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

Service Tax Appeal No. 86325 of 2017

(Arising out of Order-in-Original No. 26/STA-I/SN/16-17 dated 10.03.2017 passed by the Commissioner of Service Tax Audit I, Mumbai)

Standard Chartered Finance Pvt. Ltd. **.....Appellant**
Parinee Crescenzo, 7th Floor Finance Division
C-38/39 G-Block, Behind MCA Club BKC
Bandra East, Mumbai

VERSUS

Principal Commissioner of CGST & Central Excise, Mumbai I **.....Respondent**
115, New Cen Ex Bldg., MK Road, Opp Churchgate Station, Mumbai

APPEARANCE:

Shri Jay Chheda, Advocate with Shri Aniket Barwe, Advocate for the appellant
Ms S Varalakshmi, Addl Comm(AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. A K JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No: 85693/2026

DATE OF HEARING : 17.03.2026
DATE OF DECISION : 13.05.2026

Per: AJAY SHARMA

This appeal is directed against the Order-in-Appeal dated 10.03.2017 passed by the Commissioner of Service Tax, Audit-I, Mumbai (hereinafter referred to as the "impugned order"), whereby the learned Commissioner (Appeals) confirmed the

demand of Service Tax amounting to Rs. 2,73,40,175/- (Rupees Two Crore Seventy-Three Lakhs Forty Thousand One Hundred and Seventy-Five only), with equal penalty under the relevant provisions of the Finance Act, 1994, an additional penalty of Rs. 10,000/-, and interest at the applicable statutory rates.

2. The period in dispute is from 1.8.2005 to 30.4.2006. The Appellant, M/s. Standard Chartered Finance Limited (hereinafter referred to as "the Appellant"), was registered under taxable service categories, namely: Maintenance and Repair Services; Business Auxiliary Services and Real Estate Agent Services.

3. During the course of departmental audit for the period April, 2003 to March, 2007, it came to the notice of the Revenue that the Appellant had neither charged nor paid Service Tax on amounts received by it under the head "Data Processing Fee" prior to May, 2006. The Appellant's explanation, that such services constituted Information Technology (IT) Enabled Services which were expressly excluded from the ambit of "Business Auxiliary Services" until 01.05.2006, was not accepted by the Department. The Revenue took the position that since the Appellant was deploying computer systems to process data pertaining to its clients' business operations, the output of such activity could not be characterised as an IT Enabled Service per se. According to the Department, the use of a computer or IT infrastructure as a tool for processing business-related data does not transform the underlying business activity into an information technology service and reliance was placed upon

CBEC Circular No. 62/11/2003 (F.No. B3/7/2003-TRU) dated 21.08.2003.

4. In the course of further inquiry, the Appellant disclosed that, pursuant to a Scheme of Arrangement under Sections 391 and 394 of the Companies Act, 1956, it had acquired the Domestic Business Division of M/s. Scope International Private Limited, a Chennai-based company. This acquisition came into effect in August 2005, consequent upon the demerger of the said Division from M/s. Scope International. The Appellant also furnished details of the service tax collected and discharged by the said Division in respect of the period prior to the acquisition, i.e., up to July, 2005. Thereafter, the Appellant provided bifurcated billing information for the period August, 2005 to April, 2006, distinguishing between non-IT enabled services (on which Service Tax had been discharged) and IT Enabled Services (on which no Service Tax was paid on account of the applicable statutory exclusion). The Department, however, proceeded on the basis that the Appellant had failed to discharge any Service Tax liability in respect of service charges aggregating Rs. 26,02,90,469/- pertaining to the Domestic Business Division's operations during the period in dispute.

5. A Show-Cause Notice dated 23.10.2009 was accordingly issued to them to show cause why service tax should not be demanded from them on the Data Processing Fees under taxable service category of Business Auxiliary Service u/s. 65(19) ibid, proposing recovery of Service Tax including Education Cess

amounting to Rs. 2,73,40,175/- under the proviso to Section 73(1) of the Finance Act, 1994 read with Section 68 thereof and Rule 6 of the Service Tax Rules, 1994, together with interest and penalties under the applicable provisions. After due adjudication, the said Show-cause Notice culminated in the impugned Order-in-Original dated 10.03.2017 confirming the proposed demand, interest and penalties.

6. Learned Counsel for the Appellant submitted that, following the acquisition of the Domestic Business Division of M/s. Scope International in August 2005, the Appellant commenced providing back-end transaction and data processing services to Indian branches of Standard Chartered Bank. In furtherance of this arrangement, a Master Service Agreement and a Service Level Agreement, both dated 01.06.2006, were entered into with Standard Chartered Bank. The activities performed by the Appellant encompassed, inter alia, data capture, data conversion, data processing and data storage, transaction and document processing, reconciliation, and other allied support functions in respect of the Bank's corporate and institutional banking, consumer banking, and treasury operations.

7. According to learned counsel, the department without ascertaining the actual nature of transactions/activities, merely relied upon the circular and concluded that the activities are covered under business auxiliary service. As a preliminary submission, learned Counsel contended that the Show-cause

Notice was fundamentally defective inasmuch as it failed to specify the particular sub-clause of Section 65(19) of the Finance Act, 1994 under which the Appellant's activities were proposed to be classified. Section 65(19), it was pointed out, contains seven distinct sub-clauses, each describing a different type of service falling within the category of "Business Auxiliary Services". The failure to indicate the specific sub-clause alleged to be attracted not only rendered the Notice vague and unintelligible but also deprived the Appellant of the opportunity to make a focused and effective rebuttal, which is clear violation of the principles of natural justice. It was submitted that a Show-cause Notice constitutes the very foundation of tax proceedings, and any deficiency therein cannot be subsequently cured by the adjudicating or appellate authority.

8. On the merits, learned Counsel submitted that the Department had failed to ascertain the actual and precise nature of the Appellant's activities and had mechanically relied upon the 2003 CBEC Circular to bring those activities within the taxable category of "Business Auxiliary Services". It was argued that the activities performed by the Appellant, being fundamentally data capture, conversion, processing, storage, and document processing, squarely fall within the definition of "information technology service" as contained in the Explanation to Section 65(19), and were therefore expressly excluded from the levy.

9. Per contra learned Authorised Representative for the Revenue reiterated the findings recorded in the impugned order

and urged dismissal of the appeal. It was contended that, in terms of the clarification issued by the CBEC Circular dated 21.08.2003, an activity qualifies as an information technology service only if it is primarily in relation to the operation of computer systems, and not merely where a computer is used as an instrument to carry out what are inherently business-related activities. The Revenue's case was that the Appellant's back-end activities, being business process activities performed for the Bank, did not relate to the operation of computer systems as such and therefore could not claim the benefit of the exclusion clause. The learned Authorised Representative further argued that the activities could be characterised as provision of services on behalf of a client, or as services incidental or auxiliary to such provision, attracting sub-clauses (vi) and (vii) of Section 65(19) respectively.

10. We have carefully considered the rival submissions and perused the case records including the written submissions and case laws placed on record. A specific finding has been recorded in the impugned order by the learned Commissioner in para 53.1, relevant portion of which is reproduced hereunder:-

> *"53.1 …….On a careful consideration of the definition of 'Business Auxiliary Services' as already extracted supra, it is seen that that activities carried out by the appellant do not fall within the category (i), (iv) & (v) as they are not dealing in goods, and so also under the category (ii) & (iii) as they are not rendering any promotion or marketing service nor any customer care service on behalf of the bank. However, I find that the Noticee is*

> *providing processing account opening, transaction updation, of customer bank accounts and demat accounts, Processing authorisation/ approval of the transactions affecting customer accounts, processing of loan applications including loan repayments, prepayments, etc., processing cheque book requisitions on current/saving accounts, processing EFT & ECS transactions, processing ECS (Credit) transactions, Processing cardholder repayments, merchant transactions, process payments to card merchants, processing investment related transactions, processing applications for insurance products. I find that the activities are being provided by the he Noticee on behalf of the bank to the customers of the bank. Moreover, I find that their activity can be termed as incidental or auxiliary to provision of service on behalf of client, specified under clauses (vi) and (vii) of Section 65 (19) of the Finance Act, 1994."*

11. Notably, the Show Cause Notice itself made no mention of any specific sub-clause of Section 65(19). It referred only generically to "Business Auxiliary Services" as the taxable category in question. This is a matter of critical significance.

12. Section 65(19) of the Finance Act, 1994 defines "business auxiliary service" and enumerates seven distinct sub-clauses which read as follows:

> *"65(19) "business auxiliary service" means any service in relation to –*
>
> *(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or*
>
> *(ii) promotion or marketing of service provided by the client; or*
>
> *(iii) any customer care service provided on behalf of the client; or*
>
> *(iv) procurement of goods or services, which are inputs for the client; or*
>
> *Explanation.— For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs"*

means all goods or services intended for use by the client;

(v) production or processing of goods for, or on behalf of the client; or

(vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheque, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent, but does not include any information technology service and any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 194).

Explanation.- For the removal of doubts, it is hereby declared that for the purpose of this clause, —

(a) … … …

(b) "information technology service" means any service in relation to designing, developing or maintaining of computer software or computerized data processing or system networking, or any other service primarily in relation to operation of computer systems."

13. The Show Cause Notice is the cornerstone of any proceeding initiated by the Revenue. It is the instrument by which the assessee is informed of the case it must meet, and it is this instrument alone that defines the scope and boundaries of the adjudicating authority's jurisdiction. The requirement that a Show Cause Notice be clear, precise, and specific is not a mere procedural technicality, it is a substantive safeguard rooted in the constitutional guarantee of *audi alteram partem* and the common law principles of natural justice.

14. Where a statutory provision contains several distinct sub-clauses, each describing a separate species of taxable activity, and where the Revenue seeks to tax an assessee under one or

more of those sub-clauses, the Show Cause Notice must identify the specific sub-clause or sub-clauses alleged to be attracted. This requirement is not one of form but of substance. Its purpose is to enable the assessee to comprehend, with precision, the exact allegation being levelled and to formulate an effective and targeted reply thereto. A Notice that does no more than cite the parent provision leaves the assessee to guess which of the several sub-clauses it is expected to answer, and thereby impairs its right of defense.

15. In the present case, the Show Cause Notice specified only "Business Auxiliary Services" as the taxable category, without identifying the sub-clause of Section 65(19) under which the Appellant's services were alleged to fall. This rendered the Notice imprecise and vague. The Appellant was placed in a position of uncertainty as it could not know under which particular sub-clause or sub-clauses the Revenue was proceeding and was accordingly denied the opportunity to make a full and effective response to the specific allegation.

16. It is well-settled law that the deficiency or vagueness of a Show Cause Notice cannot be cured by the adjudicating authority at the stage of adjudication, nor by the appellate authority at the stage of appeal. No authority, whether quasi-judicial or appellate in character, can traverse beyond the four corners of the Show Cause Notice or supply what the Notice itself omits. The Show Cause Notice is the source from which the adjudicating authority derives its jurisdiction, and where the

Notice is deficient, that jurisdiction is correspondingly limited. To allow the Commissioner, as was done in the present case, to specify at the adjudication stage the sub-clauses under which the Appellant's services are classified, when such specificity was absent from the Notice itself, would be to permit the Revenue to improve its case at the expense of the assessee's right of defence, which is impermissible in law.

17. The Revenue's attempt to cure this deficiency by reasoning, in the impugned order, that the activities do not fall under sub-clauses (i) to (v) and must therefore be covered by sub-clauses (vi) and (vii) is a classic instance of the adjudicating authority travelling beyond the Show Cause Notice. The adjudicating authority may legitimately interpret the scope of a provision cited in the Notice; it cannot, however, identify and apply a provision that was never mentioned in the Notice at all.

18. For all the aforesaid reasons, we are of the considered view that the Show Cause Notice dated 23.10.2009 is fatally defective on account of its failure to specify the sub-clause of Section 65(19) under which the Appellant's services were sought to be classified. This deficiency amounts to a violation of the principles of natural justice, and the entire demand raised pursuant thereto is liable to be set aside on this ground alone.

19. Since we have held that the Show Cause Notice itself is vitiated and liable to be set aside, the entire edifice of the demand including the principal demand of Service Tax, the

interest thereon, and the penalties necessarily falls to the ground. No liability in respect of tax, interest, or penalty can survive the annulment of the foundational Notice.

20. In view of the conclusion we have reached on the preliminary issue, it is neither necessary nor appropriate for us to render any finding on the merits of the dispute, namely, whether the Appellant's data processing activities constituted "information technology services." Those questions are left open.

21. For the reasons stated hereinabove, we are of the view that the demand of service tax along with interest and penalty is not sustainable. Accordingly the impugned order is set aside by allowing the appeal filed by the appellant.

(Pronounced in open Court on 13.05.2026)

(Ajay Sharma)
Member (Judicial)

(A K Jyotishi)
Member (Technical)

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