

ST/358/2011, ST/40004/2013, ST/42517/2013
ST/41043/2015, ST/41764/2015, ST/41765/2015 &
ST/41660/2019

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

Regional Bench – Court No. III

Service Tax Appeal No.358 of 2011

(Arising out of Order-in-Original No.LTUC/78/2011-(C) dated 25.03.2011 passed by the Commissioner of Central Excise and Service Tax, LTU, Chennai)

M/s. Indian Overseas Bank : **Appellant**
763, Anna Salai,
Chennai 600 002

VERSUS

The Commissioner of Central Excise & ST : **Respondent**
Large Tax Payer Unit,
1775, Jawaharlal Nehru inner Ring Road,
Anna Nagar Western Extension
Chennai 600 101

WITH

(i) Service Tax Appeal No. 40004 of 2013

M/s. Indian Overseas Bank : **Appellant**
763, Anna Salai,
Chennai 600 002

VERSUS

The Commissioner of Central Excise & ST : **Respondent**
Large Tax Payer Unit,
1775, Jawaharlal Nehru inner Ring Road,
Anna Nagar Western Extension
Chennai 600 101

(Arising out of Order-in-Original No.LTUC/318/2012-(C) dated 27.09.2012 passed by the Commissioner of Central Excise and Service Tax, LTU, Chennai)

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(ii) Service Tax Appeal No. 42517 of 2013

M/s. Indian Overseas Bank : **Appellant**
763, Anna Salai,
Chennai 600 002

VERSUS

The Commissioner of Central Excise & ST : **Respondent**
Large Tax Payer Unit,
1775, Jawaharlal Nehru inner Ring Road,
Anna Nagar Western Extension
Chennai 600 101

(Arising out of Order-in-Original No.LTUC/335/2013-(C) dated 27.09.2013 passed by the Commissioner of Central Excise and Service Tax, LTU, Chennai)

(iii) Service Tax Appeal No. 41043 of 2015

M/s. Indian Overseas Bank : **Appellant**
763, Anna Salai,
Chennai 600 002

VERSUS

The Commissioner of Central Excise & ST : **Respondent**
Large Tax Payer Unit,
1775, Jawaharlal Nehru inner Ring Road,
Anna Nagar Western Extension
Chennai 600 101
(Arising out of Order-in-Original No.LTUC/68/2015-(C) dated 27.02.2015 passed by the Commissioner of Central Excise and Service Tax, LTU, Chennai)

(iv) Service Tax Appeal No. 41764 of 2015

M/s.Indian Overseas Bank : **Appellant**
763, Anna Salai,
Chennai 600 002

VERSUS

The Commissioner of Central Excise & ST : **Respondent**
Large Tax Payer Unit,
1775, Jawaharlal Nehru inner Ring Road,
Anna Nagar Western Extension
Chennai 600 101
(Arising out of Order-in-Original No.LTUC/176 & 177/2015-(C) dated 20.05.2015 passed by the Commissioner of Central Excise and Service Tax, LTU, Chennai)

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(v) Service Tax Appeal No.41765 of 2015

(Arising out of Order-in-Original No.LTUC/176 & 177/2015-(C) dated 20.05.2015 passed by the Commissioner of Central Excise and Service Tax, LTU, Chennai)

M/s.Indian Overseas Bank

: Appellant

763, Anna Salai,
Chennai 600 002

VERSUS

The Commissioner of Central Excise & ST

: Respondent

Large Tax Payer Unit,
1775, Jawaharlal Nehru inner Ring Road,
Anna Nagar Western Extension
Chennai 600 101

(vi) Service Tax Appeal No.41660 of 2019

(Arising out of Order-in-Appeal No.230/2019 CTA-I) dt. 30.07.2019 passed by the Commissioner of GST Central Excise (Appeals-I), Chennai)

M/s.Indian Overseas Bank

: Appellant

763, Anna Salai,
Chennai 600 002

VERSUS

The Commissioner of CGST & Central Excise

: Respondent

26/1, Chennai North Commissionerate
GST Bhawan, Nungambakkam High Road,
Chennai North Commissionerate 600 034

APPEARANCE:

Shri Raghavan Ramabhadran, Advocate
For the Appellant

Ms. Sridevi T., JC (AR)
For the Respondent

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**CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)**

FINAL ORDER NOS. 40243-40249 / 2020

DATE OF HEARING: 10.02.2020

DATE OF DECISION: 10.02.2020

PER : ANIL G. SHAKKARWAR

All these appeals are taken up for common hearing since the issues involved in all of them are same and appellant is also the same. Therefore all the appeals are being taken together for decision and this common order is being passed.

2. Brief facts of the case are that the appellant is a banking company and is involved in sale and purchase of gold. There are two issues in the present appeals. This order deals with the two issues separately.

3. The first issue involved is whether the appellant is providing any safe vault service to Union Bank of Switzerland, Zurich and MKS Finance, Geneva. The appellant imports gold from Union Bank of Switzerland and MKS Finance, Geneva and holds the same with them till such time they find a customer. After the customer is identified and the price of the gold is confirmed, they have their mark up,

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collect money from customer and send the money to the suppliers such as Union Bank of Switzerland or MKS Finance and at that point of time purchase the gold which is already in their physical custody. Immediately on purchase of gold, the same gold is delivered to their customers . It appeared to Revenue that after the import of gold and till such time customer is identified, gold is being held by appellant and during said period the ownership of gold is with the Union Bank of Switzerland or MKS Finance, as the case may be, and therefore appellant is providing Safe Vault Service which is part of other financial services to Union Bank of Switzerland or MKS Finance as the case may be. Therefore, proceedings were initiated and show cause notice dated 16.07.2010 and other show cause notices were issued. For issue of show cause notice dt. 16.07.2010, in para-5, Revenue considered profit earned by the appellant which is a difference between the sale price of gold to their customers and purchase price of gold from Union Bank of Switzerland or MKS Finance as consideration for charging service tax. The other show cause notices concerning other appeals are of similar nature. On adjudication, the demand of service tax was confirmed and interest was also ordered to be recovered and penalties were imposed. Aggrieved by such orders, appellant is before this Tribunal.

4. Heard Shri Raghavan Ramabhadran, Ld. counsel for the appellant. He has submitted that as per the order of adjudicating authority, the profit earned by the appellant is consideration for

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charging service tax whereas the fact is that such profit is earned from Indian customer and allegation is about providing Safe Vault Service to foreign gold supplier . He further submitted that there is no allegation in the show cause notice that appellant had received any consideration from foreign supplier for providing safe vault service. He has taken us to para-26 of OIO dt. 25.03.2011 connected to appeal ST/358/2011 and submitted that the original authority has held as follows :

“Accordingly, I hold that service tax is payable by the taxpayer on the services rendered by them to the foreign seller for safe-keeping of gold in their vaults under the banking and other financial services, on the value equal to profit earned on the transaction since separate value for safe-keeping of gold has not been furnished either in the agreement or by the taxpayer themselves during the adjudication proceedings”.

5. Heard Ld. A.R Ms.Sridevi.T who has supported the impugned orders.

6. After considering the submissions from both sides and on perusal of record, we note that Revenue does not have any figure of the consideration alleged to have been received by the appellant from the foreign suppliers of gold for providing safe vault service which is very clear from the finding of the original authority in para-26 as reproduced above. We are, therefore, of the opinion that the

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Revenue did not have any case for raising demand of service tax on providing safe vault service on the appellant. The onus was on Revenue to identify the consideration, if any, received by appellant for providing service. Without any consideration there is no service tax payable. We therefore set aside the impugned orders for demand in all the appeals in respect providing Safe Vault Service and allow the appeals in respect of safe vault services.

7. The other issue involved in the present appeals is whether service tax is payable on interest received by the appellant. The appellant is providing metal as loan to the customers. Such metal is required to be returned to the appellant by their customers. Further, as consideration for use of such metal by their customers, customers were required to pay interest to the appellant. Revenue considered such interest as consideration for demand of service tax. Therefore through various SCNs associated with the appeals Revenue raised demand of service tax on interest so earned by the appellants. Such demands were confirmed along with interest and imposition of penalties. Aggrieved by the said orders, appellant is before this Tribunal.

8. Heard Shri Raghavan Ramabhadran, Learned. counsel for the appellant. He has submitted that w.e.f. 1..7.2012 'interest' has been

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defined under clause (30) of Section 65B of Finance Act, 1994. Further, he has submitted that the contention of Revenue is that under clause (n) of Section 66D interest is exempted from service tax and that interest is to be treated as interest earned on cash loan. Further, he has submitted that contention of Revenue is that at sub-rule (2) clause (iv) of Rule 6 of Service Tax (Determination of Value) Rles,2006 which provides that interest on loan shall not be included in assessable value deals only with interest on cash loan given. He further submitted that contention of Revenue in the present case is that since metal was given as loan the said provisions are not applicable and therefore, Revenue has demanded service tax on interest. He has submitted that there is no such distinction in the Act on interest.

9. Ld. A.R has supported the impugned orders.

10. After considering the submissions from both sides, and on perusal of record, we note that the Revenue is of the opinion that only if the loan is in the form of Indian rupee and interest is earned on that, then alone under the provisions of Valuation Rules or Section 66D of Finance Act, 1994 interest is not to be treated as part of consideration for determination of service tax. We do not find any support from any of the provisions of law for such contention by

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Revenue. There is no provision in the law to hold that interest identified by Valuation Rules or Section 66 is interest only on cash loan. We therefore hold that service tax confirmed on interest earned by the appellant by providing metal as loan is not sustainable. We therefore set aside such demand on the interest with interest and penalty.

11. In above terms, all the impugned orders are set aside and all the appeals are allowed with consequential reliefs, if any, as per law to the appellant.

(Dictated and pronounced in open court)

**(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)**

**(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)**