

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

**Service Tax Appeal No. 30893 of 2018**

(Arising out of Order-in-Appeal No. VIZ-EXCUS-001-APP-037-18-19 dt.15.05.2018 passed by Commissioner of Central Tax (Audit), Guntur)

**M/s Steel City Securities Ltd**

C/o Satish Kumar Arya, Managing Director  
49-52-5/4, Sri Kanya Towers, Santipuram,  
Visakhapatnam, Andhra Pradesh – 530 016

.....Appellant

*VERSUS*

**Commissioner of Central Tax  
Visakhapatnam - GST**

Port Area, Visakhapatnam,  
Andhra Pradesh – 530 035

.....Respondent

**Appearance**

Shri Abhishek Rastogi, Advocate for the Appellant.  
Shri K. Sreenivasa Reddy, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)  
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30281/2026**

Date of Hearing: 22.01.2026  
Date of Decision: 15.05.2026

**[Order per: A.K. JYOTISHI]**

M/s Steel City Securities Ltd (hereinafter referred to as appellants) are in appeal against OIA dt.15.05.2018, whereby, the Commissioner (Appeals) has dismissed the appeal filed by the appellant against OIO dt.09.01.2017 (Impugned Order).

2. The brief facts of the case are that the appellant is a stock broker engaged in 'Stock Broking Service' and also in providing DEMAT account services. The department, in the course of audit, noticed that besides charging and collecting stock broking commission, the appellants were also collecting certain amounts in the form of penalty, which was being booked in their books of accounts as 'Penalties'/ 'delayed payment charges'. It was also noticed that in case of DEMAT account services, the service tax was

being paid under 'Banking & other financial services'. They were collecting certain amount towards default in payment of account maintenance/ other related charges, which were also booked in the income ledger as penalty/ delayed payment charges. In this case, service tax was paid till 2012-13, however, from 2013-14, they stopped making payments. It was noticed from the documents, which were used for opening of Trading and DEMAT account, that the appellants were also charging and collecting penalty of Rs.50/- per day for every lac rupees of pay-in outstanding for each trading day in case of clients, who delay the payment of amounts. The department also noticed that they had paid service tax on such penalties/ delayed payment charges till August, 2011, however, from September, 2011, they stopped making payment. The department felt that the reliance placed by the appellant on Board's Circular F.No.137/25/2011-ST dt.03.08.2011 is no longer relevant w.e.f. 01.07.2012 with the introduction of negative list as a specific entry has been made at sub-clause (e) of section 66E of the Finance Act, 1994, covering certain activities as 'declared service'. As per this provision, 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is a declared service'. Therefore, the department felt that delay in payment by the client for which they are charging remuneration in the form of penalty is an activity to tolerate an act for a consideration and therefore, is a taxable service.

3. The adjudicating authority examined the defense of the appellant, wherein, the appellant had mostly relied on the circular dt.03.08.2011 on the ground that said circular has not been withdrawn and the fact that delayed payment charges are in the nature of interest for retaining the money belonging to the client beyond certain time and hence, out of purview of service tax. They also relied on Rule 6 of Service Tax (Determination of Value) Rules, 2006, in support that interest on delayed payment cannot be a consideration for service. The adjudicating authority, however, after examining the provisions of section 66E(e), inter alia, held that the appellant was performing an act of purchasing of shares even without their client having balance or having given money, by paying money to the stock exchange out of his own funds, which is an act in addition to his service of stock broking. Therefore, for this independent act of forbearance, he is collecting an amount of Rs.50/- per lakh of default per day, which is also part of the service rendered to their client for an additional

consideration, inasmuch as the appellant is tolerating the non-payment of cost of shares within time limits agreed upon in the contract and is receiving consideration for such tolerance. He has also relied on Guidance Paper of the Ministry of Finance in support that said amount is liable to be subjected to service tax. He also observed that from the facts of the case, the issue cannot be covered in the negative list especially in terms of the claim made by the appellant that the said service is by way of extending deposit, loans or advances, insofar as consideration is represented by way of interest or discount. Clause (n) of section 66D covers interest or discount and for being covered under this entry, the activity has to specify the following conditions.

- i. The assessee should be extending deposits, loans or advances.
- ii. The consideration is by way of interest or discount.

4. The adjudicating authority felt that the appellants are neither giving any deposit or loans or advances and the appellant's clients are not in receipt of any money as deposit or towards a loan or advance nor the appellant is charging any interest/discount and in fact, the appellant is charging penalty for default in payment by their clients.

5. Learned Advocate for the appellant has taken various grounds including the fact that delayed payment charges are not consideration towards any service and that the amount in dispute is covered under section 66D(n) of the Act. He has also submitted that extended period of limitation cannot be invoked as the issue involves interpretation of law nor penalty can be imposed under section 78. Insofar as the argument that the OIO has travelled beyond the scope of SCN, he has submitted that SCN was issued demanding service tax in respect of said consideration in terms of section 66E(e) as 'declared service', whereas, the amount has been confirmed predominantly on the ground that delayed payment charges were nothing but consideration received from stock broking and DEMAT account related activities. He has relied on various case laws including the judgment of Hon'ble Supreme Court in the case of Saci Allied Products [2005 (7) SCC 159], SD Fine Chem Ltd [2017 (354) ELT 412] and Reliance Port & Terminals Ltd [2016 (334) ELT 630 (Guj)]. He has further submitted that they are engaged in sale and purchase of securities on behalf of the clients for which they recover commission and they are paying service tax on said commission. They are also providing DEMAT services for which they are

collecting maintenance charges and the service tax was also being paid on such maintenance charges. The delayed payment charges were being recovered only on account of time value of money as the appellant advances money to the customers by discharging the settlement amount to the stock exchange on the due date and such settlement amount is paid by the appellant from their own funds on behalf of the customers. Customers who delay in making payment towards purchase of securities or maintenance charges were effectively using the appellant's money for a few extra days. Therefore, such charges have nothing to do with stock broking service or DEMAT account service. He has further submitted that there is no reciprocity of service from the appellant to client in relation to recovery of penalties/delayed payment charges. Hence, this cannot be brought under the ambit of service. He has also relied on Rule 6 of Service Tax (Determination of Value) Rules, 2006, in support that interest on delayed payment of any consideration for the provision of service or sale of property, whether immovable or otherwise cannot be included in the value of any taxable service. Additionally, he has submitted that delayed payment charges represent interest covered under section 66D(n) of the Act and therefore, it falls under the negative list.

6. Learned AR, on the other hand, has reiterated the findings of the Commissioner (Appeals).

7. Heard both sides and perused the records.

8. The core issue to be decided in this case is whether the payments, which are received by the appellant, can be considered as consideration towards provision of declared service under section 66E(e) and therefore, leviable to service tax or otherwise. The facts of the case clearly reveal that they are engaged in providing certain services covered under Stock Broking Services and DEMAT Account Services and in relation thereto, they are also getting regular payment in the form of commission for the stock broking services and in terms of maintenance charges for DEMAT Account services. In terms of the agreement with their clients, payments for these services are to be made within specified time limit and if the payments are not made then they impose penalty on per day delay basis. This particular activity is being considered as act of tolerance and therefore, covered under declared service, by the department.

9. Firstly, we find that insofar as period prior to 01.07.2012, the Board has themselves clarified that the delayed payment charges collected by the broker is not includable in the value of service. We find that though certain activities have been brought under the ambit of declared service w.e.f. 01.07.2012, whether the said activities, which were not being charged to service tax by treating them as delayed payment charges and hence, not includable in the value of service, can now be subjected to service tax as declared service needs to be examined. We find that insofar as Stock Broking service is concerned, the appellants are collecting the consideration of Rs.50/- per lakh per day for delayed payment. Appellants have taken a defense that the said amount is covered under negative list of service under section 66D specifically under sub-clause (n). This argument was not accepted by the adjudicating authority on the grounds that appellants were neither giving any deposit or loan or advance nor appellants were charging any interest or giving any discount. We find that the grounds and reasoning given by the adjudicating authority for not considering the Board's clarification vide letter dt.03.08.2011 that the said circular was issued prior to implementation of negative list, is not correct, merely because post 01.07.2012, the demand has been made under the category of declared service. Firstly, the circular has not been withdrawn and we also find force in the judgment cited by the appellant that the said circulars are binding unless the context changes substantially so as to ignore the circular as not covering all aspects in the context of which circular has been issued. However, one thing is clear that in this case, insofar as issue of delayed payment charges is concerned, the Board circular has visualized that the stock brokers are getting delayed payment charges, which was not treated as leviable to service tax. Therefore, what is to be examined here is whether the said delayed payment charges would now be covered under a totally different concept of service tax so as to negate the earlier clarification or otherwise. The department has alleged that these payments are now covered within the ambit of declared service, which is a deeming provision, as an act of tolerance, which is a concept where the activity itself has been deemed to be subjected to service tax. Such deeming provisions were not there when the said activity was examined in the circular referred, supra. Therefore, while the circulars have a binding effect on the departmental authorities but when there is a material change and the context can be distinguished then

the said circular will not have a binding effect. Therefore, in this context, we do not find any infirmity in the observation of the Commissioner (Appeals) that the said circular was not applicable. Therefore, we agree with the observation of the Commissioner (Appeals) that said Board circular is not relevant in view of the change in the definition of service.

10. Insofar as issue of whether said activity undertaken by them is covered under negative list i.e., clause (n) of section 66D or otherwise, we find that appellant is charging penalty for default in payment by his client, however, we find that the adjudicating authority has considered such delayed payment as an integral component of the service i.e., Stock Broking service and DEMAT Account service and also held that said comprehensive activity cannot be vivisected to term one part of the activity as not amounting to service and that the activity of allowing delayed payment as integral part of agreement to provide service. In this regard, we find that there is force in the argument by the appellant that while the demand was made primarily on the ground that the said activity was a declared service in terms of section 66E(e), the observation of the adjudicating authority, as also upheld by the Commissioner (Appeals), is that the said service is an integral part of their main service i.e., Stock Broking service and DEMAT Account service and therefore, this has to be subjected to service tax. We find that there is clear deviation in the ground for confirming the demand from what was charged in the SCN. Therefore, as the adjudicating authority as well as Commissioner (Appeals) has gone beyond the scope of SCN, the impugned order cannot be sustained on this count itself. However, we also proceed to examine the issue on merit also.

11. We find that appellants have been claiming that the making payment to stock exchange on behalf of the client is nothing but extending loan or advance, which is covered under negative list. We find that in this case, it is a fact that appellants were using their own fund to buy shares for their clients for which they were getting commission. In other words, making payment on behalf of their client for purchase of shares is a sort of advance extended to the client by the appellant even though it has not been directly extended to them but has been used on their behalf, a part of which, as per their practice, was covered without any penal interest or delayed payment in terms of their business understanding or settlement cycle. However, when

there is a delay in payment by the client and the funds of the appellant were required to be deployed for payment to stock exchange, it is a cost to the appellant for which they need to get certain compensation by way of interest foregone on such deployed fund. Therefore, the amount of delayed payment received is relatable to interest and the said concept of deposit, loans, advances, etc., are to be understood in their generic term and any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called time value of money, which could be in the form of interest or discount. It is also obvious that the said dues, which were to be paid by them is not towards brokerage charges, which the client has failed to pay to the appellant but it is essentially towards the amount lent or advanced for the purchase of shares and not paid back by the client to the appellant within stipulated time.

12. Therefore, in view of the discussion, we find that the said amount can also be covered under negative list under sub-clause (n) of section 66D of the Finance Act, 1994. We also find force in the clarification issued by the CBIC circular No.102/21/2019-GST dt.28.06.2019, wherein it has been clarified that transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II to CGST Act i.e., "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional/penal interest satisfies the definition of 'interest'. Therefore, though this clarification is in the context of GST Act, the activity is similar to the activity considered as declared service for the purpose of levying service tax as is evident from the wording of section 66E(e) and entry 5(e) of Schedule II to CGST Act. Therefore, we find that it has got persuasive value. In view of the same, we find that even this activity of delayed payment charges cannot be treated as declared service for the purpose of charging service tax.

13. We also note that the said delayed payment charges have been proposed to be charged to service tax under the category of declared service. While in the case of Stock Broking service, there is a clear element of that being covered under negative list also, there is no such clear link to bring delayed payment charges for the DEMAT Account services within the ambit of said negative list. We also note that these delayed payment charges are being collected in relation to providing DEMAT Account services

and not towards margin fund provided by stock broker and therefore, the rationale for not charging service tax as applicable to delayed payment charges relating to delay in payment of money towards purchase of shares cannot be applied towards delay in payment of maintenance charges for DEMAT Account. We also do not find that delayed payment charges can be equated to interest and levied on certain percentage of the DEMAT Account maintenance charges. Therefore, it cannot be considered as interest and therefore, covered under negative list. In this case, it is obvious that the primary business purpose of service provider is providing DEMAT Account services for a consideration and when the charges for these services are not paid in time, the so called delayed payment charges are collected. Therefore, we find that these charges were collected towards tolerating the act of default in payment as investor and hence, to that extent, the demand of service tax on account of delayed payment for DEMAT Account service will sustain.

14. Further, we find that insofar as the issue of invocation of extended period and imposition of penalty is concerned, the appellants were clearly aware that the law has undergone change w.e.f. 01.07.2012 and therefore, they could not have taken shelter of the erstwhile circular, which was in the context of Finance Act, 1994, as was prevalent during the material time. It is also on record that they had been paying service tax on their own but later on stopped making payment of service tax. This would show that they have clearly analyzed the situation and felt that they were covered within the ambit of earlier circular. We have already discussed that the said circular could not have been made applicable in the changed circumstances, though in respect of part of the demand, the service tax is not leviable as the same is being in the nature of interest on the amount deployed by the broker on their behalf and covered under negative list. However, the appellant cannot take shelter that it was their bonafide belief not to pay or that it was an interpretational issue. Therefore, in the facts of the case, we find that invocation of extended period is sustainable and also penalty is imposable under section 78, to the extent the demand is upheld.

15. To sum up,

- a) Demand of service tax on delayed payment charges towards Stock Broking service is set aside along with penalty under section 78.

b) Demand of service tax on delayed payment charges on DEMAT Account services as declared service, along with imposition of equal penalty is upheld.

16. Appeal allowed partly.

(Pronounced in the Open Court on 15.05.2026)

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**