

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No. ST/1921/2012-CU[DB]

(Arising out of Order-in-Original No. 42/COMMR./NOIDA/2011-12 dated 30/03/2012 passed by Commissioner of Central Excise & Customs, Noida)

**M/s ABN Amro Bank NV (Presently known as Royal Bank of Scotland
NV)** **Appellant**

Vs.

Commissioner, Central Excise, Customs & Service Tax, Noida

Respondent

Appearance:

Shri B.L. Narasimhan (Advocate) & Shri Ayush Agarwal (Advocate)
for Appellant
Shri Rajeev Ranjan (Addl. Commr.) AR for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 23/07/2018
Date of Decision : 23/07/2018

FINAL ORDER NO. **71601 / 2018**

Per: Ashok Jindal

The appellant is in appeal against the impugned order wherein demand of service tax of Rs.5,35,81,461/- alongwith interest has been confirmed and various penalties has also been imposed on them by issuance of show cause notice dated 19.09.2011 for the period from May, 2006 to February, 2008 by invoking the extended period of limitation.

2. The facts of the case are that the appellant is a banking company and engaged in the business of issuance of 'credit cards' to their customers. The credit cards business having a system to operate, how the system is operated i.e., a bank issue the credit card is known as Issuing Bank to its customers. When the customer uses that credit card, he goes to the Merchant purchase the goods by swiping the card, thereafter immediately transaction goes to the acquiring bank. The acquiring bank makes the payment to the merchant. At that time, the acquiring bank charges the certain amount for the service provided by them to the merchant. On that amount, the acquiring bank is discharging their service tax liability. Out of that amount of service retained by the acquiring bank, some amount is transferred to the issuing bank. The case of the Revenue is that the issuing bank receiving certain commission from the acquiring bank, on that amount they are liable to pay service tax under the category of 'Credit Cards Services' under Section 65(33A) read with Section 65 (105)(zzzuu) of Finance Act, 1994. To this effect the audit took place during the period from 2007-2008 and thereafter a show cause notice was issued to demand of service tax from the appellant for the period from May, 2006 to February, 2008 by way of show cause notice dated 19.09.2011. The matter was adjudicated and the demand of service tax was confirmed against the appellant

alongwith interest and various penalties were imposed. Against the said order, the appellant is before this Tribunal.

3. The learned counsel appearing on behalf of the appellant submits that it is a fact on record that the acquiring bank has paid service tax on whole of the amount and out of the said amount some amount has been shared with the appellant. Therefore, once service tax has been paid on the entire amount, no service tax is payable. He further submitted that the amount received by the appellant do not qualify as credit cards services as per Section 65(33A) sub Clause (iii) of the Finance Act, 1994. Therefore, no service tax is payable by the appellant. He further also submits that for the earlier period, a show cause notice was issued to the appellant for the same activity and the Larger Bench of this Tribunal in the case of Standard Chartered Bank vs. Commissioner of Service Tax, Mumbai-I reported at 2015 (40) S.T.R. 104 (Tri.-LB) has held that no service tax is payable on the said activity. Further, he submits that although there is change in the definition of Credit Card Services but the activity was known to the Department, therefore, extended period of limitation is not invokable. Further, he submits that moreover the audit took place in the year 2007-2008 whereas a show cause notice was issued on 19.09.2011, therefore the show cause notice is highly time barred.

4. Heard the parties.

5. Considered the submissions.

6. It is a fact on record that the acquiring bank is discharging his service tax liability on the amount in question, in that circumstances, no service tax is payable by the appellant (and the said fact has not been disputed by the learned AR during the course arguments) as held by the Hon'ble Allahabad High Court in the case of Commissioner of C. Ex. Lucknow vs. Chotey Lal Radhey Shyam reported at 2018 (8) G.S.T.L. 225 (All.).

7. Moreover, we have gone through the definition as under Section 65(33A) Clause (iii) herein is reproduced below:-

“By any person, including an issuing bank and an acquiring bank, to any other person in relation to settlement of any amount transacted through such card.”

8. On going through the said definition, we find that if the appellant is receiving certain commission in relation to settlement of any amount, then and only then the said activity is covered under credit card services. Admittedly, the appellant is not engaged in any activity of settlement of the amount. In fact, the appellant is not the settlement agency and is acting only as issuing bank. It is admitted position by the learned Commissioner in the impugned order. In that circumstances, we hold that the amount received by the appellant does not qualify as the 'credit cards services'.

Therefore, we hold that the demand against the appellant is not sustainable.

9. Moreover, we find that in this case show cause notice has been issued by invoking the extended period of limitation whereas the activity of the appellant was known to the Department much earlier and a show cause notice for the earlier period was also issued to them, in that circumstances, relying on the decision of the Supreme Court in the case of Nizam Sugar Factory vs. Collector of Central Excise, A.P. reported at 2006 (197) E.L.T. 465 (S.C.) where as it held that the extended period of limitation is also not invocable, we hold that the demand is highly barred by limitation.

10. In view of the above analysis, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated & pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

Ankit