CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

SERVICE TAX APPEAL No. 85744 OF 2014

(Arising out of Order-in-Original No. 02/AC/COMMR/TH-II/ST/2013 dated 29.11.2013 passed by the Commissioner of Central Excise, Thane-II)

HDFC BANK LTD. **.... Appellants**
Kamala Mills Cpompound,
Trade World, C-Wing, 10th Floor,
Senapati Bapat Marg, Lower Patel,
Mumbai – 400 013

Versus

Commissioner of CGST & Central Excise, Mumbai Central **.... Respondent**
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar (West),
Mumbai – 400 028

WITH

SERVICE TAX APPEAL No. 85640 OF 2016

(Arising out of Order-in-Original No. 38/ST-V/SKD/2015 dated 14.12.2015 passed by the Commissioner of Service Tax-V, Mumbai)

HDFC BANK LTD. **.... Appellants**
Kamala Mills Cpompound,
Trade World, C-Wing, 10th Floor,
Senapati Bapat Marg, Lower Patel,
Mumbai – 400 013

Versus

Commissioner of CGST & Central Excise, Mumbai Central **.... Respondent**
Utpad Shulk Bhawan, BKC, Bandra (East),
Mumbai – 400 051

AND

SERVICE TAX APPEAL No. 86995 OF 2018

(Arising out of Order-in-Original No. 11-13/COMMR(Dr.KNR)/CGST&CEX/ MC/2017 dated 14.12.2017 passed by the Commissioner of CGST & Central Excise, Mumbai Central)

HDFC BANK LTD. **.... Appellants**
Kamala Mills Cpompound,
Trade World, C-Wing, 10th Floor,
Senapati Bapat Marg, Lower Patel,
Mumbai – 400 013

Versus

Commissioner of CGST & Central Excise, Mumbai Central **.... Respondent**

GST Bhavan, 115, Maharshi Karve Road,
Opp. Churchgate Station,
Mumbai – 400 020

AND

SERVICE TAX APPEAL No. 87001 OF 2018

(Arising out of Order-in-Original No. 11-13/COMMR(Dr.KNR)/CGST&CEX/ MC/2017 dated 14.12.2017 passed by the Commissioner of CGST & Central Excise, Mumbai Central)

HDFC BANK LTD. **.... Appellant**
Kamala Mills Cpompound,
Trade World, C-Wing, 10th Floor,
Senapati Bapat Marg, Lower Patel,
Mumbai – 400 013

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai Central
GST Bhavan, 115, Maharshi Karve Road,
Opp. Churchgate Station,
Mumbai – 400 020

AND

SERVICE TAX APPEAL No. 87002 OF 2018

(Arising out of Order-in-Original No. 11-13/COMMR(Dr.KNR)/CGST&CEX/ MC/2017 dated 14.12.2017 passed by the Commissioner of CGST & Central Excise, Mumbai Central)

HDFC BANK LTD. **.... Appellant**
Kamala Mills Cpompound,
Trade World, C-Wing, 10th Floor,
Senapati Bapat Marg, Lower Patel,
Mumbai – 400 013

Versus

Commissioner of CGST & Central Excise, **.... Respondent**
Mumbai Central
GST Bhavan, 115, Maharshi Karve Road,
Opp. Churchgate Station,
Mumbai – 400 020

APPEARANCE:

Shri V. Raghuraman along with Shri Abhishek A Rastogi, Ms. Diksha Pandey & Ms. Meenal Songire, Advocates for the Appellants

Shri C.S. Pavan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/ 86020-86024/2026

Date of Hearing: 28.04.2026
Date of Decision: 17.08 .2026

Per: M.M. PARTHIBAN

These appeals being ST/85744/2014; ST/85640/2016 and ST/86995, 87001 & 87002 have been filed by M/s HDFC Bank Limited, Mumbai (herein after, referred to as "the appellants", for short) assailing three Orders-in-Original No. 02/AC/COMMR/Th-II/ST/2013 dated 29.11.2013; No.38-STC-V/SKD-15-16 dated 14.12.2015 and No. 11-13/COMMR/(Dr.KNR)/CGST& CEX/ MC/2017 dated 14.12.2017, respectively, (herein after, referred together as "the impugned orders") passed by the Commissioner of Service Tax-Thane-II, Commissioner of Service Tax-V and Commissioner of CGST & Central Excise, Mumbai Central.

2. In all the orders-in-original/impugned orders the dispute involved is arising from common issue of non-payment service tax on 'interchange fee' earned by the appellants, but covering different periods involving demand of service tax, interest and penalty thereon. Show Cause Notice (SCN) No. 623/COMMR./2012-13 dated 19.10.2012 was adjudicated vide impugned order dated 29.11.2013 covering adjudged demands for the period September, 2006 to March, 2011; SCN No. V/ST-I/Dn-II/Gr./VIIA/HDFC/ SCN/30/13 dated 14.10.2014 was adjudicated by impugned order dated 14.12.2015 covering adjudged demands for the period 01.04.2013 to 31.03.2014; and SCNs No. 1044/COMMR/2013-14 dated 26.11.2013 (July, 2012 to March, 2013), SCN/12/Pr. Commr./2016 dated 12.04.2016 (April, 2014 to March, 2015), SCN/25/Pr. Commr./2017-18 dated 16.06.2017 (April, 2015 to March, 2016), was adjudicated vide impugned order dated 14.12.2017 covering adjudged demands for the periods July, 2012 to March, 2013; April, 2014 to March, 2015 & April, 2015 to March, 2016. Thus, we are of the view that these appeals can be considered together for hearing the matter in the interest of justice. Therefore, with the consent of both the parties, all the five appeals are being taken up for consideration and for final disposal herein.

3.1 The brief facts of the case are that the appellants herein are *inter alia*, engaged in providing amongst various services, 'Banking and Other Financial Services' which are taxable services under Chapter V of the

Finance Act, 1994. For the purpose of payment of Service Tax and for compliance with service tax statute, they are registered with the jurisdictional Commissionerate under service tax registration No. AAACH2702HST001.

3.2 During the course of EA-2000 audit of accounts of the appellants conducted by the department, it was noticed that the appellants have earned 'Interchange fee' from the credit cards issued by them. It was found by the department that the appellants are providing credit card services to its customers by way of issuing credit card. As an issuing bank, they are also installing Electronic Data Capture (EDC) machines at different Merchant Establishments (MEs). In common parlance, these banks are known as acquiring bank. While the acquiring bank issues their own credit cards, they also act as issuing bank. Whenever customer buys any item from MEs using credit card, the card is swiped in the EDC machine installed at the premises of such MEs. The moment the MEs swipes the credit card of the customer, online information is transmitted to the issuing bank with the help of Visa/ MasterCard network, which then sends response to the MEs after verifying the authenticity of the card holder, and the transaction takes place and charge slip is generated with the help of EDC machine. Thereafter ME submits copy of charge slips to acquiring bank. After completion of the transaction, acquiring bank makes payment to the MEs for all the charges slips submitted by the merchants after deducting the fees at a pre agreed rate of the transaction value. Issuing bank collects the payment from the card holder; and they make payment to the acquiring bank. For such transaction, the issuing bank receives some portion of fee retained by acquiring bank, which is known as 'interchange fee'. In most of the cases, the banks which issued credit card retains certain amount while making payment to the acquiring bank and accounts the same as 'interchange fee'. On both accounts, the appellants did not pay any service tax on 'interchange fee'. The department had interpreted that in terms of Sections 65(33a) and 65(105)(zzzw) of the Finance Act, 1994 that any service provided to any person, by any other person, in relation to credit card, debit card, charge card or other payment card services, in any manner would be liable to service tax and the appellants having failed to pay service tax, are liable to be proceeded with service tax demands and exposed to penal consequences. Accordingly, the Department had issued various SCNs dated 19.10.2012, 26.11.2013, 14.10.2014, 12.04.2016 and 16.06.2017 proposing for demand of service tax for the period September 2006 to March, 2016 under Section 73(1) read with Section 68 of the Finance Act, 1994 along with interest and for imposition of penalty on the appellants under Section 76, 77 & 78 ibid. The afore said SCNs were adjudicated by various original authorities in confirming all the proposals made in the SCNs vide Orders-in-Original dated 29.11.2013, 14.12.2015 and 14.12.2017. Feeling aggrieved with the impugned orders, the appellants have filed these appeals before the Tribunal.

4.1 Learned Counsel for the appellants submitted that the issue under dispute has been decided in favour of the appellants in a number of cases by various Benches of the Tribunal and relied upon such decisions. These are the cases of *Citi Bank N.A., Vs. Commissioner of GST and Central Excise* vide Final Order No.42902 of 2018 dated 05.08.2020 in Appeal No. ST/40923 of 2017 reported in 2021 (45) G.S.T.L. 293 (Tri. Del.); upheld in favour of the appellants in Civil Appeal No.8228 of 2019 with No.89 of 2021 by the Hon'ble Supreme Court vide judgement delivered on 16.10.2024. *ABN Amro Bank NV (presently known as Royal Bank of Scotland NV) Vs. Commissioner of Central Excise & Service Tax, Noida* vide Final Order No. 71601 of 2018 dated 23.07.2018 in Appeal No. ST/1921 of 2012 reported in 2018-TIOL-2811-CESTAT-ALL.

4.2 He further submitted that the identical matter in the case of Citi Bank N.A., (supra) was initially decided in Civil Appeal No.8228 of 2019 vide judgement dated 09.12.2021. However, due to divergence of opinion the matter was referred to Hon'ble Chief Justice of India and vide judgement dated 16.10.2024, the dispute was finally decided in favour of the appellants bank. Therefore, he pleaded that the present issues could also be decided on the above basis.

5. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned orders.

6. Heard both sides and carefully examined the case records. We have also perused the additional written submissions presented in the form of paper book for this case.

7. The issues for determination in the present appeals before the Tribunal in this case are:-

(i) whether the appellants banks are liable to pay service tax on 'Interchange fee' or otherwise;

(ii) whether the adjudged demands including penalty imposed on the appellants are legally sustainable or not, in terms of the Finance Act, 1994.

8.1 In the impugned order dated 29.11.2013, the learned Commissioner as adjudicating authority had confirmed the proposal made in the SCN by invoking the extended period of limitation on the following grounds.

> *"15. The issue is in a short compass. It seeks eligibility of interchange fee to service tax for the reason that the noticee had rendered the credit card, debit card, charge card or other payment card services, as defined under Section 65(105)(zzzw) of Chapter V of the Finance Act, 1994 to their card holders. The nature of service is essential and of importance because the noticee had raised the issue of double taxation.*
>
> *16. The merchant service fee is collected by the acquiring bank for rendering services to the merchant establishment. This is done by the acquiring bank by installing the EDC machines at their premises. This installation enables the merchant establishment to enter into transactions, the payments wherefore, can be made by their customers through the credit cards issued by the noticee. The acquiring bank receives merchant service fee therefor. There is no role of the issuing bank, namely, the noticee, in this transaction vis-à-vis the merchant establishment.*
>
> *17. The noticee (or the issuing bank) receives interchange fee for the reason that it is the cardholder client of the noticee, who has made a transaction with the merchant establishment through the card issued by the noticee. The issuing bank, upon such transaction, conveys the authenticity and currency of the card holder to the EDC machine to enable the card holder to complete the transaction. This service is apart from the issue of card by the noticee to their clients to enable them to use them in such manner. The interchange fee is the consideration for this service. The acquiring bank has no role to play herein.*
>
> *18. Thus, while the service is rendered by the acquiring bank to the merchant establishment; the service rendered by the noticee, as an issuing bank, is to the card holder. The merchant service fee or the portion retained by the acquiring bank would be the gross consideration of the service rendered by the acquiring bank vis-à-vis the merchant establishment. The interchange fee, though be a portion thereof, would still be the consideration for service rendered by the noticee as an issuing bank to its card holder. There would, therefore, be no double taxation or re-taxation. It needs to be emphasized that the issuing bank, after receipt of payments from the card holder Transfers the money to the acquiring bank after deducting the portion of the interchange fee. The taxability of this portion, in the hands of the acquiring bank, thus, is highly doubtful, for this fee never reaches the hands of the acquiring bank.*

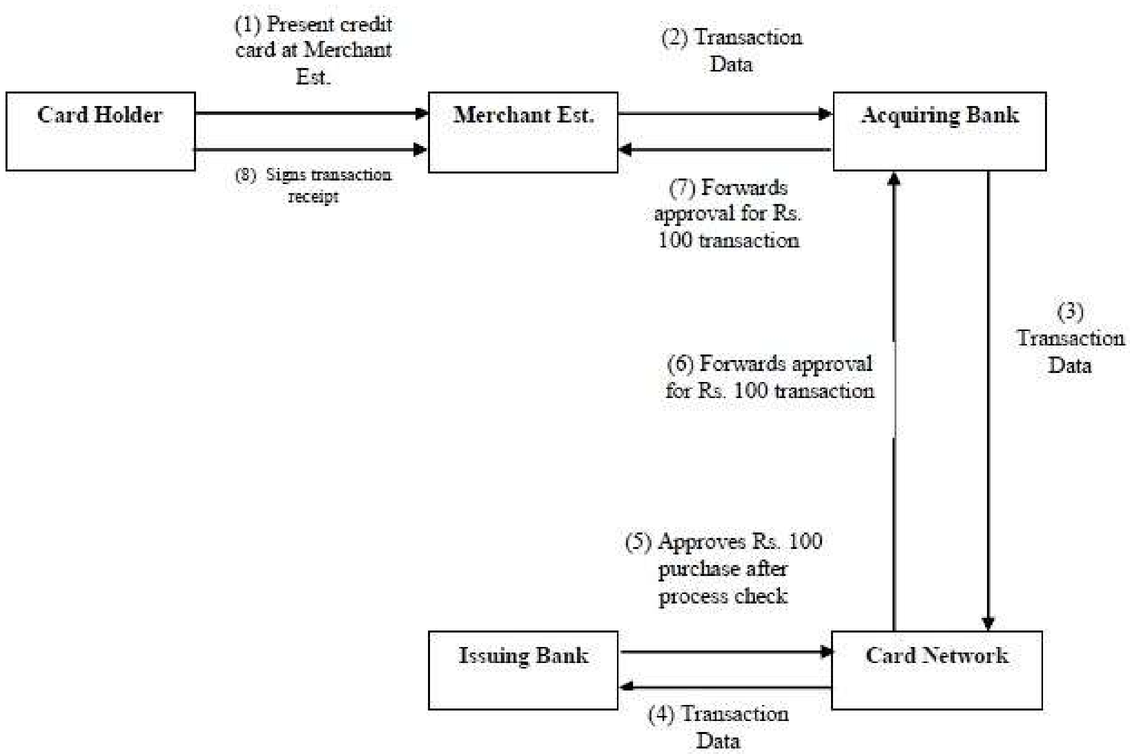
> *19. In view thereof, the exigibility would ensue. The interchange fee, received by the noticee, as an issuing bank, would be the gross consideration for rendering of the credit card, debit card, charge card defined under Section or other payment card services, as 65(105)(zzw) of Chapter V of the Finance Act, 1994 to their card holders. This amount would exigible to service tax".*

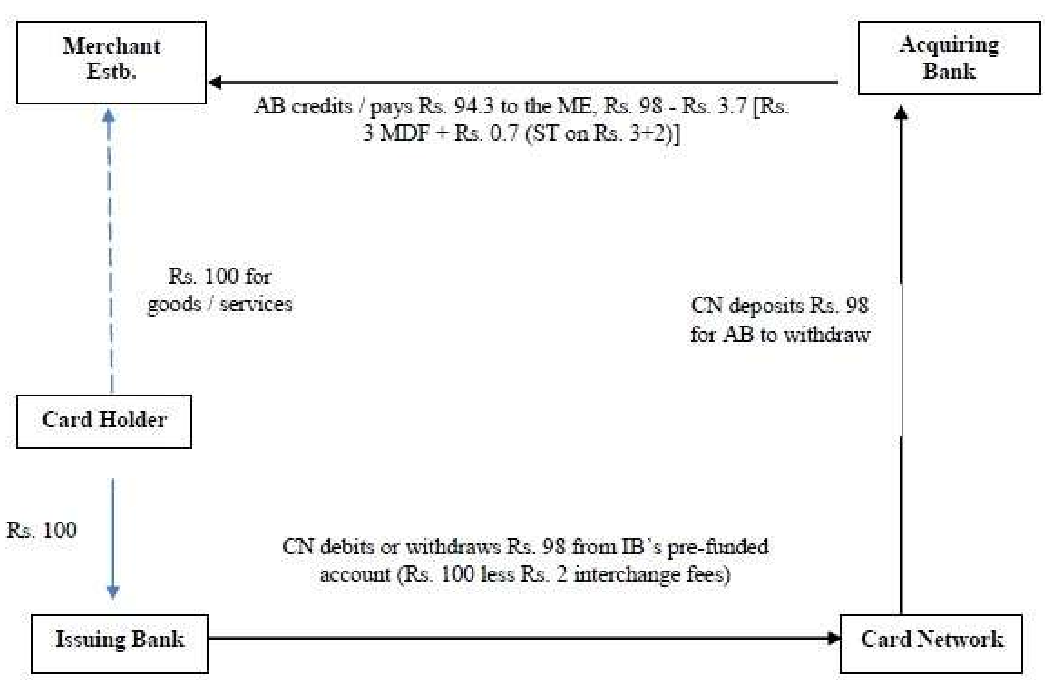
9.1 We find that on the aforesaid issue of liability to pay service tax on 'interchange fee, in an identical case of Citi Bank N.A.(supra) have been examined carefully by the Co-ordinate Bench of the Tribunal and it was held as follows. The relevant paragraphs of the said Order of Tribunal dated 05.08.2020 is extracted and given below:

> *"5.1 We find that the issue in dispute concerns taxability or otherwise of Interchange Fees which accrues to the appellant as a fallout of each credit card transactions by a holder of a credit card issued by the former.*
> *5.2 From the submissions made by both sides, we have been able to comprehend the roles of various parties involved in such credit card transactions as under:-*
>
> *In credit card transactions, following five parties are involved, namely:*
> *(a) Issuing Bank (IB) - The Issuing Bank issues credit cards and therefore, effectively lends monies to its Card Holders. The contractual relationship between an Issuing Bank and its Card Holders is spelt out in the cardholder agreement / terms & conditions. Service fees are charged to service tax.*
>
> *(b) Credit Card holders (CH) - The Card Holder is the customer to whom the Issuing Bank issues a credit card. The credit card evidences a potential line of credit established by the Issuing Bank using which the Card Holder may purchase goods or services at any of the Merchant Establishments.*
>
> *(cc) Acquiring Bank (AB) - The Acquiring Bank is a bank which recruits, screens, and accepts Merchant Establishments into a Card Network's network. They provide a Point of Sale (hereinafter referred to as 'POS') machines to Merchant Establishments which enable Merchant Establishments to validate and accept credit card payments. The Acquiring Bank processes credit card transactions for Merchant Establishments within the respective Card Network and also operates per the respective Network's Operating Regulations. Any service fees (typically Merchant Discount Fee / MDF) from Merchant Establishment is fully charged to service tax.*
>
> *(d) Merchant Establishment (ME) - The Merchant sells goods or services to Card Holders (buyers). The Merchant has no contractual relationship with the Card Holder's Issuing Bank. The Merchant is provided with POS machines by the Acquiring Bank to enable it to accept card payments, for a fee (Merchant Discount Fee / MDF) which is pre-agreed and deducted at the time of settlement of the transactions. For this, the Merchant operates a bank account with the Acquiring Bank for credit (payments) for sales made to Card Holders.*

(ee) Card Network (CN) - For example, Visa or MasterCard who provide the infrastructure / gateway system for electronic (credit card) transactions to effectuate. They also process transactions between Acquiring Banks and Issuing Banks, allowing purchases to be made, authorized and settled. Card Networks function as an interface between the Acquiring Banks and Issuing Banks, operating like an exchange or clearing platform. Thus, they have the key role in settlement of a Credit Card transaction. The Card Network prescribes the Operating Rules and the 'Interchange Fees' that IBs earn besides manage interchange flow between banks. The CN in most cases is located outside India. The charges levied by CN, whether to the Acquiring Bank or Issuing Bank suffer service tax under the reverse charge mechanism.

5.3 The transaction processes has been capsulated in following flow charts in the impugned order, which is as under:-





5.4 In the flow charts given above, for transaction of Rs.100/- shown, the interchange fee of Rs.2/- is the amount which is under dispute in *these appeals. Revenue insists that it would fall within the ambit of the service tax liability under Credit Card Services.*

5.5 Appellant, however, contests the demand on the following counts:-
(i) No service is rendered
(ii) There is no service provider-service recipient relationship
(iii) There is no consideration payable by the service recipient to the service provider
(iv) Interchanging fees is in the nature of "interest on loan"
(v) Any attempt to levy service tax on interchange fee at the hands of issuing bank would amount to double taxation
(vi) Transaction in money is not liable to service tax
(vii) Transaction in its entirety is one of 'trading'
(viii) Judgment in the case of Standard Chartered not applicable in the present case.

5.6 On the other hand, the adjudicating authority has found that interchange fee is paid for facilitating the purchase using the card and not for lending the money for the purchase; that interchange fee is a consideration that accrues to the issuing bank for verifying, facilitating and extending the purchase value in line with the contractual agreement, the issuing bank has with the card association and taking the risk for collection of amounts from the card holder.

5.7 In response to the appellant's contention that service tax is being paid on the entire MDR (Merchant Discount Rate), the adjudicating authority in para 8.11 of the impugned order has taken a stand that no proof has been furnished to that extent. Moreover, the interchange fee is the consideration given to issuing bank for validating the transaction and the MDR is the consideration for the acquiring bank for settling the merchant establishment.

5.8 We further find that although the appellant in the course of adjudication proceedings had contended that the decision of the Larger Bench of the Tribunal in Standard Chartered Bank (supra) is not applicable to the present case, no discussion or counter response to that assertion has been made by the adjudicating authority in the impugned order. Per contra, during the hearing, the ld. AR made arguments that the said Larger Bench decision was very much applicable to the facts of the present case also. However, after careful perusal of the decision, we find ourselves in agreement with the ld. Senior Advocate. The issue in question in the Standard Chartered Bank case was whether interchange fee received by the issuing bank from the acquiring bank fell within the scope of the taxing entry of Banking and Other Financial Services and should be taxed whereas in the present case, the demand is raised under the taxing entry "Credit Card Services", the definition of which is entirely different from the definition of Banking and Other Financial Services. Further, the premise in Standard Chartered Bank was that there was a service by the issuing bank to the acquiring bank. Therefore, the question of interchange fee was not in consideration before the Larger Bench of the Tribunal. We are also in agreement with the contention of the ld. counsel that in the Standard Chartered Bank case, it was not the submission of the assessee therein that interchange fee was not consideration for services. Therefore, the

Tribunal did not have any occasion to examine whether or not the activity of issuing bank was a service and covered by the taxing entry for Credit Card Services.

5.9 We further find that in the recent decision of the Tribunal in ABN Amro Bank (supra), the case law of Standard Chartered Bank had been agitated before the Bench. Further, on going through Standard Chartered Bank decision, we find that the primary issue that was dealt with by the Larger Bench of the Tribunal was in respect of services provided by issuing bank to acquiring bank and acquiring bank to merchant establishment. The Tribunal had held that these were distinct services and outside the purview of Credit Card Services prior to 1.5.2006. Of course, the Larger Bench had held that interpretation in respect of the reference whether merchant establishment discount can be said to be "received in relation" to credit card services in particular transaction wherein bank receiving discount may not have received that and the credit card delivered.

5.10 Viewed in this light, notwithstanding the contentions of the ld. AR, we find that the Standard Chartered Bank decision of Larger Bench supra does not help the case of the Revenue and on the other hand it only, in our view, buttresses the stand of the case of the appellant.

5.11 Be that as it may, we find that in a very recent decision of the Tribunal in the case of ABN Amro (supra), it has been categorically held that the amount received by the appellant does not qualify as credit card services that when acquiring bank has discharged service tax liability on the entire amount, no service tax is payable by the appellant and that the amount offered by the appellant does not qualify a credit. The relevant portion of the order is as under:-
"5. Considered the submissions.

6. It is a fact on record that the acquiring bank is discharging his service tax liability on the amount in question, in that circumstances, no service tax is payable by the appellant (and the said fact has not been disputed by the learned AR during the course arguments) as held by the Hon'ble Allahabad High Court in the case of Commissioner of C. Ex. Lucknow v. Chotey Lal Radhey Shyam reported at 2018 (8) G.S.T.L. 225 (All.).

7. Moreover, we have gone through the definition as under Section 65(33A) Clause (iii) herein is reproduced below:-"By any person, including an issuing bank and an acquiring bank, to any other person in relation to settlement of any amount transacted through such card."

8. On going through the said definition, we find that if the appellant is receiving certain commission in relation to settlement of any amount, then and only then the said activity is covered under credit card services. Admittedly, the appellant is not engaged in any activity of settlement of the amount. In fact, the appellant is not the settlement agency and is acting only as issuing bank. It is admitted position by the learned Commissioner in the impugned order. In that circumstances, we hold that the amount received by the appellant does not qualify as the „credit

cards services'. 5 APPEAL No. ST/1921/2012-CU[DB] Therefore, we hold that the demand against the appellant is not sustainable."
5.12 In the we find that the very issue that is in dispute in the present appeal has been conclusive decided by the Tribunal in the above final order (ABN Amro) against Revenue. We do not find any reason or cause to differ from the ratio laid down in that decision. This being the case, on this legal ground itself, the impugned order is not sustainable and will have to be set aside, which we hereby do. The appeal is allowed with consequential relief, if any."

9.3 When the matter came for hearing before this Bench of the Tribunal on 17.01.2024, the learned Counsel was specifically asked whether the matter in the case of Citi Bank N.A. (supra) has attained finality of law upon as confirming the fact that the case is pending before the Hon'ble Supreme Court, the learned Counsel was given liberty to mention as and when the issue attains finality. The relevant extract of the said order is as follows:

Date of Hearing : **17/01/2024**

ORDER

When the matter was called for hearing, learned AR appearing for the Revenue submitted that the issue arising out of the present appeals is the subject matter of the dispute in the case of M/s City Bank N.A., which is pending before the Hon'ble Supreme Court for final decision on merits. Accordingly, he prayed for adjourning the matter arising out of the present appeals, till disposal of the Civil Appeal.

2. We have perused the written note submitted by the learned AR Shri Suvir Misra, wherein it has been stated that the Revenue has filed a Civil Appeal being No.8228 of 2019 before the Hon'ble Supreme Court in the case of Commissioner of CGST & Central Excise Vs. City Bank N.A. Since, the Civil Appeal filed in the case of City Bank N.A., having similar set of facts as involved in the present appeal, is sub-judice before the Hon'ble Supreme Court, we are of the view that being the sub-ordinate judicial body, it would not be proper on our part to take up the present appeals for a decision on merits.

3. Therefore, Registry is directed not to list the matter till disposal of Civil Appeal by the Hon'ble Supreme Court. Both sides are at liberty to appraise the Bench about the development of the matter pending before the Hon'ble Supreme Court and thereafter, appropriate steps would be taken for deciding the appeals on merits. The written submissions filed by both sides would be considered at the time of final hearing of the appeals.

Accordingly, after the matter was of finally decided by the Hon'ble Supreme Court in the case of Citi Bank (supra), the same was brought to our attention about the judgement of the Hon'ble Supreme Court dated 16.10.2024 during the hearing of he appeals on 28.04.2026.

9.4 We also find that the Hon'ble Supreme Court of India after referring the matter to the Hon'ble Chief Justice on 09.12.2021 in Civil Appeal No.8228/2019 has finally decided the identical issue of dispute vide judgement delivered on 16.10.2024 as follows:

2024 INSC 808

Civil Appeal No. 8228/2019 etc.

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8228 OF 2019

COMMISSIONER OF GST AND CENTRAL EXCISE ..... APPELLANT

VERSUS

M/S CITIBANK N.A. ..... RESPONDENT

WITH

CIVIL APPEAL NO. 89 OF 2021

J U D G M E N T

SANJIV KHANNA, J.

We have heard the learned counsel appearing for the parties at some length.

2. The contention of the Revenue is that the acquiring bank should have paid service tax on the Merchant Discount Rate[1] minus the interchange fee, and the issuing bank should have paid service tax on the interchange fee.

3. We are of the view that the judgment and reasoning given by S. Ravindra Bhat, J. is acceptable and it is in accordance with the provisions of Clause (iii) of Section 65 (33a) of

1 For short, "MDR".

1

the Finance Act, 1994[2].

4. S. Ravindra Bhat, J. rightly observes that as per Section 65(33a) of the Act, seven distinct heads of credit card services were sought to be taxed, the idea being to broaden the coverage of the species of services into taxation net. Clause (iii) thereof applies to service by any person, which includes service by the issuing bank and the acquiring bank. The use of the word 'and' in conjuncture is indicative of the legislative intent. MDR is charged/levied by the acquiring bank at the first point in time and subsumes both the acquiring bank fee and the interchange fee of the issuing bank, as well as the platform fee. It is the sum total of the three. The aforesaid charge occurs first in point of time and deduction and payment of service tax at this stage is beneficial to the Revenue. It is not the case of the Revenue that payment by the acquiring bank to the issuing bank, known as interchange fee, is separately chargeable, in addition to the service tax on the MDR.

5. To support the conclusion, S. Ravindra Bhat, J. has said that, in reality, there is one unified service which is rendered to the consumer, that is, the credit card holder, and the merchant. The subsequent bifurcation in the context and the nature of the transaction, read with Sections 66 and 68 of the Act and Rule 5(1) of the Service Tax (Determination

2 For short, "The Act."

of Value) Rules, 2006, is immaterial as MDR is taxable and service fee is to be taxed. MDR, as a service, has been taxed and also paid.

6. We wonder whether the Revenue would have accepted the bifurcation as argued by them in case the acquiring bank and the issuing bank had taken the stand which is now taken by them. While interpreting a tax provision, one must keep in mind that the legislature ennobles the ease of collection of tax and payment of tax. These principles, especially when there is no loss of revenue, can be taken into consideration for interpreting a provision in case of doubt or debate.

7. It is pertinent to note that even the opinion expressed by K.M. Joseph, J., while adopting a different interpretation of Section 65 (33a) of the Act, goes on to hold, *vide* paragraphs 86 onwards of the judgment, that there should not be double taxation. However, it has been observed thereafter that the onus to show that payment of service tax on the entire MDR was made by the acquiring bank will be on the issuing bank, that is, the respondent, M/s. Citibank N.A.

8. We would, on the last aspect, observe that the entire data and details are available with the Service Tax Department and could have been easily ascertained before issuance of the show cause notice. Interestingly, the show cause notice proceeds on the basis that, regardless of the service tax

paid by the acquiring bank on the full MDR, the issuing bank would be liable to pay service tax on the proportion of its share in the MDR, which is the interchange fee.

9. We find that the entire amount of the service tax payable on the MDR has been paid to the Government and there is no loss of revenue.

10. Recording the aforesaid, the Reference and appeals are disposed of, holding that service tax is not separately payable on the interchange fee, as service tax has been paid on the MDR.

11. Pending application(s), if any, shall stand disposed of.

..................J.
(SANJIV KHANNA)

..................J.
(SANJAY KUMAR)

..................J.
(R. MAHADEVAN)

NEW DELHI;
OCTOBER 16, 2024.

9.5 In view of the foregoing and on the basis of the order passed by the Hon'ble Supreme Court in the case of *Citi Bank N.S.,* (supra), by holding that service tax is not separately payable on the interchange fee, as service tax has been paid on the entire MDR, we find that the issue under dispute in the present case is no more *res integra*. Therefore, the impugned orders dated 29.11.2013, 14.12.2015 and 14.12.2017 confirming the adjudged demands does not stand the legal scrutiny. Accordingly, the adjudged demands along with interest and imposition of penalty on the appellants, in impugned orders dated 29.11.2013, 14.12.2015 and 14.12.2017 are not legally sustainable and thus these are liable to be set aside.

10. In the result, the impugned orders are set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in open court on 17.08.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

SM