

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. II

APPEAL No. ST/450/10, ST/224/11 & ST/89606/13

(Arising out of Order-in-appeal No. SB (70)/STC/2010 dated 15/06/2010, 297/BPS/MUM/2013 dated 24/07/2013 & M-I/AV/435/2010 dated 15/12/2010 passed by Commissioner of Central Excise (Appeals), Mumbai)

For approval and signature:

Hon<sup>ble</sup> Mr. P.R. Chandrasekharan, Member (Technical)

Hon<sup>ble</sup> Mr. Ramesh Nair, Member (Judicial)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the

CESTAT (Procedure) Rules, 1982?: No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

Enam Securities Pvt.,

Appellant

Reema Business Services Pvt. Ltd.,

Vs.

Commissioner of Service Tax, Mumbai

Respondent

Appearance:

Shri.R.G. Sheth, Advocate for appellant

Shri.D.Nagvenkar, Addl. Comm. (AR) for respondent

CORAM:

Hon<sup>ble</sup> Mr. P.R.Chandrasekharan, Member (Technical)

Hon<sup>ble</sup> Mr. Ramesh Nair, Member (Judicial)

Date of Hearing : 07/08/2014

Date of Decision : 07/08/2014

ORDER NO????????????

Per: P.R.Chandrasekharan

1. There are three appeals involving a common issue. The appeal numbers, the orders from which they arise, period involved and the service tax demands confirmed are given in the table below:

S.No.

Appeal No.

Order-in-appeal No.

Period involved

Service tax demand

01.

ST/450/10

SB(70)/STC/2010 dt. 15/06/2010

Sep 2002 to Mar 2004

13,19,158

02

ST/224/11

M-I/AV/435/2010 dt. 15/12/2010

Aug 2003 to Oct 2004

25,92,462

03

ST/89606/13

297/BPS/MUM/2013 dt. 24/07/2013

Sept 2002 to Oct 2004

7,18,681

2. The basic issue for consideration in all these appeals is whether the sale of RBI Bonds on commission basis would be liable to service tax under "Banking and other Financial Services" for the period prior to 10/09/2004 or not. The appellants herein, M/s.Enam Securities Pvt. Ltd. and M/s.Reema Business Services Pvt. Ltd. are registered with the Reserve Bank of India (RBI). They undertook sale of RBI Tax Savings Bonds 2003 and received commission from RBI. With effect from 10/09/2004, they discharged service tax liability on the commission received under "Business Auxiliary Service" (BAS). However, they were issued a show-cause notice dated 17/10/2008 demanding service tax for the period prior to 10/09/2004 under "Banking and other Financial Services". These demands were adjudicated upon and were confirmed along with interest and imposing penalties. Hence, the appellants are before us.

3. The learned Counsel for the appellants submit that the issue relating to liability to pay service tax on commission received has been considered by this Tribunal in the case of HDFC Bank Vs. CST, Mumbai [ 2014-TIOL-27-CESTAT-MUM and Canara Bank Vs. CST, Bangalore [ 2012 (28) STR 369 (Tri-Ahmd) and this Tribunal has taken a consistent view that the activities are not taxable as the service relates to a sovereign function undertaken. Nevertheless, in order to buy peace, they have discharged the service tax liability under "BAS" from 10/09/2004 onwards when the levy of service tax on commission agent's service was made applicable to such activities rendered in an area other than agriculture; therefore, the impugned demands are not sustainable. He further submits that the show-cause notices have been issued only on 17/10/2006 invoking the extended period of time and therefore, the demands are clearly time barred inasmuch as they have started discharging the service tax liability under BAS since 10/09/2004. The department has not disputed the classification adopted by the appellant. Since BAS is not carved out of "Banking and other Financial Services" (BoFS), the question of payment of service tax under "BoFS" would not arise at all for the period prior to 10/09/2004. Therefore, he submits that both on merits as well as on the ground of time bar, the demands would not sustain.

3. The learned Additional Commissioner (AR) appearing for the Revenue reiterates the findings of the adjudicating authority. It is his contention that RBI Bond is a Government Security and therefore,

broking in “Government Security” would come within the category of ‘Banking and other Financial Services’ and liable to tax and hence, the demands confirmed for the period prior to September 2004 are sustainable and therefore, he pleads for upholding the impugned order.

4. We have carefully considered the submissions made by both the sides.

4.1 Unlike other banks, RBI does not undertake borrowing or lending on its own. Whenever the RBI undertakes borrowing activities, it is on behalf of the Government of India to manage the Indian economy which is its constitutional responsibility. Therefore, the lending or borrowing of money by the Government is a sovereign function and on such functions there cannot be any tax liability whether by way of direct tax or by way of indirect tax. This is the principle followed by this Tribunal in the case of HDFC Bank and Canara Bank case (supra).

5. In view of the above, the impugned demands are clearly unsustainable in law. Accordingly, we set aside the same and allow the appeals with consequential relief, if any, in accordance with the law.

(Dictated in Court)

(Ramesh Nair)

(P.R. Chandrasekharan)

Member (Judicial)

Member (Technical)