IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.70556 of 2013

(Arising out of Order-in-Original No.07/Commr./KOL-I/C.Ex/2013 dated 28.02.2013 passed by Commissioner of Central Excise, Kolkata-I.)

M/s. UCO Bank
(2, India Exchange Place, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Pulak Kr. Saha, Chartered Accountant for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75060/2024

DATE OF HEARING : 23 January 2024
DATE OF DECISION : 23 January 2024

Per : K. ANPAZHAKAN :

The present appeal has been filed against the impugned Order-in-Original No.07/Commr./KOL-I/C.Ex/2013 dated 28.02.2013 passed by Commissioner of Central Excise, Kolkata-I. Aggrieved against the confirmation of the demands of duty interest and penalty, the appellant has filed this appeal.

2. The Appellant submits that impugned order has confirmed the following demands along with interest and penalty.

Particulars	Demand	Penalty	Admitted and paid	Disputed Demand of tax
Irregular availment of Cenvat credit	21,65,286	u/s 78 100% penalty	5,69,734	15,95,552
Non-payment of service tax	21,65,286	0	0	21,65,286
Non-payment of service tax on interest on sale of Government and other securities	9,60,92,082	u/s 78 100% penalty	0	9,60,92,082
Delayed payment of service tax		u/s 76		
Total Demand	**10,04,22,654**		**5,69,734**	**9,98,52,920**

3. Regarding disallowance of CENVAT credit of service tax amounting to Rs. 15,95,552/-, the appellant submits that this credit is related to service tax paid for the residential telephones provided to its employees. The Appellant submits that the definition of 'input service', relevant for the material period, has two parts. The first part uses the word 'means' while the second part uses the word 'includes'. The first part of the definition defines 'input service' as any service used by a provider of taxable service for providing an output service. With the use of the word 'means', this part of the definition has to be interpreted in a restrictive manner which means that there should be a direct nexus between 'input service' and provision of 'output service'. The legislation has consciously used the word 'and includes' in the second part of the definition thereby expanding the meaning of 'input service' beyond the restrictive first part. Therefore, this part should be construed and interpreted liberally. The second part itself has two

parts. The first sub-part gives some illustrations of 'input service' while the second sub-part covers all services used in relation to ***'activities relating to business such as ...'.*** Some illustrations are given in the second sub-part which were preceded by the term 'such as' which signifies that these are only illustrative in nature. Specifically what are the services which fall within the definition of 'input service' has been clearly set out in this part. An omnibus phrase with the words 'activities relating to business' has been used to expand the meaning of 'input service'. This signifies that 'services' which even have only remote or prima facie no nexus with output service provided, should also qualify as 'input service'. Moreover, the definition does not qualify the word 'activities' which signifies that all activities relating to business should qualify as 'input service' within the meaning of the definition as it stood during the material period. From the definition of 'input services' it is clear that Cenvat credit is allowable on telephones installed in the premises of the employees as an activity relating to business though such services have no direct relation to output services provided. In support of this claim, they relied on the decision of the tribunal, Kolkata in the case of ***M/s. Indian Bank vs. Commissioner of Service Tax Kolkata [2023 (9) TMI 569 – CESTAT Kolkata]*** wherein the Tribunal has allowed the Cenvat Credit on telephone bills in respect of the telephones which were installed at the residence of employees.

4. In addition, the Appellant also placed their on the following judgements in support of their claim:

i. *JSW Ispat Steel Limited vs. Commissioner of Central Excise [2014 (2) TMI 776 – CESTAT Mumbai];*

ii. *M/s. SAIL (Alloy Steel Plant) vs. Commissioner of Central Excise & S.Tax, Bolpur [2015 (11) TMI 971 – CESTAT Kolkata]*

iii. *Gateway Terminals (I) Pvt. Ltd. vs. Commissioner of C.Ex. Raigad [2015 (10) TMI 1300 – CESTAT Mumbai];*

iv. *Keltech Energies Limited vs. Commissioner of C.Ex. Mangalore [2008 (1) TMI 96 – CESTAT Bangalore];*

v. *M/s. BASP Industries vs. Commissioner of C.Ex. Mumbai III [2011 (6) TMI 389 – CESTAT Mumbai];*

vi. *M/s. Stock Holding Corporation of India Ltd. vs Commissioner of C.Ex. Mumbai II [2015 (6) TMI 826 – CESTAT Mumbai];*

vii. *Mohan Aluminium Pvt. Ltd. vs. Commissioner of Central Excise, Customs and Service Tax, Bangalore I [2017 (8) TMI 541 – CESTAT Bangalore];*

viii. *Vishal Pipes Ltd. vs. Commissioner of Central Excise Noida [2015 (5) TMI 1008 – CESTAT New Delhi]*

5. Accordingly, the Appellant submits that the service tax paid with regard to telephones installed at the residence of the executives of the bank for official purposes, being an activity related to business, is eligible for Cenavt credit.

6. Regarding the demand of Rs. 21,65,286/- confirmed in the impugned order, the Appellant submits that this demand can be divided into two parts, Rs. 15,95,552/- and Rs. 5,69,734/-. The department has considered the Cenvat credit availed on residential telephone provided to employees amounting to Rs. 15,95,552/- as irregular credit. Thus, the service tax paid by the Appellant by utilizing this credit has been considered as non payment by the department. Once this credit is considered as eligible, the payment of service tax by utilizing this credit automatically becomes appropriate payment and the demand confirmed on this count would be liable to be set aside. Regarding the balance demand of Rs. 5,69,734/- confirmed as a part of Rs. 21,65,286/-, the Appellant submits that this demand pertains to services rendered to mutual fund operators, which they have already paid. Accordingly, they submitted that this demand is not sustainable.

7. Regarding the demand of service tax (including Education Cess and Secondary and Higher Education Cess) of Rs. 9,60,92,082/- under "Banking and other Financial Services" as defined under Section

65(10) of the Finance Act 1994, the Appellant submits that the demand has been raised on the earnings of interest of sale of government securities. The Appellant submits that they have earned an amount of Rs. 77,74,44,029/- as interest on sale of government and other securities for the financial year ended on 31/03/2008. As part of its normal banking activities, the Appellant invests in various government securities. Such investments in government securities are undertaken to comply with the requirements of maintaining the CRR and SLR as per the directives of Reserve Bank of India (RBI) issued from time to time. On several occasions, the Appellant purchases and sells of these securities at cum-interest price. Thus, the Appellant pays and receives interest at the time of purchase and sale of securities respectively. The interest earned on sale of securities during the holding period of securities is recorded separately in the BS-2 (profit & loss a/c) of the bank as interest earned on Govt. securities. This interest income has been received for the investments made by them and it was not received towards rendering of any taxable services. Accordingly, they submitted that the demand confirmed on this count is not sustainable.

8. The Appellant submits that appropriation of Rs. 4,67,42,500/- against the aforesaid demand in the impugned order is not justified as this payment has no relation with the demands confirmed in the impugned order.

9. The Appellant submits that extended period of limitation cannot be invoked as there was no fraud, collusion or any willful misstatement or suppression of facts or contravention of the provisions under the Acts or rules made there under with an intent to evade payment of service tax is established in this case. They also submit that interest charged under Section 75 of the Finance Act 1994 in respect of the demands confirmed in the impugned order is not tenable under law.

10. They also submit that the penalty under Section 76 of the Finance Act, 1994 is not imposable. The Appellant submits that penalty under Section 76 can be imposed in a situation when the service tax

was not paid or short paid. In the instant case, the Appellant admitted the short payment in certain occasions and immediately deposited the same with applicable interest. As the delay in payments were unintentional and the Appellant always paid the service tax voluntarily with interest acting with bonafide belief, penalty imposed under Section 76 is not justified. Therefore, they prayed for setting aside the penalty imposed under Section 76 by invoking the Section 80 of the Finance Act, 1994. The Appellant further submitted that penalty under Section 78 of the Finance Act, 1994 can be imposed only under the exceptional circumstances marked by fraud, collusion, willful misstatement, suppression of facts, contravention of any of the provisions of the Act or Rules, made there under with the intent to evade payment of service tax. As none of the said conditions justifying the imposition of penalty under Section 78 exists in the instant case, and hence imposing penalty under Section 78 is bad in law and liable to be quashed.

11. The Ld. A.R. reiterated findings in the impugned order.

12. Heard both sides and perused the appeal documents.

13. We observe that the demands in the impugned order has been confirmed under three major heads as mentioned in para 2 supra. Regarding the disallowance of Cenvat credit of service tax amounting to Rs. 15,95,552/-, we find that this credit is related to service tax paid for the residential telephones provided to its employees. We observe that this issue is no longer *res integra* as the tribunal, Kolkata in the case of ***M/s. Indian Bank vs. Commissioner of Service Tax Kolkata [2023 (9) TMI 569 – CESTAT Kolkata]*** has allowed the Cenvat Credit on telephone bills in respect of the telephones which were installed at the residence of employees. The relevant part of the said decision is reproduced below:

> *"8. In this case, it is a fact that the telephone has been installed to the residence of employees for use of their business purposes in order to stay connected 24 X 7 with the employees of the Bank. In that circumstances, reliance on the decision of this Tribunal in the case of JSW Ispat Steel Limited (supra), wherein this Tribunal has held as under :*

> *"3. As the issue has already been settled by the judgement of the Hon'ble High Court of Bombay in the case of Ultra Tech Cement Ltd., reported in 2010-TIOL-745-HC-MUM wherein the Hon'ble High Court held that any Service which has nexus with the business activity of the appellant, whether it is manufacturing or rendering service, has to be treated as "input service" coming within the purview of Rule 2(I) of the CENVAT Credit Rules, 2004. Undisputedly, in this case, the telephone service and air travel services have been availed by the appellants in the course of business activity as a manufacturerof excisable goods. Therefore, the issue is no more res integra. Accordingly, I set aside the impugnedorder and allow the appeal with consequential relief, if any."*
> *We allow the cenvat credit to the appellant on telephone service in question."*

14. We observe that as per the definition of 'input services' during the material period, all activities relating to business should qualify as 'input service' within its ambit. Thus, by relying on the definition of 'input services' and the decision of the Tribunal Kolkata referred above, we hold that the appellant is eligible for the Cenvat Credit of service tax paid on telephone bills in respect of the telephones installed at the residence of employees. Accordingly, we set aside the demand of Rs. 15,95,552/- confirmed in the impugned order.

15. Regarding the demand of Rs. 21,65,286/- confirmed in the impugned order, we find that that this demand has two parts, Rs. 15,95,552/- and Rs. 5,69,734/-. The Appellant has availed and utilized the Cenvat credit of Rs.15,95,552/- availed on residential telephone provided to employees. The department considered this credit amounting to Rs. 15,95,552/- as irregular credit. Thus, in the impugned order, the service tax paid by the Appellant by utilizing this credit has been considered as non payment and the demand has been confirmed. However, as discussed in paras 13 and 14 supra, this credit has been held as eligible. Thus, the payment of service tax by utilizing this credit automatically becomes appropriate payment and the demand confirmed on this count is not sustainable and liable to be set aside.

16. Regarding the balance demand of Rs. 5,69,734/- confirmed as a part of Rs. 21,65,286/-, we find that this demand pertains to services

rendered to mutual fund operators, which has already paid by the Appellant. But, the Appellant could not produce any evidence regarding the payment of interest for the delay in payment of this amount. Accordingly, out of the demand of Rs.21,65,286/- we set aside the demand of Rs.15,95,552/- and uphold the confirmation of the demand of Rs.5,69,734/-. The matter is remanded back to the adjudicating authority for the limited purpose of payment of interest for the delay in payment of this amount of service tax of Rs.5,69,734/.

17. Regarding the demand of service tax (including Education Cess and Secondary and Higher Education Cess) of Rs. 9,60,92,082/- under "Banking and other Financial Services" as defined under Section 65(10) of the Finance Act 1994. The Appellant submits that this demand has been raised on the earnings of interest of sale of government securities. We observe that as a part of its normal banking activities, the Appellant invests in various government securities. Such investments in government securities are undertaken to comply with the requirements of maintaining the CRR and SLR as per the directives of Reserve Bank of India (RBI) issued from time to time. On several occasions, the Appellant purchases and sells these securities at cum-interest price. Thus, we find that the Appellant pays and receives interest at the time of purchase and sale of securities respectively. We observe that there is no element of service involved in purchases and sales of Govt. securities which is purely an investment activity. Accordingly, we hold that no service tax can be levied on interest income pertaining to investment made in Govt. securities and the demand confirmed in the impugned order on this count is liable to be set aside and accordingly we do the same.

18. The Appellant submits that appropriation of Rs. 4,67,42,500/- against the aforesaid demand of Rs. 9,60,92,082/- confirmed in the impugned order is not justified as this payment has no relation with the demands confirmed in the impugned order. We find that as discussed in para 17 supra, the demand itself has been held as not sustainable. Hence, the question of appropriation, if any, does not

arise. Accordingly, the Appellant would be eligible for the consequential benefit of appropriation made against the said demand.

19. Regarding the penalty imposed under Section 76 of the Finance Act, 1994, we observe that penalty under this Section can be imposed when the service tax was not paid or short paid. In the instant case, we find that the Appellant has short paid service tax on certain occasions and immediately deposited the same with applicable interest. As the delay in payments were unintentional and the Appellant always paid the service tax voluntarily with interest acting with bonafide belief, we hold that penalty imposed under Section 76 on this count is not justified. Thus, we find it is a fit case for invoking Section 80 of the Finance Act 1994 to waive the penalty. Therefore, we set aside the penalty imposed under Section 76 in the impugned order by invoking the provisions of Section 80 of the Finance Act, 1994.

20. Regarding the penalty imposed under section 78 of the Finance Act, 1994, we observe that penalty under this Section can be imposed only under exceptional circumstances marked by fraud, collusion, willful misstatement, suppression of facts, contravention of any of the provisions of the Act or Rules, made there under with the intent to evade payment of service tax. As none of the said conditions justifying the imposition of penalty under Section 78 exists in the instant case, we hold that the penalty imposed under section 78 of the Finance Act, 1994 is not sustainable and we set aside the same.

21. In view of the above discussions, we pass the following orders:

(i) We set aside the demand of Rs. 15,95,552/- confirmed in the impugned order.

(ii) Out of the demand of Rs.21,65,286/- confirmed in the impugned order, we set aside the demand of Rs.15,95,552/- and uphold the confirmation of the demand of Rs.5,69,734/-. The matter is remanded back to the adjudicating authority for the limited purpose of payment of interest for the delay in payment of this amount of service tax of Rs.5,69,734/-.

(iii) We set aside the demand of service tax (including Education Cess and Secondary and Higher Education Cess) of Rs. 9,60,92,082/- under "Banking and other Financial Services" as defined under Section 65(10) of the Finance Act 1994. The Appellant would be eligible for the consequential benefit of appropriation made against this demand.

(iv) We set aside the penalty imposed under Section 76 of the Finance Act, 1994 in the impugned order by invoking the provisions of Section 80 of the Finance Act, 1994.

(v) We set aside the penalty imposed under section 78 of the Finance Act, 1994.

(vi) The appeal filed by the Appellant is disposed on the above terms.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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