

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7053 OF 2011

COMMR.OF C.E.CUSTOMS & SER TAX ...APPELLANT(s)

VERSUS

M/S FEDERAL BANK LIMITED ...RESPONDENT(s)

WITH

Civil Appeal No.7054/2011

Civil Appeal No.7055/2011

Civil Appeal No.7056/2011

Civil Appeal No.7057/2011

Civil Appeal Nos. 7058-7060/2011

Civil Appeal No. 7061/2011

Civil Appeal No.1535 of 2016
(Arising out of SLP(C) No. 36974/2012)

Civil Appeal No.613/2013

O R D E R

Leave granted in SLP.

Heard Mr. K. Radhakrishnan, learned senior counsel for the appellant and Mr. M.P. Vinod, Mr. Kunal Verma and Mr. M.P. Devanath, learned counsel for the respondents.

In the lead matter, i.e., Civil Appeal No.7053 of 2011, the appellant is aggrieved by the judgment and order dated 27.07.2009 passed by the High Court of Kerala at Ernakulam in Central Excise Appeal No.13/2009 whereby the appeal has been dismissed. The other connected

matters have also been decided on the basis of ratio laid down in the aforesaid judgment under appeal.

The moot question of law falling for determination is whether the services provided by the respondent - Bank such as collection of telephone bills, collection of insurance premium on behalf of the client companies are liable to service tax under the category "business auxiliary service" as defined under Section 65(19) of the Finance Act, 1994 (hereinafter referred to as "the Act").

The High Court has agreed with the Tribunal and has dismissed the appeal by the appellant by holding that Section 65(12) of the Act covers all charging services rendered by the Banks and hence, by express provisions in the same very section, cash management services stood excluded from the purview of service tax. On account of such exclusion, the authorities cannot levy service tax by indirect method of charging the same service under the head "business auxiliary service".

Since the meaning and significance of "cash management service", the term not defined under the Act, was not very clear, the High Court has taken note of clarification contained in the Circular issued by the Central Board of Excise and Customs (CBEC) dated 01.06.2007. The relevant part of that clarification letter is as follows:

"At present cash management is specifically excluded from the scope of this service. Specific exclusion of cash management is being omitted. Consequently, cash management services will be leviable to service tax under this service. Cash management services includes services of collection of receivables, execution of payment, management of liquidity and providing customized Management Information System (MIS) reports, provided by banks to clients such as corporate clients."

Mr. Radhakrishnan, learned senior counsel for the appellant has placed before us certain write-ups explaining the concept and meaning of cash management services. One of the write-ups appears to be an extract from the Research Journal of Management Sciences, Vol.3(12), 15-17, December (2014).

A perusal of the write-ups supports the concept and meaning of cash management services appearing in the clarification letter of the CBEC dated 01.06.2007.

It is not in dispute that under Clause (12) of Section 65, there was a specific mention in sub-clause (v) to the effect that the banking and other financial services means asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management. Subsequently, the legal position has been altered and the above noted

exclusion of cash management services has been dropped with effect from 01.06.2007. This amendment in Clause (12) has been noted by the High Court in the impugned judgment also.

The High Court has given detailed consideration to Clause (19) of Section 65 which defines "business auxiliary service". It has thereafter held that sub-clause (vii) of Clause (19) refers to only a service which is incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), but those activities in turn do not specifically relate to banking and other financial services. Rather such banking and other financial services are specifically covered by clause (12) of Section 65.

In that view of the matter, the High Court held that Clause (12) of Section 65 covers all charging services rendered by the Banks. The High Court is further of the view that when cash management services stood excluded from the purview of service tax at the hands of the Bank until 31.05.2007, the authorities cannot levy service tax on an activity which is essentially cash management service, by taking aid of other general charging heads, such as business auxiliary service.

Having considered the various provisions in the Act, we are in agreement with the views expressed by the High

Court even for a further reason that Section 65A of the Act, while dealing with classification of taxable services, has clarified in sub-section (2) that "when for any reason, a taxable service is, *prima facie*, classifiable under two or more sub-clauses of clause (105) of Section 65, classification shall be effected as follows:

(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;

(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, insofar as this criterion is applicable;

(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merit consideration."

It is notable that clause (105) has several sub-clauses enumerating various "taxable service" by

reference to its description. Clearly, the stand of the High Court is supported by the aforesaid statutory provision also and requires no interference.

For the said reasons, the appeals preferred by the Revenue must fail. They are dismissed accordingly. No order as to costs.

.....J.
(SHIVA KIRTI SINGH)

.....J.
(R.BANUMATHI)

NEW DELHI
FEBRUARY 18, 2016

ITEM NO.102

COURT NO.12

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).7053/2011

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C.A. No. 7054/2011C.A. No. 7055/2011C.A. No. 7056/2011C.A. No. 7057/2011C.A. No. 7058-7060/2011C.A. No. 7061/2011SLP(C) No. 36974/2012

(With Office Report)

C.A. No. 613/2013

(With Office Report)

Date : 18/02/2016 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. K. Radhakrishna, Sr. Adv.
 Mr. Rajiv Nanda, Adv.
 Ms. Rashmi Malhotra, Adv.
 Mr. B. Krishna Prasad, AOR
 Ms. Shweta Garg, Adv.

For Respondent(s) Mr. M. P. Vinod, AOR
 Mr. Atul Shankar Vinod, Adv.

Mr. Kunal Verma, AOR
Ms. Yugandhara Jha, Adv.
Prasanna Mohan, Adv.

Mr. M. P. Devanath, AOR
Mr. Vivek Sharma, Adv.
Mr. Abhishek Anand, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted in SLP.

The appeals are dismissed in terms of the signed
order. No costs.

(SANJAY KUMAR-I)
AR-CUM-PS

(JASWINDER KAUR)
COURT MASTER