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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2026

CORAM

**THE HON'BLE DR JUSTICE G. JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SHAMIM AHMED**

CMA No. 1925 of 2019

State Bank of India
Commercial Branch,
Represented by Mr.A.Ganesh,
Assistant General Manager and COO,
No.1087/A-F, Krishna Towers,
Avinashi Road, PN Palayam,
Coimbatore – 641 037.

..Appellant(s)

Vs

Deputy Commissioner
Service Tax Cell,
Office of the Commissioner of Central Excise And
Service Tax, 6/7, ATD Street, Race Course Road,
Coimbatore – 641 018.

..Respondent(s)

Civil Miscellaneous Appeal has been filed under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, to set aside the Final Order No.43138 of 2017 dated 18.12.2017 passed by the Tribunal.

For Appellant(s): Mr.Joseph Prabakar

For Respondent(s): Mr.B.Satish Sundar



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JUDGMENT

[Judgment was delivered by **Dr.G.Jayachandran J.**]

The Civil Miscellaneous Appeal is preferred by the Assessee, being aggrieved by the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai, dismissing the appeal.

2. The facts of case is as below:

2.1. The appellant is a Nationalised Bank. During an audit conducted by the Central Excise and Service Tax Department, the audit team has instructed the appellant to pay service tax to the tune of Rs.20,23,916/-, on the premise that the share of profit in transactions related to foreign exchange was tantamount to a taxable service. However, based on their advice and instructions, the appellant paid the said amount on 22.12.2006. Subsequently, on verification, it was found that the said share of profit cannot be levied with service tax and therefore, claim for refund was filed, stating that the remittance of Rs.20,23,916/- had been made in error. The said request was rejected on the ground that the claim was barred by limitation. Meanwhile, the appellant *suo motu* adjusted the said amount in the subsequent return. This was found fault, leading to passing the order in original, which reads as below:

*“I confirm the demand of Service Tax of Rs.19,87,688/-
(Service Tax Rs.19,48,713/- and Edn, cess Rs.38,975/-) (Rupees*



Nineteen Lakhs Eighty Seven Thousand Six Hundred and Eighty Eight Only) proposed in the show cause notice dated 27.02.2008, under Section 73(1) of the Finance Act, 1994.

I demand appropriate interest under Section 75 of the Finance Act, 1994 and

I impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) for non-payment of Service Tax under Sections 76 of the Finance Act, 1994.”

3. This was challenged by the appellant before the Commissioner (Appeals), but same was rejected. Being aggrieved, an appeal before the CESTAT was preferred. However, the tribunal rejected the appeal for the following reasons:

“4.2. The dispute in the present appeal relates to the legal issue as to whether the profit earned by the appellant on Foreign Exchange remuneration is a taxable service or not. The taxability of the same stands considered by the adjudicating authority in the adjudication, relatable to the refund claim filed by the appellant and the same stands upheld by the adjudicating authority and having not been appealed against holds the field. In as much as the taxability has already been held against the assessee and the refund claim filed on the said ground of non-taxability stands rejected, the action of the assessee taking suo motu credit of the tax paid cannot be appreciated and held in accordance with law. It may not be out of place once again to mention that the provision of Rule 6(3) of STR, 1994, do not relate to dispute on the taxability and simplicitor allow the credit of the service tax already paid in



respect of the services which are subsequently not provided by an assessee.

4.3. In a nutshell, the assessee's refund claim filed under Section 11 B of Central Excise Act, 1944, having been rejected and not challenged the appellant's claim of suo motu credit involved in the present appeal cannot be accepted. The impugned orders are upheld. Appeal is rejected.”

4. The learned counsel appearing on behalf of the appellant would submit that, in a case involving the very same appellant, another Bench of the CESTAT held that the share of profit earned by a branch in foreign exchange transactions does not fall within the purview of the service tax. While so, the finding of the CESTAT holding that the appellant ought to have challenged the rejection of the refund claim is not legally sustainable.

5. We find that the payment of service tax been made by the appellant solely on the instructions of the audit team of the Central Excise Department. While so, having now found that the share of profit is not liable to be taxed under Service Tax, the respondent ought to have refunded the amount at the first instance.

6. Having failed, when the assessee himself has *suo motu* adjusted the amount, it cannot be termed as an improper or impermissible process for



imposing penalty. Therefore, the unjust enrichment of the department cannot be given a seal of approval on the ground of limitation or the failure to prefer an appeal against the order rejecting the refund request. This was a technical error or mistake made without any *mala fide* intention.

7. In our view the order in original has to be set aside. Consequently, the Final Order No.43138 of 2017 dated 18.12.2017 passed by the CESTAT, is hereby set aside and Civil Miscellaneous Appeal stands allowed. No costs.

[G.J.,J.]

[S.S.A.,J.]

08-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

1.The Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2.The Deputy Commissioner, Service Tax Cell,
Office of the Commissioner of Central Excise and Service Tax,
6/7, ATD Street, Race Course Road,
Coimbatore – 641 018.



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CMA No. 1925 of 2



**DR.G.JAYACHANDRAN, J.
AND
SHAMIM AHMED, J.**

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