IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No. 40935/2016

(Arising out of Order in Appeal No.4/2016 (STA – II) dated 19.1.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

Punjab National Bank Ltd. **Appellant**
Circle Office, PNB Towers
46 – 49, Royapettah High Road
Chennai – 600 014.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam High Road
Chennai – 600 034.

APPEARANCE:

Shri Arun Prasad, Advocate for the Appellant
Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41180/2026 DATED 16.11.2026

INTERIM ORDER NO. 01/2026

Date of Hearing: 12.01.2026
Date of Decision: 29.04.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 4/2016 (STA – II) dated 19.1.2016 passed by the Commissioner of Service Tax (Appeals – I), Chennai (impugned order).

2. Brief facts of the case are that the appellant is engaged in banking service and are registered with the Service Tax Department. It was noticed that the appellant has collected '**commitment charges**' from the customers in case of non-availment of sanctioned loan facility.

Commitment charges so collected by the appellant for the period from 2007 – 08 to 2011 – 12 was Rs.1,14,80,950/- and the same allegedly attracted service tax under 'Banking and Other Financial Services' under section 65(105)(zm) of the Finance Act, 1994 but the appellant has not paid Service Tax. Hence Show Cause Notice (**SCN**), dated 29.10.2012 was issued demanding Service Tax of Rs.12,76,769/-. After due process of law, the Ld. Adjudicating Authority passed Order in Original (**OIO**), dated 27.06.2014, confirming the demand of service tax under section 73 along with interest under sec. 75 and imposed penalties under section 77 and 78 of the Act. The appeal preferred by the appellant before the Ld. Commissioner (Appeals) came to be rejected except for setting aside the penalty imposed under section 77. Hence the present appeal.

3. The learned Advocate Shri Arun Prasad appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 Shri Arun Prasad the Ld. Counsel for the appellant submitted as follows:

A. The appellant is a nationalised bank registered under *"Banking and Other Financial Services"* and complying with statutory requirements.

B. In the ordinary course of lending, interest accrues from the date of availability of the loan. Where the borrower delays drawdown after sanction, the lender suffers loss of interest as the sanctioned funds remain idle though contractually committed. To compensate such loss, banks levy charges on the undisbursed

portion of sanctioned loans till drawdown. These charges are levied for keeping funds available at the agreed rate and, in substance and economic reality, represent interest.

C. For accounting purposes, income on undrawn loan amounts is termed *"commitment charges"* and income on drawn amounts is termed *"interest"*. However, commitment charges are nothing but interest on undisbursed loan amounts, calculated as a percentage thereof, and differ only in nomenclature.

D. While lending falls under Section 65(12) of the Finance Act, 1994, Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 specifically excludes *"interest on loans"* from the taxable value. Neither the Act nor the Rules define *"commitment charges"*. Since service tax is leviable only on provision of taxable service for consideration, and interest is expressly excluded, commitment charges—being in the nature of interest—are not taxable.

E. The Department, by letter dated 19.06.2012, sought to levy service tax on commitment charges for the period 2007-08 to 2011-12. The appellant, vide reply dated 02.08.2012, clarified that the said amounts represented interest and that no taxable service was rendered. However SCN dated 09.10.2012 was issued proposing demand of duty along with interest and penalties and subsequently confirmed by OIO dated 27.06.2014.

F. The entire demand is founded solely on CBEC Circular No. 137/62/2011-ST dated 21.10.2011, which, even otherwise, cannot be applied retrospectively to the period April 2007 to

October 2011. Hence, the demand for the extended period is unsustainable.

G. Invocation of extended limitation under Section 73 and imposition of penalty under Section 78 are unwarranted, as there was no suppression, wilful misstatement or intent to evade tax. The issue involved is purely interpretational and was clarified by the Department itself only in 2011. No service tax was collected from customers and the Department was fully aware of the nature of the transactions.

H. The Commissioner (Appeals) failed to consider statutory definitions of *"interest"* under the Interest Act and Income-tax Act, binding judicial precedents, and the appellant's submissions, and has passed a non-speaking order without recording reasons.

I. Without prejudice, the appellant is entitled to cum-tax benefit and waiver of penalty under Section 80, as the appellant acted under bona fide belief and reasonable cause.

He prayed that the appeal may be allowed.

3 Smt. O.M. Reena, Ld. Authorised Representative for the respondent, submitted that Punjab National Bank collected "commitment charges" for keeping available the undisbursed portion of sanctioned loan limits. SCN dated 09/10/2012 proposed service tax on such charges for April 2007–March 2012 as consideration for "lending" under Banking and Financial Services (Section 65(12)), taxable under Section 65(105)(zm) of the Finance Act, 1994. As the charges were not "interest", they were treated as service charges for keeping funds available. Extended period/suppression was invoked as

the charges were not reflected in ST-3 returns and were disclosed only in response to the Department's letter dated 18/04/2012. In her oral and written submissions put forward during the oral hearing she summarised the orders and leading judgments on the matter as under:

A) OIO (Original Adjudicating Authority): Relying mainly on **HUDCO Ltd Vs CCE,** 2012 (26) STR 531 (Tri.-Ahmd), held that charges collected in relation to lending (other than interest) are taxable; drew analogy with prepayment/reset charges. Found commitment charges are borrower-specific, collected separately (not as interest), and involve a service element in relation to lending. Held they are not penalty; treated them akin to liquidated damages (relying on *United Telecom* and *HFCL*). Board/TRU letters were cited. Demand for extended period was confirmed with equal penalty, invoking suppression.

B) OIA (Commissioner (Appeals)): Followed PNB's own case, **Punjab National Bank Vs CCE**, 2015 (38) STR 498 (Tri.) (single member; F.O. dated 08/10/2014), which followed **HUDCO**; held commitment charges compensate the bank for keeping funds available and are integrally connected with lending, hence taxable. Extended period was upheld as the Department allegedly learnt of the charges only through correspondence and they were not shown in ST-3 returns.

C) Subsequent Division Bench decision in PNB: In **Punjab National Bank Vs CST, Raipur,** 2019 (4) TMI 813 (CESTAT New Delhi) (Division Bench; order dated 20/12/2018), the Tribunal held commitment charges are liquidated damages for breach of contract and not includible in taxable/assessable value; demand was set aside.

It relied on the definition of "interest" under the Interest Act, 1974 and Section 2(28A) of the Income-tax Act, 1961, and referred to **Vishwapriya Finance Services** (Madras HC) [(2003) 179 CTR (MAD) 334 / [2002] 258 ITR 496 (MAD)] and **Ram Decorative & Industries,** 2000 (124) ELT 659. Suppression was also held not invocable on the facts of that case.

D) Contrary view – Bank of Baroda: In **Bank of Baroda v. CST, Mumbai**, 2021 (45) GSTL 381 (Tri.-Mumbai) (F.O. dated 21/08/2019), the Tribunal upheld service tax on commitment charges, distinguishing them from interest (interest on utilised amount; commitment charges on unutilised portion) and from liquidated damages (requiring proof of breach of a specific contract and nexus). Extended period was upheld; penalty relief was considered under Section 80 as tax/interest had been paid before SCN.

In view of the above facts and case law in Hudco and Bank of Baroda, she prayed that the impugned order may be upheld.

4. Heard both sides and perused the appeals and connected documents. The demand covers the period from 2007–08 to 2011–12.

5. It would be apposite to reproduce the relevant sections of the Finance Act 1994, which would help bring clarity to the issues involved.

5.1 Section **65(105)(zm**) defines the taxable service:

> **"Section 65** – (**105**) "taxable service" means any [service provided or to be provided] –
> . . . .
>
> [(**zm**)[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;]"

The amendments made to the section do not affect our discourse and are hence not discussed.

5.2 Section 65(12) defines the classification heading "Banking and other financial services":

> "(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:-
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> (i) financial leasing services including equipment leasing and hire purchase by a body corporate;
>
> (ii) credit card services;
>
> (iii) merchant banking services;
>
> (iv) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency including money changing;
>
> (v) Asset management including portfolio management, all forms of fund management, pension fund management, custodial depository and trust services;
>
> (vi) Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
>
> (vii) provision and transfer of information and data processing;
>
> (viii) banker to an issue services; and
>
> (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 locker, safe vaults, operation of bank accounts;
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> (b) foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer

in foreign exchange or an authorised money changer, other than those covered under sub-clause (a):

Explanation:- For the purposes of this clause, it is hereby declared that "purchase or sale of foreign currency, including money changing" includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be is specified separately.

5.3 Service tax is levied on various taxable services on the basis of value charged by the service provider. Its valuation is governed by section 67 of the Finance Act, 1994 read with the rules under Service Tax (Determination of Value) Rules, 2006. Relevant portions of the Section and Rule and reproduced below:

5.3.1 Section 67 - (1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this section,—

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b) [* * *]

(c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

5.3.2 Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 specifically excludes "interest on **delayed payment of any consideration** for the provision of services" from the taxable value.

6. Cases in which the commission, costs, etc., will be included or excluded.-

(1)Subject to the provisions of section 67, the value of the taxable services shall include - . . . . . .

(**2**) Subject to the provisions contained in sub-rule

(1), **the value of any taxable service**, as the case may be, **does not include-**

**** ***** *****

(iv) interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable.

(emphasis added)

6. Two issues are involved. (i) whether the activity of the appellant involves a service and is so (ii) whether *"commitment charges"* is a consideration for a service or is exempt as being *"interest".*

*7. The appellant has stated that t*he Commissioner (Appeals) failed to consider statutory definitions of *"interest"* under the **Interest Act, 1974** and **Income-tax Act, 1961.** We find that a **Constitution Bench** of the Apex Court **i**n **Hari Khemu Gawali Vs Deputy Commissioner of Police, Bombay and another** [AIR 1956 SC 559], has cautioned against the blind use of the provisions of one Act with reference to decisions dealing with other Acts. It held:

> "It has been repeatedly said by this Court that **it is not safe to pronounce on the provisions of one Act with reference to decisions dealing with other Acts which may not be in pari materia.**"

We hence do not examine those definitions or place reliance on judgments based on the said Acts. We may hence look at the common understanding of 'interest' as found in Dictionaries. Blacks Law Dictionary [REVISED FOURTH EDITION], defines 'Interest' as under:

> ***"For Money***
>
> ***Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money****. Beach v. Peabody, 188 Ill. 75, 58 N.E. 680, Shealy v. U. S., D.C.S.C., 37 F.2d 918, 919.*
>
> *Conventional interest is interest at the rate agreed upon and fixed by the parties themselves, as distinguished from that which the law would prescribe in the absence of an explicit agreement. Fowler v. Smith, 2 Cal. 568; Vernon's Ann. Civ. St. art. 5069."*

8. As held by the Hon'ble Gauhati High Court in **Magus Construction Pvt. Ltd. Vs Union of India** [2008 (11) S.T.R. 225 (Gau.)],

> "29. In the light of the various statutory definitions of "service", one can safely define "service" as an act of helpful activity, an act of doing something useful, rendering assistance or help. Service does not involve supply of goods; "service" rather connotes transformation of use/user of goods as a result of voluntary intervention of "service

> provider" and is an intangible commodity in the form of human effort. To have "service", there must be a "service provider" rendering services to some other person(s), who shall be recipient of such "service".
>
> 30. **Under the Finance Act, 1994, "service tax" is levied on "taxable service" only and not on "service provider".** A "service provider" is only a means for deposit of the "service tax" to the credit of the Central Government. Although the term "service receiver" has not been defined in the Finance Act, 1994, the "service receiver" is a person, who receives or avails the services provided by a "service provider".
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> (emphasis added)

9. The question is whether the activity of providing a loan is a taxable service and if so whether the amount collected, including 'Commitment Charges' is includable in the value of the service. The appellant admits that they are a nationalised bank providing banking and financial services. Hence the classification of the activity of merchant banking services, which includes the sanction of a loan, as a service, provided by the appellant under 'Banking and other financial services', is not disputed. They however state that when a loan is approved, interest normally starts from the date the loan is made available to the borrower, as the funds are ready for use. Usually, the loan is taken immediately. However, if the borrower asks the bank to keep the loan available without drawing it, the bank loses income because the unused funds earn no interest. To cover this loss, and as agreed in the contract, the bank charges interest from the date the loan is made available until it is actually used. For accounting purposes, interest on an undrawn loan is called "Commitment Charges", while interest on a disbursed loan is called "Interest." Commitment Charges are essentially interest on unused loan amounts. They are usually calculated as a percentage of the undisbursed amount and compensate

the bank for keeping the funds available at the agreed rate, regardless of market changes.

9.1 While "Value of taxable service" as defined under Section 67 of the Finance Act,1994 means the **gross amount charged** by the service provider **for the taxable service** rendered by him, Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 specifically **excludes interest on delayed payment of any consideration** for the provision of services from the taxable value. So the next question to be answered is whether "Commitment Charges" are nothing but **"interest" which does not enter the value of the service** rendered for purpose of calculating Service Tax.

9.2 **We find that, 'Commitment charges' are charges for services rendered. It involves a clear quid pro quo, namely payment in lieu of the bank's contractual commitment to lend the sanctioned amount at a future date**. Performance is the essence of a contract and the bank though having the option of cancelling the loan, which is not drawn by the borrower after its sanction, chooses to offer its services statedly to gives the borrower time to avail the sanctioned loan at a later date. **The payment, which is towards the assured performance of a service, cannot be considered as an interest.** They are at best in the nature of a charge to assure future service.

9.3 Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 carves out from the taxable value only "interest on delayed payment of consideration for provision of services". It does not, as suggested by the appellant, exclude "interest on loans". Being in the

nature of an exclusion, the provision requires strict construction. It is the appellant's submission that, where the borrower delays drawdown of the loan after sanction, the lender suffers loss of interest, as the sanctioned funds remain idle though contractually committed. To compensate for such loss, banks levy charges on the undisbursed portion of sanctioned loans till future disbursement. Thereby, a charge that commits the lender to disburse a sanctioned loan at a later date, even after suffering a loss of interest, does not fit the definition of being an 'interest' by itself. The charge is not on the money lent; it is on the money that sits idle in the bank. The payment is for ensuring the performance of contract by the bank even at a later date. The payment of the charge thus entitles the borrower to a separate and additional period of time beyond the date of sanction of the loan itself. **Hence while liability for 'interest' is based on the principle of compensation for use of the bank's money, 'commitment charge' is for the bank's contractual commitment to lend the sanctioned amount at a future date.** Hence, the impugned order is legal and correct on merits, in including the 'commitment charges' as a part of the gross amount charged while determining the value of the taxable services provided by the appellant and needs to be upheld. The issue of raising a demand for the extended period and imposition of penalty is discussed separately.

9.4 As regards the Appellants request for allowing cum-tax benefit while calculating duty payable, we hold that where consideration is received for services rendered, the amount so received is deemed inclusive of service tax, and the appellant is entitled to the cum-duty

benefit while determining the taxable value, unless service tax has been separately paid by the customer. Moreover Section 67(2) of the Finance Act 1994, provides that where the gross amount charged is inclusive of service tax, the value of the taxable service shall be the amount which, when service tax is added, equals the gross amount charged. A coordinate Bench has taken a similar view in **CCE, Patna Vs Advantage Media Consultant**, 2008 (10) STR 449 (Tri.-Kolkata).

10. A coordinate Bench of his Tribunal at Mumbai in the case of **Bank of Baroda Versus Commissioner of Service Tax, Mumbai** [2019 (8) TMI 1029 - CESTAT MUMBAI], did not find any merits in the submissions of the appellant that the commitment fees charged by them is interest charge or in nature of liquidated damages. It held as under:

> "2.1 Appellant is a public sector bank and is providing Banking and Financial Services as defined by Section 65(12) of the Finance Act, 1994.
>
> 2.2 As per the intelligence gathered the Appellant had entered into a credit facility agreement with M/s Clearing Corporation of India Ltd (CCIL) under which M/s CCIL were required to pay a commitment fee to the Appellant, as fixed percentage, per annum, of fund based limit. The said commitment fee was directly being debited to the account, by the Appellant, without raising any invoice. The said service of lending was a taxable service, w.e.f 11.09.2004 under the category of *"Banking and Other Financial Services".* However appellants had not taken any registration or paid service tax in respect of the services so rendered.
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> *****. *****. *****
>
> 3.1 In the appeal filed appellants have challenged the impugned order stating that
>
> - Commitment charges/ fees received by them are not distinct and separate from interest and hence should not have formed the part of taxable service under the category of *"Banking and Other Financial Services."*

- The amounts charged by the appellant to CCIL for establishing the line of credit at Rs 3,75,000/- per quarter **is in lieu of interest which the appellant would have earned had CCIL utilized the facility and as CCIL had not utilized the facility, in the hands of appellant these so named commitment fees charges are in fact, in terms of banking practices, minimum interest and not bank charges.**

- The facility so extended by the appellant is disaster management facility only and cannot be termed as lending. **This is further strengthened by the fact that CCIL had never utilized this facility by drawing any amount out of Rs 100 Crore extended by them during the entire period.**

*****. *****. *****

5.7 **In view of the discussions as above and established practices in banking and financial industry we do not find any merits in the submissions of the appellant that the commitment fees charged by them for extend clean line of credit facility to CCIL is interest charge or in nature of liquidated damages.** The reliance placed by the counsel for appellant on the decision of this tribunal in case of **Ram Decorative & Industries Limited** [2000 (124) ELT 659 (T)] is not of any help. In that decision the tribunal was dealing with goods which are tangible in nature and were produced for sale to the customer on an agreed price. The charges which were collected towards the goods not actually lifted by the buyer were held not to be added to the value of the goods that were actually lifted by the buyer. In the case of services, which are intangible in nature the same principle cannot apply. The services are agreed to be provided against the consideration for providing them. The creation Clear Line of Credit was the service provided by the appellant to their client viz CCIL against the consideration which they call "commitment fees". Against the amounts drawn from this clear line of credit, appellants recovered the interest at agreed rate. Since these charges were towards the creation of Clear Line of Credit facility for the client, they cannot be called the damages too. It is not even the case of appellant that CCIL had ever committed to draw ₹ 100 crore from the Clear Line of Credit extended to them by the appellant. They had got this Clear Line of Credit facility extended to them against the payment of agreed consideration. The reliance placed by the appellant on the various Commentaries in relation to Contract, referred in para 4.2 above do not help the case of the appellant. For levy of liquidated damages the existence of specific contract, whose performance has been vitiated by the actions of the parties to the contract need to

> be established. In the present case appellants have not been able to establish existence of such a contract whereby CCIL had agreed to borrow the said amount of ₹ 100 Crores from them. On the contrary as banking industry product Clear Line of Credit has been sanctioned by the appellant in favour of CCIL against agreed consideration. Thus in our view the findings recorded by the Commissioner in this respect cannot be faulted with.
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> (emphasis added)

11. Similarly, the Ahmedabad Bench of this Tribunal in **M/s HOUSING & DEVELOPMENT CORPORATION LTD (HUDCO) Versus CST, AHMEDABAD** [2011 (11) TMI 95 - CESTAT, AHMEDABAD / 2012 (26) S.T.R. 531 (Tri. - Ahmd.)], which was also cited in the impugned order, examined bank charges called "**prepayment charges"** and **"reset charges",** which are akin to **"commitment Charges"** and held:

> "6. When borrower prefers to make prepayment of part/full amount of loan during the loan period, the appellant levies **prepayment charges** on the amount prepaid. It was submitted that this amount is dependent upon the tenure of loan, differential interest and the interest loss that may have to be borne by the appellant and further balance repayment period etc. According to the appellant, these charges are nothing but additional interest and they treat it as interest income and income tax department also treats it as interest income. In case of finance on fixed interest loan, rate of interest remains fixed for a period of 5 years. But, if the borrowers fulfills certain conditions before expiry of 5 years, the borrower is given an option to opt for floating rate of interest loan. At the time of conversion of fixed rate of interest loan into floating rate interest loan, **reset charges** are levied. Ld. Counsel for the appellant also explained that these calculations are made on certain parameters. The question that arises whether such charges are includible for the purpose of levy of Service Tax on 'Banking and other financial services'.
>
> 14. . . . . In this case, prepayment/reset charges are not in the nature of interest at all but is in the nature of charge for early closure of loan/resetting of loan and is relatable to lending since it either closes the loan or charges the terms and hence it cannot be equated with interest at all. It has to be noted that in the case of prepayment, interest is collected

> separately till the date of prepayment. It is also not necessary that when a loan is prepaid or reset, the lender suffers. In fact, foreclosure by prepayment and reset are relatable to lending and if an application for processing a loan application is chargeable to Service Tax and processing fee charged for foreclosure/prepayment of loan or reset of interest would also be chargeable. In fact, we are unable to see what is the difference between the liability of Service Tax in respect of application of a loan where the processing fee is charged which is independent of loan and over and above the interest, when we see here also it is over and above the interest. The processing fee is charged for considering the various aspects such as credit worthiness of the borrower repaying capacity of the borrower, period of loan vis-a-vis repaying capacity of the borrower, quality of assets of the borrower etc. When the proposal is made for prepayment of loan or resetting, processing the application is involved. **Therefore, there is definitely an element of service in prepayment of loan or resetting of interest. As already discussed earlier, the definition covers any activity in relation to lending.**
>
> 15. Even though, we have not discussed the charges levied for resetting the loan in detail, the principle underlining reset of interest and prepayment of loan are same. The Revenue has a better case in respect of reset charges since the issue is not at all covered by the decision of the Tribunal in the case of SIDBI as far as resetting charges are concerned. Further, in the case of resetting, the relationship between the lender and the borrower does not cease to exist and loan also continues. **Therefore, resetting of interest rate can be definitely considered as a service rendered by the appellant in relation to lending and is covered by Service Tax definition.** . . . . In any case, in view of the conclusion that we have reached that the service tax is payable on reset charges as well as prepayment charges, we consider that it is not necessary for us to go into this aspect."
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> (emphasis added)

12. The Appellant had placed reliance in the case of **IN RE AMALGAMATIONS PVT LTD. 2012 (28) S.T.R. 641 (Commr. Appl.)**, which pertains to the First Appellate Authority and is non-binding. More so in the light of the elaborate discussions above. The other judgments cited relate to demand for duty under the extended period and are not being discussed, in the light of our decision below.

13. We find that the period of demand in this case is from April 2007 to March, 2012. The dispute involves an interpretational issue as is clear from the clarification issued by TRU vide CBEC Circular No. 137/62/2011- ST dt. 21.10.2011. Hence a case of misdeclaration or suppression of fact is not made out and the duty and interest has to be confined to the normal period. In the circumstances a case for imposition of penalty is also not made out.

14. Accordingly, while we uphold the demand for duty and interest in the impugned order, on merits for the normal period only. The duty shall be re-calculated by giving the cum-tax benefit and interest calculated accordingly. We set aside the portion of the said order demanding duty for the extended period and imposing penalties. The appellant is eligible for consequential relief, as per law, after paying the adjudicatory dues on terms determined herein. The appeal is disposed of accordingly.

(Order pronounced in open court on _____)

(Separate Order)
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Rex

Per AJAYAN T.V.

15. I have carefully gone through the order recorded by my Learned Brother Shri. M. Ajit Kumar, Member (Technical), whereby the demand for duty and interest in the impugned order on merits for the normal period extending the cum-tax benefit, has been upheld and the portion of the said order demanding duty for the extended period and imposing penalties, has been set aside. With respect, I am unable to agree with the very aspect of rendering a decision on the matter on merits, given the fact that two conflicting decisions of coordinate benches of the Tribunal directly on the identical issue at hand, has been brought to my notice and is available on record. According to me, rather than compounding the confusion and adding to the judicial uncertainty, principles of judicial discipline mandate that the issue involved in this case needs a referral to a larger bench.

16. The issue involved in this case is whether the commitment charges received by a bank are exigible to service tax. The Appellant herein is a Government Bank (Public Sector Undertaking) registered as a service provider under the category of 'Banking and Other Financial Services'. According to the Appellant, upon lending of the loan, the interest is chargeable right from the day the loan is made available to the borrower. At times, the borrower does not avail the loan from the date on which the loan is made available. In such circumstances, in order not to lose earnings, the Bank charges interest on the borrower at the contracted interest rate, generally specified as a fixed percentage of the undisbursed loan amount, as agreed upon with the borrower. This is known as the commitment charges and are paid by the borrower as compensation for keeping a line of credit open in assurance that the bank will supply the loan at the specified future date and at the contracted interest rate, regardless of conditions in the financial and credit markets. It is the contention of the Appellant that commitment charges are nothing but interest on the unavailed portion of the loan sanctioned and does not attract service tax and that Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 as applicable for the relevant period, and which deals with cases in which the commission, costs, etc

will be included or excluded for valuation of any service, specifically excluded "interest" on loans.

17. The Department, however, is of the view that any amount collected by the service provider on account of lending is either interest or service charges. Further, according to the Department, the commitment charges cannot be considered to be interest, and therefore are to be treated as consideration for the service provided. Hence the Department demanded service tax on the commitment charges collected for the period from 2007-08 to 2011-12. After due process of law, the Adjudicating Authority, rendered a finding inter-alia that commitment charges are akin to liquidated damages, but being not interest, are to be appropriately treated as consideration for the services provided and accordingly leviable to service tax under Section 65(105)(zm). The Adjudicating Authority went on to confirm the demand along with appropriate interest and imposed penalties. Aggrieved by the Order in original, the Appellant preferred an appeal before the Commissioner of Service Tax (Appeals-II). The Appellate Authority, before whom the Appellant alone was the aggrieved party, however, rejected the appeal, save for setting aside the penalty imposed under Section 77 of the Finance Act, 1994. Aggrieved and dissatisfied, the Appellant has preferred this Appeal.

18. The rival submissions were heard on 09.12.2025 and adjourned to 12.01.2026. In the interregnum, as permitted, Shri. S.P. Srinivasan, the Ld. Counsel appearing for the appellant filed his written submissions on 05.01.2026, essentially recapitulating the contentions raised before the authorities below. Subsequently, Ms. O.M. Reena, Ld. Authorised Representative, appearing for the Respondent filed her written submissions on 07.01.2026. The matter was reserved on 12.01.2026.

19. Ms. O.M. Reena, Ld. Authorised Representative, has been exceptionally fair in her written submissions, which is truly appreciated. Ld. AR has pointed out that the impugned OIA has relied on ***a single member decision rendered on October 8, 2014 in the Appellant's own case***, namely, ***Punjab National Bank v. CCE & ST-Jaipur, II,2015(38) STR 498 (Tri-Del): 2014 (11) TMI 250-CESTAT NEW DELHI***, wherein it was held that commitment charges are exigible to service tax.

However, she has also drawn our attention to a decision of the ***Division Bench of the Tribunal, Delhi Bench, subsequently, again in the Appellant's own case***, namely, ***Punjab National Bank v. CST, Raipur, 2019 (4) TMI 813-CESTAT NEW DELHI has vide the order dated December 20, 2018,*** which has held that commitment charges are not exigible to service tax. Thereafter, the Mumbai Bench of the Tribunal, in ***the decision dated 21-08-2019, rendered in Bank of Baroda v CST, Mumbai, 2021 (45) G.S.T.L 381 (Tri-Mumbai),*** has negated the contentions of the Appellant therein that the commitment charges are in the nature of interest charges or liquidated damages, and has held that commitment charges are liable to service tax.

20. Thus, it is seen that two benches of the Tribunal have, in the case of two different Government Banks (PSU), taken diametrically opposing views on whether commitment charges are exigible to service tax in the context of a bank making available a loan to a borrower. Incidentally, it is also noticed that in the decision rendered in ***Bank of Baroda v CST, Mumbai, 2021 (45) G.S.T.L 381 (Tri-Mumbai)***, the earlier single bench decision of the Appellant's case was noted, however, the Division Bench decision of 2018, appears to have gone unnoticed.

21. At this juncture, it is apposite to notice that the Honourable Supreme Court in ***Lala Shri Bhagwan v. Ram Chandra MANU/SC/0320/1965: 1965]3SCR218***, speaking through Gajendragadkar, C.J., observed:

> "**It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re- considered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of Judicial decorum and propriety.**" **(emphasis supplied)**

22. Further, a constitution bench of the Honourable Supreme Court in ***Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673,*** has in para 12(2) held as under:

> "**12(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt**

all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing, before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

23. It is also seen that the Honourable Supreme Court in the decision in ***Gammon India Ltd v. CC, Mumbai, 2011 (269) ELT 289 (SC)***, has held as under:

"24. Before parting, we wish to place on record our deep concern on the conduct of the two Benches of the Tribunal deciding appeals in the cases of *IVRCL Infrastructures & Projects Ltd*. (supra) & *Techni Bharathi Ltd*. (supra). **After noticing the decision of a co-ordinate Bench in the present case, they still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty with regard to the declaration of law involved on an identical issue in respect of the same Exemption Notification. It needs to be emphasised that if a Bench of a Tribunal, in identical fact situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on earlier occasion, that will be destructive of the institutional integrity itself. What is important is the Tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, the propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a Larger Bench, for which provision exists in the Act itself.** In this behalf, the following observations by a three Judge Bench of this Court in *Sub-Inspector Rooplal & Anr. v. Lt. Governor & Ors.,* (2000) 1 SCC 644 are quite apposite:

"At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. **If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a Larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware**

of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a Larger Bench if it disagrees with the earlier pronouncement."

We respectfully concur with these observations and are confident that all the Courts and various Tribunals in the country shall follow these salutary observations in letter and spirit. **(emphasis supplied)**

24. It would also be profitable to notice that in the Judgement in ***Jaisri Sahu v Rajdewan Dubey and Others***, ***AIR 1962 SC 83***, a four-judge bench of the Honourable Supreme Court has held as under:

"**11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench**. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Seshamma* v. *Venkata Narasimharao* that the decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in *Halsbury's Laws of England*, 3rd Edn., Vol. 22, para 1687, pp. 799-800:

> "The court is not bound to follow a decision of its own if given *per incuriam*. A decision is given *per incuriam* when the court has acted in ignorance of a previous decision of its own or of a Court of a coordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must

decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."

In *Virayya* v. *Venkata Subbayya* it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in *Bilimoria* v. *Central Bank of India*. **The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court**." **(emphasis supplied)**

25. For the aforesaid reasons, in light of the aforementioned binding Apex court decisions, I refrain from expressing an opinion on the merits of the matter either way. Respectfully adhering to the binding judicial dicta reproduced above, I am of the considered view that to clarify such an ambiguity; i.e., whether the commitment charges received by a bank are exigible to service tax; by resolving conflict between the two decisions of the Tribunal noted supra, and to ensure that the mischief caused by such conflicting views are erased, it is imperative that this order along with the referred conflicting decisions are placed before the Hon'ble President for orders, as deemed appropriate, with respect to constituting a Larger Bench to resolve the conflict and restore the certainty in law. Accordingly, Registry is so directed.

Sd/-
(AJAYAN T.V.)
Member (Judicial)

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DIFFERENCE OF OPINION

26. A divergence of opinion has arisen between the Members of the Bench on the merits of the issue. The learned Member (Technical) holds that "commitment charges" constitute consideration for services rendered, involving a clear quid pro quo, viz., payment in lieu of the bank's contractual commitment to lend the sanctioned amount at a future date; such payment, being for assured performance of a service, cannot be characterised as "interest". The learned Member (Judicial), noting two conflicting decisions of coordinate Benches of the Tribunal on the issue, opines that judicial discipline requires a reference to a Larger Bench and has, accordingly, refrained from expressing any view on merits. This has raised some important questions of law. In order to resolve the issue, the Registry is directed to place the matter before the Hon'ble President for a reference to a Larger Bench. The following points arise for determination:

(I) Whether the order of the Tribunal in **Punjab National Bank Vs CST, Raipur** [2019 (4) TMI 813-CESTAT NEW DELHI],

(a) having determined at para 10 of the Order that the show cause notice was found to be barred by time and the demand for this reason is not sustainable, yet acted outside its jurisdiction and addressed the issue on merit which is an illegality. [See: **State Bank of India Vs B.S. Agricultural Industries** - AIR 2009 SUPREME COURT 2210 / **Commissioner Of Customs, Mumbai Vs M/S B.V. Jewels And Ors** -AIR 2005 SUPREME COURT 1231 / **Commissioner Customs, Central Excise & Service Tax Vs M/S Monsanto Manufacturer Pvt. Ltd.** [2014

(35) STR 177 (ALL) / **E.T.A. General Pvt. Ltd. Vs Additional Commissioner of C. Ex., Chennai** [2016 (44) S.T.R. 409 Mad.] – a clearly laid down legal principle respectfully implemented by this very Bench in a number of Orders - see: **Nagarjuna Hospital Ltd. Vs Commissioner of Customs (General) -** FINAL ORDER NO. 40616/2026, Dated: 02.02.2026 / **M/s. RU's Marketing and Creative Unit Vs Commissioner of GST & Central Excise** - FINAL ORDER No.40460/2026, Dated: 02.04.2026]

(b) having not been made a part of the Appeal Memorandum or being pressed at the Bar by the appellant, though being in their own case even after being cited by the respondent-Revenue. Further not citing the judgment even in their final 'written arguments' submitted on 05.01.2026 after the oral hearing despite our specific query recorded in Daily Order dated 09.12.2025. Thereby not relying on the said judgment for reasons best known to them.

would still have binding precedential value on other coordinate benches?

(II) If the issue at **(I)** above is answered in the affirmative, then;

i. Whether in the light of the decision of the Division Bench in the case of **Punjab National Bank Vs CST, Raipur** [2019 (4) TMI 813-CESTAT NEW DELHI], 'commitment charges' are in the nature of interest as held under Income Tax law and are not includable in the assessable value?

OR

ii. Whether in the light of the decision of:

(a) the Division Bench in the case of **Bank of Baroda Vs CST, Mumbai** [2021 (45) GSTL 381 (Tri.-Mumbai)], that 'commitment charges' are neither interest charges as claimed by the appellant nor liquidated damages. The creation of Clear Line of Credit was the service provided by the appellant to their client against the consideration which they call "commitment fees".

(b) the **Member (Technical)**, that "commitment charges" constitute consideration for services rendered, involving a clear quid pro quo, viz., payment in lieu of the bank's contractual commitment to lend the sanctioned amount at a future date; such payment, being for assured performance of a service, cannot be characterised as "interest".

'commitment charges' are includable in the assessable value as per section 67 of the Finance Act, 1994?

(Order pronounced in open court on _____)

(separate difference of opinion) Sd/-
(**AJAYAN T.V.**) (**M. AJIT KUMAR**)
Member (Judicial) Member (Technical)

Rex

DIFFERENCE OF OPINION

27. I have perused the difference of opinion noted and the points arising for determination framed by the Ld. Member (Technical). With respect, I disagree with the stated divergence of opinion framed as well as the points for determination as formulated by the Ld. Member (Technical). According to me, the divergence of opinion has arisen on the very aspect of rendering a decision on the matter on merits and hence cannot be framed as a divergence of opinion on the merits of the issue. For the said reason, I disagree with the first point of determination framed by the Ld. Member, Technical as it would tantamount to opining on one of the conflicting decisions and which, to my mind, would be in defiance of the binding dicta of the Hon'ble Apex Court decision in ***Jaisri Sahu v Rajdewan Dubey and Others***, ***AIR 1962 SC 83*** as noticed in my decision. Further, the said opinion is that which is only stated now in the difference of opinion, in the first point of determination, and is also an opinion that has not been stated in the decision authored by the Ld. Member (Technical). Furthermore, the second point of determination as framed by the Ld. Member (Technical) is contingent on the outcome of the first point of determination, which as noted supra, I have expressed my disagreement thereto and hence it is also not agreed to. For the aforesaid reasons, according to me, the singular difference of opinion that would now arise for consideration by a third member, is as under:

1) In light of the fact that two conflicting decisions of coordinate benches of the Tribunal on the issue of whether the commitment charges received by a bank are exigible to service tax; namely, the decision in ***Punjab National Bank v. CST, Raipur, 2019 (4) TMI 813-CESTAT NEW DELHI, vide the order dated December 20, 2018*** and the decision ***in Bank of Baroda v CST, Mumbai, 2021 (45) G.S.T.L 381 (Tri-Mumbai) vide the order dated 21-08-2019;*** has been brought to the notice of this division bench and is available on record, whether Member (Technical)

could have gone on to render a decision on merits, instead of a referral to a larger bench,

OR

Whether in adherence to judicial discipline, to clarify such an ambiguity; i.e., whether the commitment charges received by a bank are exigible to service tax; by resolving conflict between the two decisions of the Tribunal noted supra, and to ensure that the mischief caused by such conflicting views are erased, it is necessary that the matter be placed before the Hon'ble President for orders, with respect to constituting a Larger Bench to resolve the conflict and restore the certainty in law, as held by Member (Judicial) in his decision?

Registry is directed to place the records before the Hon'ble President.

Sd/-
(AJAYAN T.V.)
Member (Judicial)

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28. In view of the difference of opinion as framed, Registry is directed to place the order and appeal records before the Hon'ble President for further necessary action.

(Order pronounced in open court on 29.04.2026)

Sd/-
(**AJAYAN T.V.**)
Member (Judicial)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Rex

Per: Shri P. Dinesha

This reference to the third Member arises from the difference of opinion expressed by the learned Members in the above Appeal. I have carefully perused their respective Interim Orders and the points of difference separately recorded by each of them. Heard both sides at length on 13.08.2026, and perused the synopsis filed by both the sides.

2. Facts have been very elaborately discussed in the Interim Order dated 29.04.2026 by both the learned Members and hence, I do not propose to repeat the same. The difference arose as to the taxability of commitment charges under Service Tax. Ld. Technical Member confirmed the taxability while the Judicial Member disagreed with the same. There is also a reference to order of coordinate Delhi Bench in the case of **Punjab National Bank Vs CST Raipur** [2019 (4) TMI 813 CESTAT New Delhi] and a later order of Mumbai Bench in the case of **Bank of Baroda Vs CST, Mumbai** [2021 (45) G.S.T.L 381 (Tri.-Mumbai)] which have expressed divergent views.

3. In the later order in the case of **Bank of Baroda** (*supra*), the Bench has considered an earlier order of Delhi Bench in very case of **Punjab National Bank Vs Commissioner** reported in 2015 (38) S.T.R. 498 (Tribunal) and at para 5.9 they have reproduced the following :

> "5. I have carefully gone through the facts of the case and submissions made by the appellants in the appeal memorandum and during personal hearing. I observe that the commitment charges are the charges imposed on the client who decide not to draw the amount of loan that has been at their disposal. These charges are basically to compensate for the loss of interest that the bank would have earned if the customer had drawn money from loan account. It is seen that the charges are related to lending of money to the client and; in order to give limit/overdraft facility, the bank keeps the fund available for the same. Under such circumstances, it is evident that such charges are integrally connected with the lending which is a taxable service. Therefore, commitment charges cannot be separated from lending service. I, therefore, hold that the commitment charges are chargeable to Service Tax and the amount of Rs. 46,902/- is recoverable from them."

[emphasis added]

4. Interestingly, in the later decision of **Punjab National Bank** decided on 20.12.2018 **[2019 (4) TMI 813-CESTAT New Delhi]** very conveniently the said

decision in the same Appellant's case was not placed before the Bench.

5. I find that decision of Mumbai Bench **[2021 (45) G.S.T.L 381 (Tri.-Mumbai)]** is just and reasonable and hence, the same is required to be followed.

6. In view of the above clear and convincing ruling of Mumbai Bench, I find that the commitment charges is liable to service tax and hence, the order of Member (Technical) which is in line with the above ruling appears to be just and proper, although for different reasons spelt out in his order.

7. The reference is answered as recorded above. The matter may be placed before the referral Division Bench for appropriate orders.

sd/-
(P. DINESHA)
Member (Judicial)

gs

Service Tax Appeal No. 40935/2016

(Arising out of Order in Appeal No.4/2016 (STA – II) dated 19.1.2016 passed by the Commissioner of Service Tax (Appeals – II), Chennai)

Punjab National Bank Ltd. **Appellant**
Circle Office, PNB Towers
46 – 49, Royapettah High Road
Chennai – 600 014.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam High Road
Chennai – 600 034.

FINAL ORDER NO. 41180/2026

MAJORITY ORDER

In view of the majority opinion, the impugned Order-in-Appeal is upheld in terms of the findings and directions of Ld. Member (Technical). The appeal is disposed of accordingly.

(Pronounced in open court on 16.11.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

Rex