

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH –COURT NO. 4

Service Tax Appeal No. 53305 of 2018

(Arising out of Order-in-Original No. 92/2018-ST dated 31.07.2018 passed by the Additional Director General (Adjudication), New Delhi)

M/s India Infoline Limited

Appellant

IIFL Centre, Kamala City,
Senapati Bapat Marg,
Lower Parel, Mumbai-400 013.

Versus

**Additional Director General (Adjudication)
New Delhi**

Respondent

Directorate General of GST Intelligence
(Adjudication) Cell, West Block-VIII,
Wing No. 6, 2nd Floor, R.K. Puram,
New Delhi – 110066.

Appearance:

Present for the Appellant: Shri Pritesh Mehta, Chartered Accountant

Present for the Respondent: Shri Rohit Issar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)

Hon'ble Ms. Hemambika R. Priya, Member (Technical)

Date of Hearing : 03/12/2024

Date of Decision : 10/03/2025

Final Order No. 50389/2025

Dr. Rachna Gupta:

In the present appeal the Order-in-Original No. 92/2018 dated 31.07.2018 has been assailed. The facts which have been culminated into the said order, succinctly, are as follows:

1.1 That India Infoline Ltd.¹ herein are engaged in providing Stock Broker Agent Service to their clients relating to the facilitation of sale or purchase of securities/stocks on Stock

¹ the appellant

Exchanges by their clients against a consideration/brokerage at the, agreed terms for their clients. The appellants were found discharging their service tax liability on this brokerage income. However, during investigation conducted based on intelligence received in DGCEI, the department observed that the appellants were receiving consideration from their clients as Delayed Payment Charges² towards extending credit facilities, however, were not paying service tax on the said amount. Based on the insertion with effect from 01.07.2012 to Rule 6(1) of Service Tax (Determination of Value) Rules, 2006, department found an opinion that the service of extending credit facility is an activity distinct from the stock broker service. Thus, the "Delayed Payment Charges" is the consideration for provision of this separate service/activity of extension of credit facility.

2. Department alleged that the appellant's claim about DPC being levied against default made by the client and not for any other activity being carried out by the appellant, was alleged baseless and the appellant was held liable to pay service tax on the said DPC. Accordingly, the show cause notice No. 545/2015/9295 dated 29.11.2016 was served upon the appellant after invoking the extended period of limitation proposing the recovery of service tax amounting to Rs. 11,70,58,419/- along with proportionate interest and the appropriate penalties under Section 77 and 78 of the Finance Act. This proposal has been confirmed for the demand of service tax amounting to Rs. 10,32,76,114/- after extending the benefit of cum tax value to the appellant along with interest.

Penalty of Rs. 7,95,94,691/- has been imposed under Section 78 of the Finance Act. However, penalty under Section 77 has been dropped. Still being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri Pritesh Mehta, learned counsel for the appellant and Shri Rohit Issar, learned Authorized Representative for Revenue.

4. Learned counsel for the appellant has mentioned that the DPC have wrongly alleged to be a consideration against separate activity/service. The appellant has paid service tax on the brokerage income earned by it for rendering the stock broker agent service. Learned counsel further submitted that it is the mandate for the stock broker to make a payment to stock exchanges for the purchases done by the client on the settlement date itself. Hence the clients are required to make the payment to the stock brokers of the amount due from them for purchase of securities before the settlement date. It is to manage the risk of payment on or before the settlement date that the stock brokers levies interest/DPC on the amount due from the client/purchasers if such client fails to make the payment of its dues to the appellant on or before the time limits provided by the stock exchanges/SEBI. The DPC are the charges not levied if the client/purchasers makes the payment of dues within the prescribed limit. Hence DPC are wrongly alleged to be includible in taxable value. It is further submitted that the appellant has not collected any amount of service tax from the clients on the said DPC.

4.1 Learned counsel also submitted that Rule 6(2) of Service Tax Valuation Rules, 2006 provides that the value of taxable service shall not include interest on delayed payment on any consideration for the provision of service. The matter related to DPC/surcharge etc. has been clarified by CBEC Circular No. 32/3/2006 dated 20.12.2000. It is further submitted that DPC has wrongly been compared to demurrage charges because in case of demurrage charges the value of service itself undergoes change. Hence decision relied upon by the adjudicating authority below are not applicable to the facts of the present case. Learned counsel further submitted that this Tribunal in appellant's own case titled as **IIFL Holding Ltd. Vs. CCGST, Mumbai Central**³ CESTAT, Mumbai has already decided the present issue in favour of the assessee. The order under challenge is, therefore, prayed to be set aside and the appeal is prayed to be allowed.

5. While rebutting these submissions, that the issue involved in the present case, has been a PAN India issue as such number of demand notices have been issued by the various of the department. In many cases, the demand has been confirmed even in one of the appellant's own case, the demand has been confirmed by a DG (ADJ), DGGCEI. However, for the subsequent period Commissioner (Mumbai) has dropped the demand.

6. Learned Departmental Representative while submitting on merits mentioned that it is stock broker obligation to make payment to the stock exchange/SEBI on behalf of investor/customer and by recovering this payment from the

3 Service Tax Appeal No. 87042 of 2018

customer along with some interest. The appellant used to settle an account of client with stock exchange while extending credit facility which is another essential aspect of the agreement between stock broker and its client. Thus it is not part of the stock broker service but a separate service.

7. Further, it is submitted that the adjudicating authority has rightly observed that when the noticee, in addition to stock broking, settles the accounts with Stock Exchange (SEBI) on behalf of their client, this service distinctly different from that of Stock Broker Service took place. At this juncture it may be worth noting that the law makes consciously used the term "Activity" in the provision, namely Section 65B(44) of Finance Act, 1994 which defines the term "services". Therefore, they were doing two different activity. Post introduction of negative list every activity is a taxable service unless the service specifically mentioned or covered in the negative list the share packing activity takes place at the time when share agent for which the broker charged commission from clients. The activity of settling account since takes place an act at later point of time against a separate amount of consideration. It is a separate activity since the same does not figure in the introduction list of Section 66D of Finance Act, hence, is separately liable to tax. Learned Departmental Representative has reiterated all such findings of the original adjudicating authority impressing upon no infirmity therein. The order is accordingly, prayed to be upheld and appeal is prayed to be dismissed.

8. Having heard both the parties at length and after perusing the entire record we have foremost observe that the undisputed facts of the present case are:

- (i) The appellant is rendering the stock broker services against receiving the commission/brokerage as consideration;
- (ii) The service tax liability has been discharged on the said brokerage;
- (iii) In addition to the brokerage, the appellants are receiving DPC. The DPC on the outstanding debit balance till the client makes payment of his dues or his balance.

The dispute is as to whether the amount of DPC is an amount includible in the taxable value of providing stock broking service else is taxable being a consideration for providing a separate service of settling the account of clients with stock exchanges as different from the service of stock broking for the purpose or is not the amount of consideration which is liable to be taxed.

9. We foremost need to look into the concept of consideration. Section 67 of the Finance Act deals with the concept, what constitutes "consideration" for service. Service tax is leviable only when an activity is considered to be a service. There has to be a consideration for the provision of such service. Only an amount payable for the service would be "consideration." Consideration must flow from the service recipient to the service provider and should accrue to the benefit of the service provider. There is a

marked distinction between “conditions to a contract” and “consideration. A ruling by the Larger Bench of the Tribunal **Bhayana Builders (P) Limited Vs. Commissioner of service tax**⁴, wherein it was observed that any consideration (whether monetary or otherwise), should have flown or should flow from the service recipient to the service provider and should accrue to the benefit of the latter. - The Supreme Court’s decision in **Commissioner of service tax v. M/s Bhayana Builders**⁵ in affirming the above ruling **Bhayana Builders (P) Limited** (supra) wherein it was held that “any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under section 67,” which was also reiterated in another landmark decision by the Supreme Court in **Union of India Vs. Intercontinental consultants and Technocrafts**⁶. The definition of the term “consideration” under the Finance Act, being an inclusive definition, the Tribunal observed that it must be construed to comprehend not only such things as it signifies according to its natural import, but also those that the interpretation clause declares they shall include. Accordingly, reference was made to the definition of “consideration” under section 2(d) of the Contract Act, 1872, wherein consideration should flow at the desire of the promisor. Larger Bench of Tribunal in Service Tax Appeal No. 511 of 2011-LB with Service Tax Cross Application No. 40320 of 2018 holds that foreclosure charges collected by banks and NBFCs on premature termination of loans is not leviable to service tax; analyses what constitutes

4 2013 (32) S.T.R. 49 (Tribunal-LB)

5 2018 (2) TMI 1325

6 2018 (10) GSTL 401 (SC)

"consideration" for service and damages for breach of contract. The Tribunal observed that the banks and NBFCs are promisors and they would not desire premature termination of the loan, as it is in their interest that it runs the entire agreed tenure. The Hon'ble Apex Court also in the case of **Bhayana Builders**⁷ has held as under:

"In the light of the clear Legislative text, the unambiguous provisions of sections 66 and 67 of the Act and in the light of the judgment in **Intercontinental Consultants and Technocrats Pvt Ltd.** (supra), the conclusion is compelling and inviolable that the value "free supplies" by a construction services recipient, for incorporation in the constructions would not constitute a non-monetary consideration to the service provider nor form part of the gross amount charged for the services provided. Whether the legislature may enact that the value of "free supplies" should be included in the value of the service provided for levy of tax; and within its legislative competence, is an aspect that is speculative for the nonce and outside the purview of either the substantive appeals or the issue referred to us. In this view of the matter it is not necessary to consider the contention on behalf of the assessee that an interpretation that Section 67 of the Act enables or mandates inclusion of the value of goods and materials incorporated into construction services (whether provided by the service provider or as a free supplies by the service recipient) would render the legislative provision unconstitutional, since value of the goods incorporated being sale of goods would be liable to sales tax, an area within the legislative competence of State, the value of goods sold would thus be beyond the legislative competence of Parliament for levy of tax on such sale; consequently could not also constitute the value of taxable services. Ld. Counsel placed reliance on the judgment in *M/s Gannon Dunkerley and Co. and Others vs. State of Rajasthan and Others* (1993) 1 SCC 364 = [\(2002-TIOL-103-SC-CT\)](#); and *State of Andhra Pradesh and Others vs. Larsen & Toubro Limited and Others* (2008) 9 SCC 191 = [\(2008-TIOL-158-SC-VAT\)](#) , to buttress this contention.

(viii) Since Section 67 of the Act, as currently structured does not, in our view require inclusion of free supplies in the gross value charged, for computation of the value of taxable services;"

10. Thus, it becomes clear that any income which gets generated up to the settlement of the agreement of rendering services which

7 (2018) 3 SCC 782

shall form the part of the taxable value of Section 67 of the Finance Act the service of stock broker gets completed when the terms and conditions of the contract entered with the client for sale/purchase of securities are completely accomplished. Thus the payment of outstanding amount to the stock exchange on behalf of the clients is the part of service relating to stock broker service which gets completed when the transaction for the same are finally settled. The amount of DPC are not collected from all the clients to whom the stock broker service are rendered by the appellant. These amounts are being collected only from those clients who have not paid the appellant within the time limit and the appellant being under a legal contract with the exchange, had to deposit the value of securities sold/purchased by their clients as such. To our opinion, the nature of amount of such DPCs is nothing beyond a penal charge.

11. We have also perused clause (iv) of the agreement between the appellant and its client as has been referred in the show cause notice itself. A perusal thereof clearly recites that the DPC shall be directly debited to the account of client at the end of every month. This is only a penal measure and brings in discipline in the clients to clear the dues in time as appellant had SSIFL being to clear its obligation to the exchange as per time limits prescribed by such exchanges.

12. We have also perused the CBEC circular as has been brought to notice by the appellants the circular is RUD filed as well bearing No. 137/25/2011 dated 03.08.2011. It is with respect to clarification regarding service tax on delayed payment charges

collected by the service provider in respect of stock brokers services. Para 2.1 thereof clarifies that, delayed Payment Charges (DPC) received by the stock brokers are not includible in taxable value as the same are not be charged for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time. Such amounts are not includible in the taxable value for charging service tax. We also find that the issue of Delayed Payment Charges (DPC) arising in the context of purchase of shares has been addressed by the Co-ordinate Bench of this Tribunal in the case of **Religare Securities Limited Vs. Commissioner of Service Tax, Delhi**⁸ by holding that the same is not liable to service tax. The relevant paragraphs of the said order is extracted below:

"10. After appreciating the submissions made by both the sides, we find that the dispute to be decided in the appeal is as to whether the DPC collected by the appellants from their clients in those cases where the appellants have already made payments to the Exchange but has not recovered the same from their clients, are required to be considered as a part of the value of the services, so as to levy the Service Tax in respect of the same. We find that there is not much dispute on the facts. The DPCs are being collected by the appellants only from those clients, who have not paid them well within the time-limit period and the appellants being under a legal contract with the Exchange, had to deposit the value of the securities, sold or/and purchased by their clients. As such, the nature of the said DPCs being a penal charge, is established. Where there is no delay in making payments by the clients, no DPC is being charged from them. As such, one thing becomes clear that such DPC is not on account of any stockbroking services being provided by the appellants.

In terms of clause 45 of the agreement entered by the appellants with investors, - "any amount overdue towards trading or any other reason will be charged with delayed payment charges". Perusal of the said clause reveals that the DPCs are collected only in case of

overdue payments. The reasoning of the Commissioner that the origin of the DPC has taken place on account of business or service of sale/purchase of securities by a stockbroker and the same has to be considered as a part of the service does not appeal to us, for the simple reason that such DPC collection has got nothing to do with the sale/purchase of the securities, a service which the appellants is rendering as a stock-broker but admittedly is a charge recovered from only those customers, who delayed the payments of the securities value and is in fact is a penal interest, for compensating the assessee for the payments already made by them, to the Exchange, on behalf of their clients.

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11. As is seen from the above, the mandate of Section 67 of the Act is that it is only the commission/brokerage, which is liable to Service Tax and no other recovery made by the stock-broker can be held to be a part of the value of the service. The Tribunal very clearly observed that the receipts not in the nature of commission/brokerage should not be taxed in disguise. Inasmuch as, we have already held that DPC is not a commission or a brokerage for sale/purchase of securities, as the same is not being collected from each and every customers but is relatable to only delayed payments by some of the customers, there is no justification for inclusion of the same in the value of the services.

12. Apart from the above, we note that the issue stands clarified by the C.B.E. & C. vide their letter dated 3-8-2011, relating to the DPCs recovered by the stock-broking service, the Board observed as under :-

"Subject: Section67-Clarificationregarding Service Tax on delayed payment charges collected by the service provider in respect of Stock Broker's services - Reg.

Representations have been received seeking clarification regarding leviability of Service Tax on the additional amount that is collected towards the delay in making payment to the stock-brokers by their customers (delayed payment charges) in respect of Stock Broker's services.

2. The matter has been examined. Clarifications issued by the Board in the past on similar issues are summed up below :-

(i) Circular No. 96/7/2007 at para 002.01 clarifies that an amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and therefore, does not form a part of the value of taxable service.

(ii) Circular No. 121/02/2010-S.T., dated 26-4-2010 clarifies that detention charges in respect of detained containers

are not in respect of service provided on behalf of client (under BAS) nor it on account of infrastructure support services (under BSS). Such charges can at best be called as 'penal rent' for retaining the containers beyond the predetermined period. Therefore, the amount collected as 'detention charges' is not chargeable to Service Tax.

2.1 In a similar manner, delayed payment charges received by the stock-brokers are not includible in taxable value as the same are not the charges for providing taxable services. Such charges are on account of delay in making payments by the service recipient to the service provider and are in the nature of a penal charge for not making the payment within stipulated time. Such amounts are not includible in the taxable value for charging Service Tax. This principle will also apply to other service providers.

3. However, Section 67 of the Finance Act, 1994 provides that Service Tax is chargeable on taxable value which shall be the 'gross amount charged' by the service provider. Therefore, if in the account statement/invoice/bill, etc. issued by the service provider, only the gross amount is shown without indicating the delayed payment charges separately, the Service Tax would be payable on the entire amount. Delayed payment charges would not be includible in the 'gross value charged' only if these charges are shown separately in the account statement/invoice/bill etc."

As is seen from the above, the DPCs recovered separately and shown separately in the invoices/bills cannot be held liable to payment of Service Tax. Admittedly, in the present case, such DPCs were being recovered by the appellants by issuing separate debit notes to their customers and by debiting the amounts in their running ledgers. As such, the clarification issued by the Board is fully applicable to the facts of the present case.

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14. In view of our foregoing discussions, we set aside the impugned order confirming the demand of Service Tax and interest and imposing penalties upon the appellants. Accordingly, their appeal is allowed with the consequential relief to them."

13. This decision has been relied upon by CESTAT (Mumbai) in appellant's own case bearing Service Tax Appeal No. A/85086-85087/2024 dated 19.02.2023.

14. We do not find any difference of facts of in the present case. Hence do not find any reason to differ from those findings. It is accordingly, held that the adjudicating authority having ignored the department's own circular about the collection of DPC has wrongly held the amount to be the consideration for providing a separate activity. It has absolutely been ignored that there was only one contract of appellant with their client for sale/purchase of security and the said contract itself has talked about penal charges to have been collected from the clients in case the payments are delayed. DPC are wrongly held to be taxable. Demand is held to have been wrongly confirmed.

15. In the light of the entire above discussion, we hereby set aside the impugned order in original. Consequent thereto, the appeal stands allowed.

(Pronounced in open Court on 10.03.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical)

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