10 Meaning of Supply
>
> ….
>
> (2) Without limiting subsection (1), supply includes any of these:
>
> …
>
> (g) an entry into, or release from, an obligation:
>
> a. to do anything; or
>
> b. to refrain from an act; or
>
> c. to tolerate an act or situation;
>
> (h)………"

K.14 Therefore, it is submitted that the legal principles propounded in the GST Determination No. 2005/6 and GSTR 2001/6 can be applied to determine the fallacies and illegalities in the allegations raised by the Respondent No. 4 in its impugned Show Cause Notices.

L. Invocation of Rule 3(b) of the Valuation Rules by the Respondent No. 4 is an illusory exercise in the instant case

L.1 It is submitted that the Respondent No. 4 has resorted to Rule 3(b) of the Valuation Rules, which provides that the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service. After resorting to the said sub-rule which mandates a positive and intrinsic determination of a value needing to satisfy two conditions namely; (a) equivalent to the money value of the consideration; and (b) which is also not less than the cost of provision, the Respondent misdirected himself in valuing the services on the basis of the highest amount of penal charges. This very exercise is self-defeating since Respondent No. 4 remains clueless after resorting to Rule 3(b) and fails to meet with the threshold conditions attached to the sub-rule and arbitrarily resorts to an extraneous payment which has no connection to the transaction in question. This application of the rule remains a fait accompli and the resort to this rule is totally illusory.

L.2 Further, the Respondent No. 4 has completely mis-applied Rule 3(b) of the Service Tax Valuation Rules since, even by applying rule 3(b) of the Valuation Rules, the value of the services would be Nil or Zero, as substantiated below:

- Rule 3(b) of Valuation Rules specifically provides that where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration which shall, in no case be less than the cost of provision of such taxable service.

- "equivalent money value of such consideration" – The Respondent No. 4 has alleged that the consideration in the present case is the minimum balance maintained by the account holder. However, the minimum balance is the property of and belongs to account holder and no part of it is received by or appropriated by the Petitioners. The Petitioners have no lien on the amount deposited by its customers in their own bank accounts. Therefore, this amount is zero or NIL.

- "not be less than cost of provision of such service" - There is no separate or distinct cost incurred by the Petitioner-Banks for "agreeing to provide the service". As a bank, the Petitioners operate their network of offices and branches. The costs are incurred irrespective of the number of account holders or the number of accounts where the minimum balance is maintained or otherwise. No specific separate or additional cost is incurred by the

Petitioner-Banks to render the alleged service.

L.3 It is therefore submitted that as there is no cost attached to "agreeing to provide service", value under Rule 3(b) of Valuation Rules, would be NIL or Zero. Accordingly, there cannot be any Service Tax liability arising for such activity, and the impugned Show Cause Notices affixing the Service Tax liability is liable to be quashed and set-aside.

L.4 As all the impugned Show Cause Notices are based on assumptions and presumptions, and are liable to be quashed on this ground alone.

M. The impugned show cause notices are arbitrary, unreasonable and whimsical in as much as they attempt to overwrite the commercial contracts between the parties

M.1 The Petitioners submit that through the impugned Show Cause Notices the Respondent No. 4 is seeking not only to re-write the provisions of Finance Act and CGST Act but also the agreements and contracts entered into by the Petitioner Banks with their customers. MAB is nothing but a deposit which carries interest. The Petitioner Banks cannot and should not and have not paid the customers in any manner other than by way of payment of interest. The prohibition emanates out of regulatory regime vide RBI Circular No. DBR.Dir No.84/13.03.00/2015-16 dated 03.03.2016 (as amended from time to time), under which RBI bars any bank to provide any consideration towards receiving or holding deposits including the one in the nature of MAB. It is also for this reason that the Petitioner Banks do not charge a consideration and render free services without any tag or limitation to such customers falling under the respective category. The impugned Show Cause notices seek to impute a consideration to the transaction which is nothing but a figment of imagination and any interpretation or sustenance of this assumption would be in direct conflict and breach of regulation under RBI Circular No. DBR.Dir

No.84/13.03.00/2015-16 dated 03.03.2016 (as amended from time to time). Further, to assume that all the Banks in India had committed such a breach in unison will go against the teeth of regulatory controls. A case of re-writing the contracts stares one in the face.

M.2 It is submitted that there is only one service which is envisaged under the contract between the Petitioner Banks and the customers wherein if there is a breach, penalty is being recovered on which Service Tax is being discharged. There is no other service which can be discerned from the terms of the contract (i.e. AOF) between the Petitioner Banks and the customers. It is a settled position of law that the contracts cannot be artificially bifurcated to carve out a separate service only for the purpose of levying Service Tax.

M.3 It is further submitted that when the contract (i.e. AOF) between the Petitioners and the customers does not contain any provision for consideration for provision of the services by the

Petitioner Banks, the Respondent No. 4 cannot re-write the business model of the Banks or construe the contract in such a manner so as to impute consideration.

M.4 It is well-settled by the Hon'ble Supreme Court that the Department cannot construe the agreements in the light of tax laws to impose a liability on the assessee. The Hon'ble Supreme Court in the case of **Ishikawajma Harima Heavy Industries Ltd Vs. Director of Income Tax, Mumbai, 2007 (3) SCC 481**, held as follows:–

> "76. In construing the contract, the terms and conditions thereof are to be read as a whole. A contract must be construed keeping in view the intention of the parties. No doubt, the applicability of the tax laws would depend upon the nature of the contract, but the same should not be construed keeping in view the taxing provisions."

M.5 Thus, basis the above, it is submitted that the Respondent No. 4 by artificially construing that the maintenance of MAB is a consideration for the services / features / benefits provided by the Petitioners, has violated the settled legal principles.

N. That the impugned Show Cause Notices are pre-meditated, conclusive and issued without mandatory pre-consultation and thus falls foul of Article 14 and Article 19(1)(g) of the Constitution

N.1 It is submitted that the impugned proceedings are in gross violation of natural justice as the statutory process of pre-consultation envisaged under Circular No. 1053/02/2017-CX dated 10.03.2017 dated 10.03.2017 has been overlooked and certain allegations in the impugned Show Cause Notices clearly reveal that the Respondents have pre-determined the issue and a pre-meditated proceedings in law is a mere farce and therefore liable to be interfered with.

N.2 The conclusive nature of the impugned show cause notices is clearly discernible from the fact that similarly worded notices have been sent to 13 banks across India containing the very same conclusive points against the Petitioner-Banks. Further, specific reference may be made to paragraphs 13.2 (i), 13.2 (k1) and 13.2 (k2) of the show cause notice dated 14.04.2018 issued to the Petitioner No. 2. For ease of reference we have extracted the aforesaid paragraphs as under:

> "(i) on account of above aspects, in these accounts with features of minimum balance / average balance, from the time of opening of the account, -
>
> SBI recurrently commits to providing the services/facilities/benefits as per features of the relevant current account product variant
>
> in lieu
>
> of a recurrent commitment from the customer of having agreed to/understood the requirement of maintaining a particular

minimum balance / average quarterly balance (in the account) as defined in a particular manner for every specified time interval (daily, quarterly) which is a feature of that account.

The former is an activity rendered by SBI to the customer. It is also a case of SBI agreeing to the obligation to do an act.....

(kl) in terms of the provisions of the Finance Act 1994 it appears that the said activity of SBI described in (i) above is a service as also a declared service of agreeing to the obligation to do an act. It is not covered in the negative list of services. It also does not enjoy any exemption from Service tax. It appears that service tax, for this taxable service rendered by SBI to customers in lieu of the said recurrent consideration received by SBI from 01.07.2012 onwards with respect to the current accounts with intrinsic minimum average balance/ minimum balance features, has not been paid...”

Reference may also be made to similarly worded paras 13(n) and 13(pl) of the show cause notice dated 14.04.2018 issued to the Petitioner No. 3.

N.3 The afore-stated paragraphs of the impugned Show Cause Notices clearly establish the fact that the Respondent No. 4 had already concluded that the Petitioners are liable to deposit Service Tax on the transactions being undertaken by them. The said paragraphs make it abundantly clear that the Respondent No. 4 has made-up its mind vis-à-vis the liability of the Petitioners to deposit the Service Tax and has merely issued the impugned Show Cause Notices in order to comply with the procedure laid down in the Finance Act. Hence, the impugned Show Cause Notices are liable to be quashed and set-aside.

N.4 It is further submitted that invocation of both Rule 3(a) and 3(b) of the Valuation Rules shows the pre-mediated mindset of the Respondent No. 4 to impose Service Tax even when no mechanism is available to determine the consideration attributable to the alleged services. The Respondent is trying to ride on both horses, leaving the inference inevitable that there is no consideration and same is also incalculable and immeasurable. It is settled law an ambiguous approach is always held to be arbitrary and therefore violative of article 14 and article 19 (1)(g) of Constitution of India.

N.5 Therefore, in view of the above, the impugned Show Cause Notices issued with a preconceived notion are liable to be quashed.

O. That the features / facilities provided by the Petitioner-Banks to their customers as a part of the bank account held by them, are also not taxable under the provisions of the Central Goods and Services Tax Act, 2017 (“CGST Act”)

O.1 It is submitted that the goods and Services Tax (“GST”) regime was implemented in India from 01.07.2017. On the said date the CGST Act, the IGST Act, along with its allied Laws were brought into force. Section 7 of the CGST Act defines the term ‘supply’ and also provides its scope. As per this provision a transaction would qualify as a ‘supply’ if the same is made for a consideration, but, it also includes certain specific transactions, which even if not made for a consideration would still qualify as a ‘supply’. Such transactions have been listed under Schedule I of the CGST Act and it does not include the transaction which is being undertaken by the Petitioners.

O.2 Further, Section 9 provides that all the supply of goods or services or both are leviable to Central GST. The provision also applies to the IGST Act and a corresponding provision has also been enacted by each State of India (in their State GST Acts) thereby, levying State GST on the supply of goods, services or both. Furthermore, Section 15 of the CGST Act prescribes the scope of the ‘value of supply’. As per this provision if the parties are un-related and price is the sole consideration then, the price actually paid or payable will qualify as the ‘transaction value’, which in-turn would qualify as the ‘value of supply'. In case the parties are related or in case the 'transaction value' cannot be determined as per Section 15(1) of the CGST Act, then, the same shall be determined as per the rules, prescribed in this regard.

O.3 It is submitted that in the present facts and circumstances, the Petitioners and its customers are un-related. As has been submitted by the Petitioners in the foregoing paragraphs of this petition, the Petitioners have not assigned any consideration for supplying the features / facilities / services to its customers (who are the account holders). Therefore, as per Section 7(1)(a) the transactions, undertaken by the Petitioners, would not qualify as a 'supply' and hence, it would be outside the scope of the CGST Act (as well as the corresponding State GST act).

O.4 To bolster the above argument, reference may be made to the Frequently Asked Questions ("FAQs") issued by the Central Board of Indirect Taxes & Customs ("CBIC" i.e. Respondent No. 3).

FAQ number 32 deals with the valuation of the supplies provided by banks at a concessional / differential rate to a recipient. The CBIC has clarified that in case of such services, which are provided to an unrelated recipient, there is no requirement for enhancing the value of services by invoking the rules framed under the CGST Act. For ease of reference, we have extracted the relevant FAQ as under:

> "32. Can value of services be enhanced by invoking the CGST Rules in case of services provided by banks at a concessional / differential rate to a recipient other than 'related party' /'distinct person'?
>
> Reply: Banks provide various services to customers for a charge. However, at times, account holders / customers are provided services free or at a concessional / differential rate. The free or concessional / differential rate is offered considering factors such as credit rating and stability of the customer, size of relationship, expected future business or the opportunity

presented in the market elsewhere etc. As a result, the charges for the same service may differ from customer to customer. Such services provided to persons who are not related persons will be taxable on the transaction value, that is, the value of the services charged or recovered from the customers or account holders as per section 15 of the CGST Act, 2017. Thus, in case of services provided at a concessional / differential rate to a recipient other than 'related party' / 'distinct person', there is no requirement for enhancing the value of services by invoking the CGST Rules, 2017."

O.5 Thus, on the basis of the above, it is submitted that under the GST law if the Petitioner Banks and its customers are un-related then, the value assigned by the Petitioners will not be enhanced by making a reference to the rules framed under the CGST Act. Accordingly, if the Petitioners assign the value as Nil or Zero then, such transactions would not be leviable to GST / tax in terms of the provisions of the CGST Act.

O.6 Hence, on the basis of the afore-stated submissions it is humbly submitted that the Respondents should be jointly and severally restricted from pursuing the ongoing investigations and from initiating new investigations, under the CGST Act (and also under the allied GST statutes), with respect to the disputed transactions pertaining to the features / facilities provided by the Petitioners to its customers as a part of the main supply of operating and maintaining the bank account.

P. That the Respondent No. 4 has erred in invoking the extended period of limitation for demanding the Service Tax and to impose penalty and interest

P.1 It is submitted that the Respondent No. 4 has grossly erred in invoking the extended period of limitation for demanding the Service Tax, *vide* its impugned Show Cause Notices, in as much as the Petitioners have not deliberately withheld any information to evade the payment of Service Tax.

P.2 It is submitted that the Petitioners are reputed banks and are audited by the tax authorities almost every year with respect to the business transactions undertaken by it. The Department in its previous audits has never raised the issue, regarding the payment of Service Tax on the services / benefits / features provided by the Petitioners to its customers. Hence, no fraud and suppression can be alleged.

P.3 It is further submitted that the business model is an industry practice and is not specific to a particular bank. Banking is one of the most regulated sectors in India. A bank has to strictly adhere to a lot of regulations and instructions that are issued by the governmental authorities (like RBI, etc.) and has to function within the defined contours of such regulations / instructions. Therefore, the Respondent No. 4 cannot allege that it had no information about the practices being followed by the Petitioner Banks and that the Petitioner Banks have deliberately suppressed the information so as to evade the payment of Service Tax.

P.4 It is submitted that since the Respondent No. 4 has miserably failed to prove that there was an intention on the part of the Petitioners to evade Service Tax, hence, no demand by invoking the extended period as well as penalty and interest can be imposed. Therefore, the impugned Show Cause Notices are liable to be quashed and set-aside.

Q. That the Respondent No. 4 has erred in imposing personal penalty under Section 78A of the Finance Act on Petitioner No. 14 to Petitioner No. 38

Q.1 It is submitted that the Respondent No. 4 has grossly erred in imposing personal penalty on Petitioner No. 14 to Petitioner No. 38, under the Section 78A of the Finance Act.

Q.2 It is submitted that as per Section 78A if a company has contravened the provisions of the

Finance Act by evading the Service Tax, then, a personal penalty can be imposed on the director, manager, secretary or other officer of the company who at the time of such contravention was in charge of the conduct of business of such company and was knowingly concerned with such contravention.

Q.3 On the basis of the aforementioned provision it is submitted that in order to impose the penalty under Section 78A of the Finance Act it is necessary to satisfy the following conditions

a. The officer of the company was in charge / responsible for the conduct of business of the company; and

b. The officer had contravened the provisions intentionally or knowingly.

Q.4 It is submitted that the aforementioned conditions have not been fulfilled in the present set of facts and hence, the imposition of personal penalty on Petitioner No. 14 to Petitioner No. 38 is illegal and in violation of Section 78A of the Finance Act.

Q.5 It is further submitted that a personal penalty can only be imposed if the person, on whom the allegation is levelled, has personally benefited out of the said act or has a personal involvement in devising the entire scheme to defraud the Government. Since none of the tests get satisfied in the present case, the case for levy of personal penalty is unsustainable.

Q.6 It is submitted that banking sector is a highly regulated sector and hence, the banks are bound to operate within the defined regulations. This is clearly evident from the fact that the Respondent No. 4 has referred to the circulars issued by the RBI on the issue relating to collection of penal charge from the customers in case of failure to maintain the MAB by the customers. Thus, it is submitted when all the banks (including the Petitioner Banks) follow similar practices coupled with the fact that the RBI (which is a governmental authority) has also issued circulars on the subject matter on which the Respondent No. 4 has sought to demand Service Tax, then, the Petitioner No. 14 to

Petitioner No. 38, who are responsible to comply with the regulations issued by the RBI (and other governmental authorities) cannot be said to have knowingly contravened the provisions of the Finance Act. Further, the issue involves interpretation of law which has given rise to the present dispute. Consequently, the imposition of personal penalty under Section 78A is illegal and liable to be set-aside.

R. It is submitted that the present writ petition is maintainable before this Hon'ble Court since the Respondent No. 4 who has issued the impugned Show Cause Notices is situated in Delhi. The impugned Show Cause Notices direct the Petitioner Banks to appear for adjudication before Respondent No. 5 who is also in Delhi. The Petitioners have further impleaded CBIC located in Delhi as Respondent No. 3 and have sought relief both for the pre-GST and GST era since the issue is continuing in nature. Specific reliefs have been sought for against the Respondent No. 6 (i.e. Goods and Services Tax Council), which is also in Delhi.

S. It is submitted that the Petitioners have not filed any other Writ Petition either in this Hon'ble Court or in any other High Court or in the Hon'ble Supreme Court of India regarding the subject matter of the present Writ Petition.

PRAYER

In the premises stated hereinbefore, the Petitioners most respectfully prays that this Hon'ble Court may be pleased to:

a) Issue a writ of certiorari or any other order or direction to declare Section 66E(e) of the Finance Act, 1994 and Section 7(1A) read with Clause 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017 as arbitrary, ambiguous, vague, incapable of giving out a measurable value and therefore violative of Article 14, Article 19(1)(g) and Article 265 of Constitution of India, 1950; AND

b) Issue a writ or any other order or direction to quash and set aside the following Show Cause Notices and the demand made thereunder:

i. Show Cause Notice bearing No. DZU / INV / D / PNB/ 536 / 2015 / 3059 dated 20.04.2018 issued to Petitioner No. 1.

ii. Show Cause notices which have been sequentially numbered starting from DZU / INV / D / PNB / 536 / 2015 / 3060 to DZU / INV / D / PNB / 536 / 2015 / 3133, all dated 20.04.2018 issued to Circle offices of Petitioner No. 1.

iii. Show Cause Notice bearing No. DZU/INV/ST/G/539/2015/2760 dated 14.04.2018 issued to Petitioner No. 2.

iv. Show Cause Notice bearing No. DZU//INV//B/Kotak/544/2015/2771 dated 14.04.2018 issued to Petitioner No. 3.

v. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1984 dated 14.03.2018 issued to Petitioner No. 4.

vi. Show Cause Notice bearing No. DZU / INV / ST / F / 550 / 2015 / 2732 dated 12.04.2018 issued to Petitioner No. 5.

vii. Show Cause Notice bearing No. DZU / INV / ST / J / 541 / 2015 / 2572 dated 06.04.2018 issued to Petitioner No. 6.

viii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2495 dated 04.04.2018 issued to Petitioner No. 7.

ix. Show Cause Notice bearing No. DZU / INV / D / K / 542 / 2015 / 3175 dated 24.04.2018 issued to Petitioner No. 8.

x. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3021 dated 19.04.2018 issued to Petitioner No. 9.

xi. Show Cause Notice bearing No. DZU / INV / ST / I / 552 / 2015 / 3437 dated 27.04.2018 issued to Petitioner No. 10.

xii. Show Cause Notice bearing No. DZU / INV / ST / F / 549 / 2015 / 3347 dated 25.04.2018 issued to Petitioner No. 11.

xiii. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3321 dated 25.04.2018 issued to Petitioner No. 12.

xiv. Show Cause Notice bearing No. DZU / INV / ST / J / 540 / 2015 / 3331 dated 25.04.2018 issued to Petitioner No. 13.

xv. Show Cause Notice bearing No. DZU / INV / D / PNB / 536 / 2015 / 3134 dated 20.04.2018 issued to Petitioner No. 14.

xvi. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2761 dated 14.04.2018 issued to Petitioner No. 15.

xvii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2762 dated 14.04.2018 issued to Petitioner No. 16.

xviii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2763 dated 14.04.2018 issued to Petitioner No. 17.

xix. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2764 dated 14.04.2018 issued to Petitioner No. 18.

xx. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2773 dated 14.04.2018 issued to Petitioner No. 19.

xxi. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2772 dated 14.04.2018 issued to Petitioner No. 20.

xxii. Show Cause Notice bearing No. DZU / INV / ST /I /552/2015/3438 dated 27.04.2018 issued to Petitioner No. 21.

xxiii. Show Cause Notice bearing No. DZU / INV / ST/F/ 550/2015/2733 dated 12.04.2018 issued to Petitioner No. 22.

xxiv. Show Cause Notice bearing No. DZU / INV / ST/F/ 550 / 2015 / 2734 dated 12.04.2018 issued to Petitioner No. 23.

xxv. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2573 dated 06.04.2018 issued to Petitioner No. 24.

xxvi. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2574 dated 06.04.2018 issued to Petitioner No. 25.

xxvii. Show Cause Notice bearing No. DZU / INV / ST/I/ 551 / 2015 / 2496 dated 04.04.2018 issued to Petitioner No. 26.

xxviii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2497 dated 04.04.2018 issued to Petitioner No. 27.

xxix. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2498 dated 04.04.2018 issued to Petitioner No. 28.

xxx. Show Cause Notice bearing No. DZU / INV / ST/K/ 542 / 2015 / 3176 dated 24.04.2018 issued to Petitioner No. 29.

xxxi. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3177 dated 24.04.2018 issued to Petitioner No. 30.

xxxii. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3178 dated 24.04.2018 issued to Petitioner No. 31.

xxxiii. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3022 dated 19.04.2018 issued to Petitioner No. 32.

xxxiv. Show Cause Notice bearing No. DZU / INV / D/BOB/ 535 / 2015 / 3023 dated 19.04.2018 issued to Petitioner No. 33.

xxxv. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3322 dated 25.04.2018 issued to Petitioner No. 34.

xxxvi. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3324 dated 25.04.2018 issued to Petitioner No. 35.

xxxvii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 / 3332 dated 25.04.2018 issued to Petitioner No. 36.

xxxviii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 /3333 dated 25.04.2018 issued to Petitioner No. 37.

xxxix. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1985 dated 14.03.2018 issued to Petitioner No. 38; AND

c) Issue a writ of prohibition or any other writ in the nature of prohibition or any other order or direction to prohibit adjudication of the following Show Cause Notices by the respective Respondents as mentioned herein:

i. Show Cause Notice bearing No. DZU / INV / D / PNB/ 536 / 2015 / 3059 dated 20.04.2018 issued to Petitioner No. 1 and to be adjudicated by Respondent No. 5.

ii. Show Cause notices which have been sequentially numbered starting from DZU / INV / D / PNB / 536 / 2015 / 3060 to DZU / INV / D / PNB / 536 / 2015 / 3133, all dated 20.04.2018 issued to Circle offices of Petitioner No. 1 and to be adjudicated by Respondent No. 5.

iii. Show Cause Notice bearing No. DZU/INV/ST/G/539/2015/2760 dated 14.04.2018 issued to Petitioner No. 2 and to be adjudicated by Respondent No. 5.

iv. Show Cause Notice bearing No. DZU//INV//B/Kotak/544/2015/2771 dated 14.04.2018 issued to Petitioner No. 3 and to be adjudicated by Respondent No. 5.

v. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1984 dated 14.03.2018 issued to Petitioner No. 4 and to be adjudicated by Respondent No. 5.

vi. Show Cause Notice bearing No. DZU / INV / ST / F / 550 / 2015 / 2732 dated 12.04.2018 issued to Petitioner No. 5 and to be adjudicated by Respondent No. 5.

vii. Show Cause Notice bearing No. DZU / INV / ST / J / 541 / 2015 / 2572 dated 06.04.2018 issued to Petitioner No. 6 and to be adjudicated by Respondent No. 5.

viii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2495 dated 04.04.2018 issued to Petitioner No. 7

and to be adjudicated by Respondent No. 5.

ix. Show Cause Notice bearing No. DZU / INV / D / K / 542 / 2015 / 3175 dated 24.04.2018 issued to Petitioner No. 8 and to be adjudicated by Respondent No. 5.

x. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3021 dated 19.04.2018 issued to Petitioner No. 9 and to be adjudicated by Respondent No. 5.

xi. Show Cause Notice bearing No. DZU / INV / ST / I / 552 / 2015 / 3437 dated 27.04.2018 issued to Petitioner No. 10 and to be adjudicated by Respondent No. 5.

xii. Show Cause Notice bearing No. DZU / INV / ST / F / 549 / 2015 / 3347 dated 25.04.2018 issued to Petitioner No. 11 and to be adjudicated by Respondent No. 5.

xiii. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3321 dated 25.04.2018 issued to Petitioner No. 12 and to be adjudicated by Respondent No. 5.

xiv. Show Cause Notice bearing No. DZU / INV / ST / J / 540 / 2015 / 3331 dated 25.04.2018 issued to Petitioner No. 13 and to be adjudicated by Respondent No. 5.

xv. Show Cause Notice bearing No. DZU / INV / D / PNB / 536 / 2015 / 3134 dated 20.04.2018 issued to Petitioner No. 14 and to be adjudicated by Respondent No. 5.

xvi. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2761 dated 14.04.2018 issued to Petitioner No. 15 and to be adjudicated by Respondent No. 5.

xvii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2762 dated 14.04.2018 issued to Petitioner No. 16

and to be adjudicated by Respondent No. 5.

xviii. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2763 dated 14.04.2018 issued to Petitioner No. 17 and to be adjudicated by Respondent No. 5.

xix. Show Cause Notice bearing No. DZU / INV / ST / G / 539 / 2015 / 2764 dated 14.04.2018 issued to Petitioner No. 18 and to be adjudicated by Respondent No. 5.

xx. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2773 dated 14.04.2018 issued to Petitioner No. 19 and to be adjudicated by Respondent No. 5.

xxi. Show Cause Notice bearing No. DZU / INV / B / Kotak / 544 / 2015 / 2772 dated 14.04.2018 issued to Petitioner No. 20 and to be adjudicated by Respondent No. 5.

xxii. Show Cause Notice bearing No. DZU / INV / ST /I /552/2015/3438 dated 27.04.2018 issued to Petitioner No. 21 and to be adjudicated by Respondent No. 5.

xxiii. Show Cause Notice bearing No. DZU / INV / ST/F/ 550/2015/2733 dated 12.04.2018 issued to Petitioner No. 22 and to be adjudicated by Respondent No. 5.

xxiv. Show Cause Notice bearing No. DZU / INV / ST/F/ 550 / 2015 / 2734 dated 12.04.2018 issued to Petitioner No. 23 and to be adjudicated by Respondent No. 5.

xxv. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2573 dated 06.04.2018 issued to Petitioner No. 24 and to be adjudicated by Respondent No. 5.

xxvi. Show Cause Notice bearing No. DZU / INV / ST/J/ 541 / 2015 / 2574 dated 06.04.2018 issued to Petitioner No. 25

and to be adjudicated by Respondent No. 5.

xxvii. Show Cause Notice bearing No. DZU / INV / ST/I/ 551 / 2015 / 2496 dated 04.04.2018 issued to Petitioner No. 26 and to be adjudicated by Respondent No. 5.

xxviii. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2497 dated 04.04.2018 issued to Petitioner No. 27 and to be adjudicated by Respondent No. 5.

xxix. Show Cause Notice bearing No. DZU / INV / ST / I / 551 / 2015 / 2498 dated 04.04.2018 issued to Petitioner No. 28 and to be adjudicated by Respondent No. 5.

xxx. Show Cause Notice bearing No. DZU / INV / ST/K/ 542 / 2015 / 3176 dated 24.04.2018 issued to Petitioner No. 29 and to be adjudicated by Respondent No. 5.

xxxi. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3177 dated 24.04.2018 issued to Petitioner No. 30 and to be adjudicated by Respondent No. 5.

xxxii. Show Cause Notice bearing No. DZU / INV / ST / K / 542 / 2015 / 3178 dated 24.04.2018 issued to Petitioner No. 31 and to be adjudicated by Respondent No. 5.

xxxiii. Show Cause Notice bearing No. DZU / INV / D / BOB / 535 / 2015 / 3022 dated 19.04.2018 issued to Petitioner No. 32 and to be adjudicated by Respondent No. 5.

xxxiv. Show Cause Notice bearing No. DZU / INV / D/BOB/ 535 / 2015 / 3023 dated 19.04.2018 issued to Petitioner No. 33 and to be adjudicated by Respondent No. 5.

xxxv. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3322 dated 25.04.2018 issued to Petitioner

No. 34 and to be adjudicated by Respondent No. 5.

xxxvi. Show Cause Notice bearing No. DZU / INV / B / ICICI / 530 / 2015 / 3324 dated 25.04.2018 issued to Petitioner No. 35 and to be adjudicated by Respondent No. 5.

xxxvii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 / 3332 dated 25.04.2018 issued to Petitioner No. 36 and to be adjudicated by Respondent No. 5.

xxxviii. Show Cause Notice bearing No. DZU / INV/ ST / J / 540 / 2015 /3333 dated 25.04.2018 issued to Petitioner No. 37 and to be adjudicated by Respondent No. 5.

xxxix. Show Cause Notice bearing No. DZU / INV / B / HDFC / 531 / 2015 / 1985 dated 14.03.2018 issued to Petitioner No. 38 and to be adjudicated by Respondent No. 5; AND

d) Issue a writ of certiorari or any other writ in the nature of certiorari thereof or any other order or direction to read down Rule 9(a) read with Rule 2(h) of the Place of Provision of Services Rules, 2012 rules in so much as the impugned Show Cause Notices impose a Service Tax levy on services provided by branches of the Petitioner No. 3 to Petitioner No. 5, Petitioner No. 8 to Petitioner No. 10 and Petitioner No. 12 located outside the "taxable territory" i.e. the State of Jammu & Kashmir to customers located outside the "taxable territory", i.e. the State of Jammu & Kashmir; AND

e) Issue a writ of certiorari or any other writ in the nature of certiorari thereof or any other order or direction to declare Notification No. 14/2017-Central Tax dated 01.07.2017 as ultra vires the provisions of Section 3 of the Central Goods And Services Tax Act, 2017; AND

f) Issue a writ of prohibition or any other writ in the nature of prohibition or any other order or direction to prohibit the officers of Respondent

No. 2 and the subordinate officers of Respondent No. 3 from initiating any further proceedings including issue of summons, letters of enquiries, letters calling for data and information, etc. with respect to the issues raised in the Show Cause Notices (issued to Petitioner No. 1 to Petitioner No. 38); AND

g) Issue a writ or any other order or direction to the Respondent No. 6 to issue necessary direction, clarification and recommendation prohibiting the GST authorities in States, Centre and Union Territories from initiating any further investigation or inquiry for levy of GST on the activities covered under the impugned Show Cause Notices; AND

h) Issue a writ of declaration or any other writ in the nature of declaration, to declare that no Service Tax under the erstwhile Finance Act, 1994 (hereinafter referred to as "Finance Act") and / or Goods and Services Tax (hereinafter referred to as "GST") under the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act") or Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act" which also should be read to include a reference to the pari materia State / Union Territory GST Acts) can be levied on the activities on which Service Tax is sought to be levied under the Show Cause Notices issued to Petitioner No. 1 to Petitioner No. 38 and also to other member banks of the Petitioner No. 39 Association; AND

i) Pass such other orders or grant such other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

SETTLED BY:
N. VENKATARAMAN
LD. SENIOR ADVOCATE

FILED BY:-

(SUDIPTA BHATTACHARJEE / ONKAR SHARMA / HARSH MAKHIJA / ARJYADEEP ROY & RAJAT MITTAL)
ADVOCATES FOR THE PETITIONER
ADVAITA LEGAL, 2ND FLOOR, F-BLOCK,
INTERNATIONAL TRADE TOWER NEHRU PLACE
NEW DELHI 110019
MO. 9910339069

PLACE: NEW DELHI
DATED: 03 .07.2019