CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. III

SERVICE TAX APPEAL NO. 50241 OF 2020

[Arising out of Order-in-Original No. 01–05/TPS/PC/CGST/DSC/2019–20 dated 18.11.2019 passed by the Principal Commissioner, Central Goods & Service Tax, Delhi South Commissionerate, Plot No. 2B, 3rd Floor, EIL Annexe Building, Bhikaji Cama Place, New Delhi–110066]

The State Trading Corporation of India Ltd. ……... Appellant
Jawahar Vyapar Bhawan
Tolstoy Marg
New Delhi–110001

vs.

Principal Commissioner, CGST,
Delhi South Commissionerate ....Respondent
Plot No. 2B, 3rd Floor
EIL Annexe Building
Bhikaji Cama Place
New Delhi–110066

APPEARANCE:

Mr. N.D. Duby and Mr. S. C. Kamra, Advocates for the Appellant
Mr. D. S. Garbyal, Authorized Representative for the Revenue

CORAM: HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing :14.07.2026
Date of Pronouncement :07.08.2026

FINAL ORDER NO. 51292/2026

PER: MS. BINU TAMTA

M/s. State Trading Corporation of India Limited, New Delhi[1] have filed the present appeal challenging the Order-in-Original[2] passed by the Principal Commissioner of CGST & CX, Delhi South Commissionerate, New Delhi confirming the demand of service tax under the category of "banking

---

[1] the appellant
[2] 01-05/TPS/PC/CGST/DSC/2019-20 dated 18.11.2019

and other financial services" as defined under Section 65(12) of the Finance Act, 1994[3] up to 30.06.2012 and from 01.07.2012 under taxable services other than negative list and exempted services.

2. The appellant is a premier international trading company of the Government of India engaged primarily in export and import transactions. Under the business model, the domestic buyer places an indent upon the appellant intimating details of goods required by him including the source of supply, price settled with the foreign supplier, etc. Since the domestic buyer is not able to negotiate better terms, he approaches the appellant to procure the goods for the buyer. The appellant arranges the banking transactions such as opening of Letter of Credit[4] in favour of foreign supplier or in favour of his banker through the bank in India. The appellant issues proforma invoice to the domestic buyer who makes advance payment to the appellant. Once the goods are shipped by the foreign supplier as per the order placed by the appellant, a High Seas Sales agreement[5] is entered into between the appellant and the domestic buyer for sale of imported goods to the domestic buyer before the goods enter into landmass of the country.

3. That under the HSS, the appellant issues invoice to the domestic buyer without charging VAT/Sales Tax as HSS transactions are not exigible to sales tax/VAT. In addition, the appellant charges 0.54% of LC value towards expenses incurred by the appellant in opening LC in the bank in favour of the foreign supplier. The appellant also charges trading margin

[3] the Act
[4] LC
[5] HSS agreement

@ 1.25% of LC value. The LC charges and trading margin are part of price charged by the appellant for selling the imported goods to the domestic buyer on HSS basis.

4. That for the period 2007-08 to 2009-10, the service tax records of the appellant were audited by CERA Audit Team in August, 2010. An objection was raised by the Audit that though the appellant recovered LC charges from the domestic buyers, the appellant did not pay service tax thereon under the category of "banking and other financial services" as defined in Section 65(12) of the Act.

5. Based on CERA audit report, the Commissioner of Service Tax, New Delhi issued SCN dated 19.10.2012 and proposed recovery of service tax of Rs. 4,03,42,735/- on the amount paid by the buyers to the appellant for 2011-12 reimbursement of LC charges during the period 2007-08 to 2011-12. In addition, penalties under section 76, 77 and 78 of the Act were also proposed.

6. Subsequently, the Department issued four Show Cause Notices on the same issue for the period 2012–13 to 2016–17, dated 16.05.2014, 20.04.2015, 11.04.2016 and 30.01.2018. All the four Show Cause Notices were adjudicated b the Ld. Commissioner confirming the entire demand of Rs. 3,12,67,623/- alongwith interest and penalties under Section 76, 77 and 78 of the Act by invoking the extended period of limitation under the proviso to Section 73(1). Being aggrieved the appellant has filed the present appeal.

7. Heard Mr. S. C. Kamra, Ld. Counsel for the appellant and Mr. D. S. Garbyal, Ld. Authorised Representative for the respondent and perused the records of the case.

Submissions of the Appellant

8. The submissions made by Mr. S. C. Kamra are basically that the LC is issued exclusively by the bank and not by the appellant for which reimbursement is sought from the domestic customer and since the recovered charges form part of the cost of imported goods sold under HSS transactions on which customs duty has already been discharged by the buyer, then such reimbursement cannot be treated as consideration for any taxable service. Referring to the definition of "Banking and Other Financial Service" as defined in Section 65(12) of the Act, he submitted that as per clause (ix) the activity involving the issue of pay order, demand draft, cheque, letter of credit and bill of exchange, etc., it is the bank who is authorized to issue and it is only at the request of the appellant that the Indian Banker has issued the LC in favour of the foreign supplier as payment guarantee. He clarified that LC is actually an assurance issued by the bank to the buyer of goods stating that the seller will receive payment on time, which means that if the buyer fails to make the payments, the bank will do so on his behalf. He emphasized that the relationship between the appellant and the HSS buyer is that of seller and buyer and not service provider and service recipient. The Ld. Counsel has made an alternate argument that the supply of goods to HSS buyer (principal supply) and supply of taxable service under "banking and other financial services" is a composite supply, and the classification thereof is

determined as supply of goods (principle supply). In the facts of the case, he submitted that the recovery of LC charges from the customer as reimbursement and transaction of sale of imported goods under HSS agreement which blended together to form composite transaction and which has to be taxed according to the principal transaction which is sale of goods to the HSS buyer. The Ld. Counsel, has also raised the issue of SCN for the period 2007–08 and 2010–11 as being time barred. Though, the appellant was registered with the Service Tax Department and the audit of service tax records of the period 2007–08 to 2009–10 was conducted by the CERA Audit team in August 2010 when audit objection was raised as to non-payment of service tax on LC charges paid by the appellant to the Indian Bankers and later recovered from the HSS buyers. The audit was not conducted in time and so the Department could not raise the service tax within the normal one year period of limitation. The first SCN covering the demand for the period 2007–08 to 2011–12 was issued on 19.10.2012 i.e. after 2 years of CERA Audit Report. Under these circumstances, the mere fact that the appellant was operating under self-assessment procedure or has not assessed its tax liability correctly, does not mean that the appellant have committed fraud, collusion or willful misstatement or suppression of facts to evade payment of service tax. Consequently, the extended period of limitation under proviso to Section 73(1) of the Act is not applicable and the service tax demand to the tune of Rs. 2,57,44,442/- up to March, 2011 is time barred.

Submissions of the Revenue

9. Mr. D. S. Garbyal extensively argued the appeal reiterating the findings of the Ld. Commissioner and made the following submissions. The Appellant is engaged in the import of goods from foreign suppliers and their subsequent sale to domestic customers on HSS basis. In the course of such transactions, the Appellant arranges the opening of LCs through banks for payment to overseas suppliers. Besides recovering the value of the imported goods along with its trading margin, the Appellant also recovers separate amounts from its customers towards LC opening charges, LC negotiation charges and bank charges. However, despite collecting such consideration, the Appellant neither discharged Service Tax on the said amounts nor disclosed the same in its statutory Service Tax returns, thereby resulting in non-payment of Service Tax.

10. The charges recovered by the Appellant are not merely incidental to the sale of goods but constitute a distinct consideration received for arranging banking and financial facilities for its customers. These charges were recovered separately from the commercial invoice value and, in several instances, were recovered through independent debit notes raised after completion of the HSS transaction.

11. That Section 65(12)(a)(ix) of the Act specifically includes services relating to the issue of Letters of Credit within the ambit of "Banking and Other Financial Services". The statutory definition is comprehensive and covers services relating to lending, issue of pay orders, demand drafts, cheques, letters of credit and other banking facilities. In the present case, although the LC is physically issued by the bank, the Appellant arranges

the facility for its customers and recovers separate consideration towards such financial arrangement. Therefore, the Appellant acts as a provider of financial facilitation services and the consideration recovered is liable to Service Tax.

12. The Appellant has failed to substantiate its contention that the impugned charges had already formed part of the assessable value for Customs purposes.

13. The documentary evidence examined during adjudication proceedings clearly demonstrates that in several transactions, LC charges were recovered much after issuance of the commercial invoices through separate debit notes. Had these charges actually constituted part of the sale price, there would have been no occasion to recover them independently after completion of the sale transaction. Such conduct of the Appellant itself establishes that the impugned charges represented consideration distinct from the value of goods sold.

14. The combined reading of Section 65(105)(zm) and Section 65(12)(ix) reveals that if any body corporate or commercial concern provides a service to any person in relation to "other financial services" which includes issuance of LC, the service will be taxable service under Section 65(105(zm) of the Act.

15. The Appellant definitely qualifies as a "commercial concern" or "body corporate". Also, the service of opening of LC linked with completion of trade of import of goods indented by its client who eventually agreed to buy on HSS as per pre-determined agreement including reimbursement of

the "trade margin (1.25% of LC Value) and LC opening charges (0.54% of LC Value), provided by the Appellant is nothing but a service provided which is related to issuance of LC. Therefore, the Adjudicating Authority has rightly confirmed the demand of Service Tax.

16. Further, even after the introduction of the negative list regime with effect from 01.07.2012, the activity undertaken by the Appellant continues to remain taxable service. As per Section 65B (44) of the Finance Act, 1994, "service" means any activity carried out by one person for another for consideration, excluding only those activities specifically excluded by law. The activity of arranging LC for customers against separate consideration satisfies every ingredient of the statutory definition of 'service'. Further, the activity is neither covered under the Negative List nor exempted by any notification issued under the Act. Consequently, the consideration recovered towards LC charges remains liable to Service Tax even during the post-negative list period.

17. The Ld. Authorised Representative has also filed additional submissions. Referring to the gist of the agreement between the parties, he submitted that the appellant have claimed protection under the 'trading of goods' as the dominant service which itself is exempted and, therefore, any other service linked to it must also be exempted. According to him, the trading of goods have taken place beyond the territorial jurisdiction of India and, therefore, cannot be subjected to domestic sales. Mentioning the various activities carried out by the appellant, his argument is that the dominant nature of the contract is not trade of goods but a contracted financial and procurement service. He further emphasized on the scope

of the term, "in relation to" occurring in Section 65(105)(zm), which according to him does not merely tax 'the issuance of LC' but also includes any service provided in relation to the issuance of LC by a body corporate or commercial concern.

Analysis

18. Having heard both sides, the common question which arises for consideration is whether the agreement is for trading of goods or is for providing services so as to incorporate the activity of facilitating the issuance of LC as amounting to rendering of service under Section 65(105)(zm) read with Section 65(12)(ix).

19. Before considering the issue on merits, we may appreciate the factual position in the present case where the appellant imported the goods ordered by the customer and then selling the same to the customer on HSS basis. Under the normal international commercial parlance, for importing the goods, the appellant coordinates with the bank to open the LC in favour of the foreign vendor. The appellant recovers the LC charges at fixed percentage of CIF value of goods from the customers subject to adjustment to be made at a later stage. Needless to mention, the bank issues LC guaranteeing the buyers payment and in the event, the buyer is unable to make payment on purchase, the bank is required to cover the full or remaining amount of the purchase. In other words, the LC represents a guarantee from the bank as to payment of invoice value raised by the foreign supplier to the Indian buyer. This guarantee of payment is not given by the appellant, but by the banker in favour of the foreign supplier.

20. The first and foremost issue is to ascertain the dominant nature of the agreement and the intention of the parties thereto. The nomenclature of the agreement is "High Seas Sale Agreement" which suggests that the agreement is basically and predominantly for sale of goods, however in order to execute and complete the transaction of sale, the appellant has to procure certain facilities. The transaction being one of high seas sale, the appellant is required to open LC through banks and recovers these LC related charges from the domestic buyers. Referring to the specific invoice number, the agreement makes the buyer/importer who has placed the order for supply of goods with the seller, (the appellant), liable to pay all taxes, Central or State and also to indemnify the seller against any demand for payment or any dues by any authority and make necessary arrangements to meet such demands and to reimburse the seller for the payments made. Lastly, the agreement provides for consideration of sale, whereby the buyer shall pay to the seller as per the invoice, and the amount shall be the entire amount payable by the buyer to the seller and shall include all cost of the seller. The said clause reads as:

> CONSIDERATION:-
> In consideration of this sale, the buyer shall pay to the seller inclusive of LC charges as per sellers Invoice No. STC/FA/G1/01/2016–17 dated 30.11.2016 valuing Rs. 66,64,904.00 (Rupees Sixty Six Lakhs Sixty Four Thousand Nine Hundred Four Only). This amount shall present the entire amount payable by the buyer to the seller and shall include all costs of the Seller. Retiring of documents and all other levies and charges.

20.a. This clause is self-sufficient to say that the LC charges which the appellant had incurred are inclusive in the amount payable by the appellant. The terms and conditions of the agreement clearly show that it is an agreement for sale of goods, ensuring the liability of the buyer to pay towards all costs incurred by the appellant and also the taxes, etc. Further, the agreement specifically provided for retiring of documents and other levies and charges. The agreement being for sale of goods, the relationship between the parties, i.e., the appellant and the HSS buyer is that of seller and buyer and not as service provider and service recipient. Consequently, the basic requisites for classifying it as 'service' are absent.

21. The submission of the Revenue is that the activity of issue of LC by banking company, financial institution, including NBFC or any other body corporate, or commercial concern, is covered under the taxable service as defined under Section 65(12)(a)(ix) of the Act and though the appellant had not issued LC but has opened LC in the bank and has paid LC charges to the bank. Therefore, the activity carried out by the appellant falls under the category of taxable service, "banking, other financial services" and the appellant is liable to pay service tax. To appreciate the argument of the Revenue, we may consider the expression "banking and other financial services" which was originally inserted in the Act, w.e.f. 16.07.2001 as defined in Section 65(10) and subsequently amended in 2006 to cover specified services provided by a banking company or financial institution, including NBFC or any other body, corporate or any other person. The amended definition is provided in Section 65(12)(a) and the relevant part is set out below:

> "(12) "banking and other financial services" means–
>
> (a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate [or commercial concern] namely:-
>
> (i) – (viii) - xxxxx
>
> (ix) other financial services, namely, lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; transfer of money including telegraphic transfer, mail transfer and electronic transfer; providing

> bank guarantee, overdraft facility, bill discounting facility, safe deposit, safe vaults; operation of bank accounts;]

Further, Section 65(105)(zm) reads as: -

> "**Taxable Service**" means any service provided or to be provided **to any person**, by a banking company or a financial institution including a non-banking financial company, or **any other body corporate or commercial concern**, in **relation** to **banking and other financial services**;

22. The above contention raised by the Revenue is based on misreading of the statutory provisions. The term, "in relation to banking and other financial services" has to be read in conjunction with issue of letter of credit which cannot be stretched to include the activity undertaken by the appellant. In fact, the expression would include all the activities which are undertaken by the banks for issuance of the LC as only they have the authority and ability to issue LC. In other words, since the issue of LC by a person or body corporate, not engaged in banking, financial or similar activities is not covered in the list of services of clause (ix), the recovery of LC charges by the appellant from their HSS buyers is not liable to service tax. We may take note of the reliance placed by the Ld. Counsel on the Circular No. 83/1/2006–ST dated 04.07.2006, clarifying that the expression 'any other person' appearing in Section 65(12) read with Section 65(105)(zm) of the Act is to be read *ejusdem generis* with the preceding words. Similarly, the expression 'other financial services' appearing in Clause (ix) of Section 65(12), the Board clarified that it is a residuary entry and includes those services which are normally rendered by banks and financial institutions. Therefore, a banking company or a financial institution or NBFC or any other service provider similar to bank or financial institution are liable to service tax under Section 65(105)(zm).

Since, the Department of Post is not similar to bank or financial institution, the Board clarified that it does not fall under the category of 'any other similar service provider'. The Circular issued by the Board is binding on the Department and, therefore, it cannot be interpreted as suggested by the Mr. Garbyal. In that view, we are of the opinion that the appellant being purely a trading organization is not engaged in banking and other financial services and hence, cannot be categorized as any other person or a body corporate engaged in activities similar to banking and other financial services.

23. During the post negative era, the service tax was levied on all services other than services specified in the negative list or services exempted by notifications. Section 65B(44) of the Act defines 'service' as an activity carried out by a person for another person for a consideration. The appellant is not authorised to issue LC to the foreign supplier on behalf of the domestic buyer/HSS buyer, therefore, no service was rendered by the appellant to the domestic buyer. As noted above, the relationship between the appellant and the HSS buyer is that of seller and buyer. The appellant was engaged in trading activities whereby he was selling the goods during the course of import as HSS sales. From the definition of 'service' in Section 65B(44), such an activity falls under the exclusion clause. The provisions of section 65B(44) are quoted below:

> "(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, **but shall not include –**
> **(a) an activity which constitutes merely, -**
> **(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or**"

24. The submission of the Ld. Counsel that since the goods are imported by the appellant for the benefit of the domestic buyer, the appellant charges 0.54% of LC value from the domestic buyer towards expenses incurred in opening LC by the Indian banker in favour of the foreign supplier. Therefore, mere payment or flow of money by way of LC charges does not imply that the appellant has rendered any taxable service and that too under the category of "banking and other financial services". In **M/s. Indusind Bank Ltd.** vs. **Commissioner of Service Tax, Chennai**[6], the issue before the Tribunal was whether the amount received from the vehicle dealers by the bank is in the nature of commission or consideration which is subject to levy of service tax under the category of "Business Auxiliary Service". It was held that merely because there is a flow of money from the dealer to the bank it cannot be said that the same is a consideration for service rendered. Every flow of money does not have the character of consideration. For rendering a service, there should be a relationship in the nature of service provider and service recipient. Similar view has been taken by the Principal Bench in **M/s. B. G. Exploration & Production India Ltd.** vs. **Commissioner of CGST & CX, Navi Mumbai**[7], where, once again, it was held that mere flow of money by itself is not enough to fasten the service tax liability. It is an obligation on the part of the Department to show that the said flow of money is a consideration for rendition of a service, in which case alone there can be a liability to service tax.

[6] 2019 (25) GSTL 220 (Tri – Chen.)
[7] 2022 (63) GSTL 351 (Tri–Mum)

25. We may now refer to the decision in the case of **Indian Oil Corporation Ltd.** vs. **Commissioner of CCE, Goa[8]**, where the facts of the case were quite identical dealing with the transaction under HSS. The issue was whether additional handling charges and facilitation charges on import of goods paid by importer/seller was leviable to service tax under "Business Auxiliary Service" and it was concluded as under:

> "6. In this case, although ZIL placed an order on the appellant for procurement of Naphtha and furnace oil, as per the agreement the transactions are on principal to principal basis i.e. the appellant is the seller, ZIL is the buyer. The appellant has imported the impugned goods in their own account and in their own name and thereafter they have sold goods to ZIL. In these circumstances, whatever expenses have been incurred before transfer of the goods, form part of the sale price of the impugned goods. In these circumstances, relying on the decision of Nahar Industrial Enterprises (supra) we are of the view that the appellant is paying these charges for their own purposes. Therefore, same cannot form part of the Service Tax liability under Section 65(19) Clause (iv) of the Finance Act, 1994, i.e., Business Auxiliary Service."

26. The next contention of Shri Kamra is that LC charges being pre-import charges forms part of the transaction value of the goods imported and cleared by the HSS buyer. The scheme of procuring LC requires the appellant to first pay the LC charges to their banker in India who issues LC in favour of the foreign seller, thereafter the same is recovered from the HSS buyer as per the agreement. In the process, the HSS buyer pays the customs duty and then to charge service tax would amount to double taxation which is not permissible. As referred above, the agreement specifically says that the HSS consideration includes all costs which the appellant had incurred. Hence, we are of the opinion that no service tax is chargeable from the appellant.

[8] 2015 (38) STR 501 (Tri–Mum)

27. Lastly, issue needs to be addressed with reference to the concept of composite service. The main purpose of the HSS agreement as noticed above is the transaction of sale of goods and procuring LC on payment of charges is merely linked to the transaction of sales. Consequently, it amounts to composite supply and the Ld. Counsel is right in submitting that it cannot be vivisected to charge service tax on the LC charges recovered by the appellant from the HSS buyer as part of price of goods sold. In support, we would like to take note of the decision in **Union of India** vs. **Mohit Minerals Pvt. Ltd.**[9], where the Apex Court with reference to CGST provisions considered the taxability of composite supply consisting of import of goods from the foreign party and cost of ocean freight paid by the foreign party to the foreign shipping line to ensure shipment of goods to the place of destination at the Indian port on CIF basis. The Apex Court held that in a CIF contract, supply of goods is accompanied by supply of services of transportation and insurance, the responsibility for which lies on the foreign exporter. The supply of services of transportation by the foreign shipper forms part of bundle of supplies between the foreign exporter and the Indian importer on which IGST is payable u/s 8 and Section 2(30) of the CGST Act. To levy IGST on the supply of service component of the transaction would go against the principle contained in Section 8 and shall be in violation of the Scheme of GST law. Following the said principle, we find that the primary transaction being sale of goods to the HSS buyer it has to be treated as transaction of sales, which has already suffered the customs duty.

---

[9] 2022 (61) GSTL 257 (SC)

28. Mr. Kamra has also raised the issue that the show cause notice is barred by time, especially for the period 2007–2008 and, therefore, the demand is not sustainable. Since, we have decided the issue on merits in favour of the appellant, we do not find any reason to go into this question.

29. In view of our discussion above, we hold that the impugned order is devoid of merits and needs to be set aside. The appeal, is accordingly allowed.

[Order pronounced on 07.08.2026]

(BINU TAMTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

DJ