

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

CHENNAI

Appeal No.ST/480/2010

[Arising out of Order-in-Appeal No.54/2010 (ST) dt. 07.04.2010 passed by Commissioner of Customs & Central Excise (Appeals), Trichy]

Karur Vysya Bank Limited Appellant

Versus

Commissioner of Central Excise,

Tiruchirappalli Respondent

Appearance :

Shri N. Quadir Hasyen, Advocate

For the Appellant

Shri A. Cletus, ADC (AR)

For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing : 13.06.2018

Date of Pronouncement : 10.08.2018

FINAL ORDER No. 42214 / 2018

Per Madhu Mohan Damodhar

The Karur Vysya bank Ltd., the appellants herein are providing Banking and Other Financial Services. During the course of verification, it emerged that appellants were charging Dormant Account Charges for operating an account of a customer which remained inoperative or dormant. It appeared to the department that such charges would be required to be part of the gross amount of value of taxable service for purposes of discharging service tax liability. Hence show cause notice dt. 27.5.2008 was issued to appellants, inter alia proposing demand of service tx of Rs.17,39,970/- on such dormant period charges collected for the period 10.09.2004 to 31.03.2007, with interest thereon, and imposition of penalty under various provisions of law. In adjudication, the original authority vide an order dt. 11.03.2009 confirmed this proposed demand and also imposed penalties under Section 76, 77 & 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) vide the impugned order dt. 07.04.2010 set aside the penalties under Section 76 of the Act, however, upheld the remaining portion of the order of original authority. Aggrieved, the appellants are before this forum 2. When the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri N. Quadir Hasyen made oral and written submissions which can be broadly summarized as under :

i) A Bank Account which is inoperative for more than 12 months (ie., 1 year) is known as “Dormant Accounts”. So the definition “operation of Bank Account” is not applicable to Dormant Accounts.

ii) Dormant period charges is a penalty for a customer who is not operating the bank account on regular basis and the purpose of the implementation of this charges for regulating the dormant bank account into an operative one (or) to eliminate those accounts from the system for the effective utilization of the other operative customers.

iii) For this Dormant Period Charges, appellants are not providing any service to its customers rather they are collecting charges for “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”.

iv) “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” has been included in the definition of “Declared service” w.e.f. 01.07.2012. So before 01.07.2012, it is not taxable in the hands of the appellant.

v) Further, appellant is covered under the Excise Audit, 2000 every year and all documents and books of accounts have been scrutinized by the Audit party of the Excise & Service Tax Department, Trichy. So, appellant has not concealed/suppressed any facts before the Department and the extended period of Limitation cannot be invoked u/s.73 (1) of the Finance Act, 1994.

vi) Ld. counsel relies upon Board’s Circular No.96/7/2007-ST dt. 23.08.2007 wherein it has been clarified 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 part of the value of taxable service under section 67 read with Service Tax (Determination of Value) Rules, 2006.

viii) He also relies upon Board’s Circular No.121/3/2010-ST dated 26.04.2010 wherein it has been clarified that to retain the container beyond the pre-holding period is neither a service provided on behalf of the client (Business Auxiliary Service) nor is it an infrastructural support in the business of either the shipping lines or the customer (Business Support Service). Such charges can at best be called as ‘penal rent’ for retaining the containers beyond the pre-determined period. Therefore, the amount collected as ‘detention charges’ is not chargeable to service tax.

3. On the other hand, on behalf of the department, Ld. A.R Shri A. Cletus supports the impugned order and also submits as under : i) As per the definition of “Banking and Other Financial Services” in Section 65 (12) of the Finance Act, 1994, the financial services of “operation of bank accounts” is liable to service tax w.e.f.10.09.2004. The “Dormant Period Charge” is directly linked to the services provided by the bank to the customer by way of maintaining their inoperative bank accounts and by way of keeping such account in a dormant status in their operating scheme. ii) Hence there definitely is an element of service involved in keeping account in dormant status and this becomes part of the activity relating to maintenance and operation of bank accounts. iii) Therefore the amount charged as “dormant charges” is nothing but charge being collected from customers for implementing operating cost and servicing such in operation bank accounts. iii) As per Section 65 (105) (zm) of the Finance Act, 1994, taxable service means any services including provided or to be provided to a customer by a Banking Company etc. in relation to Banking and Other Financial Services. iv) Ld. AR also refers to earlier decision of CESTAT Chennai in appellant’s own case vide Final Order No.40871/2017 dt. 02.06.2017. 4. Heard both sides and have gone through the facts on record.

5.1 No doubt, banks provide a multitude of services. In fact the concept of banking is essentially on profits made in leveraging charges made for such services. At the micro level, there is a customer base of account holders where the largest sources by far of funds to bank. These accounts holders entrust

their savings to the bank for safe keeping and use for future transactions. These are the “core deposits”, typically from the checking and savings account . There is no curb on the account holders that they have to operate their account in perpetuity. The customer reserves his right to withdraw the amount at any time and has the option to withdraw the money on demand. Deposits from these customers are very important to the banks since account holders are relatively paid very low rates of interest on the deposits made by them. The deposits made by the banks from such account holder is then lent to borrowers at much higher rates of interest which is one of the sources of profit. Some of other income areas are interchange fees for use of credit cards, debit cards etc. Banks also get “fees / charges” for using ATMs etc. When the saving or current account has not had any transactions or activity for more than a specific period, the account is rendered inoperative by the bank and is subsequently declared dormant. On top of this, dormant account charges are imposed on such account holders and very often such charges are deducted from the balance of such account. The pertinent aspect that has to be considered is whether banks are providing a service by levying such charges. In our considered opinion, the answer to this question is resoundingly in the negative. There is no service being provided to the customer in the course of levying such charges. The customer in any case was not operating his account for quite some time, only for which reason the account has been declared dormant or inoperative by the bank. By levying “dormant account charges’ such account holders are not getting any additional services or benefits that they were not getting earlier. This being so, levy of such charges are nothing but a penalty imposed on such account holders for keeping their account inoperative. Banks need a constant rolling of money and deposits, and inoperative or dormant account will not help this purpose. The dormant account charges are therefore nothing but a charge in the nature of penalty.

5.2 In this regard, we find that the Ld. Advocate’s reliance on Board’s circulars dt. 23.8.2007 and 26.4.2010 have merit. In the circular dt. 23.08.2007, it has been clarified that amount collected for delayed payment of telephone bill is not to be treated as a consideration charges for provision of telecom service and therefore it does not form part of the value of taxable service. In the circular dt. 26.4.2010 the issue of inclusability of “container detention charges” was addressed wherein it has been held as under :

“4. The issue has been examined. To retain the container beyond the pre-holding period is neither a service provided on behalf of the client (Business Auxiliary Service) nor is it an infrastructural support in the business of either the shipping lines or the customer (Business Support Service). Such charges can at best be called as „penal rent“ for retaining the containers beyond the pre-determined period. Therefore, the amount collected as „detention charges“ is not chargeable to service tax.”

5.3 Eodem argumento, the dormant account charges levied on some of the customers are at best may be called “penal charges’ and hence cannot form part of the taxable value.

5.4 An earlier order of the Tribunal in the appellant’s own case, Final order No.40871/2017 dt. 2.6.2017, has been pointed out to us by the Ld.A.R. We however find that the issue involving therein was not related to dormant charges but inclusion of cheque return charges etc. , hence that decision will not help the Revenue’s case.

6. In the event we find that the impugned order cannot be sustained and requires to be set aside, which we hereby do. Appeal is allowed with consequential benefits, if any, as per law. (Pronounced in court on 10.08.2018) (P. Dinesha) (Madhu Mohan Damodhar) Member (Judicial) Member (Technical)