CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 42491 of 2016

(Arising out of Order-in-Original No. LTUC/551/2016-C dated 23.09.2016 passed by Commissioner, Large Taxpayer Unit, 1775, Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101)

M/s. Cognizant Technology Solutions India Private Limited, **.... Appellant**
6th Floor, New No.165,
Old No.110, Menon Eternity Building,
St. Mary's Road, Alwarpet,
Chennai 600 018.

VERSUS

The Commissioner of GST & Central Excise **... Respondent**
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai,
Nandanam,
Chennai 600 035.

APPEARANCE :

Shri Rajaram Ramanan, Consultant, for the Appellant
Dr. S. Subramaniam, Special Counsel for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41016/2024

DATE OF HEARING : 29.07.2024
DATE OF DECISION : 01.08.2024

Per: Ms. Sulekha Beevi. C.S

Brief facts are that the appellant is providing Information Technology Software Services and Business Support Services. Appellant also avails the facility of cenvat credit of service tax paid on various input services. During the course of audit, it was noted from the Annual Reports of the tax payer that they had engaged in trading of securities, during the period from 2010-11 to 2014-15. Appellant had made investments in equity shares and mutual fund schemes. This is reflected in the Annual Reports of the appellant under the heading "Investments". These financial statements showed that the appellant has received proceeds from sale of securities, and the amount was reflected under the schedule for 'other income' in their Annual Reports. The Department was of the view that the appellant has earned profit from the activity of trading of securities. As per Rule 2 (e) of Central Credit Rules, 2004 which defines '*exempted services'* from 01.04.2011 an Explanation has been added which says 'exempted services' includes '*trading'*.

2. Section 66D of the Finance Act, 1944 which gives the list of services which are not subject to levy of service tax reads as follows :

> *" The negative list shall comprise of the following services, namely -,*
>
> *(a) "services by Government or a local authority excluding the following services to the extent they are not covered elsewhere -*
>
> ……..
>
> ***(e) trading of goods.***
>
> ……
>
> *(q) funeral, burial, crematorium or mortuary services including transportation of the deceased."*

3. Since trading of goods is listed in the 'negative list' of services, no service tax is leviable on 'trading of goods'. This implies that trading of goods continues to be an exempted service as per Rule 2 (e) of Cenvat Credit Rules, 2004 even after 01.07.2012.

4. As per Section 65 (50) of the Finance Act, 1994, which was in vogue prior to 01.07.2012, the definition of "*goods*" reads as under :

> *" 'goods' has the meaning assigned to it in clause (7) of Section 2 of Sale of Goods Act, 1930 (3 of 1930)."*

5. As per clause (7) of Section 2 of Sale of Goods Act,1930 –

> *" 'goods' means every kind of movable property other than auctionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale under the contract of sale."*

6. With effect from 01.07.2012 Section 65B (25) of the Finance Act, 1994 defines "*goods*" as follows :-

> *" 'goods' means every kind of movable property other than auctionable claim and money and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contact of sale"*

7. "*Securities*" has been defined under Section 65B (3) of the Finance Act, 1944 as follows :

> *" 'Securities' has a meaning assigned to it in clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956)" .*

8. Clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956) defines '*securities'* as follows –

> *"securities" include –*
>
> *(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
> *(ia) derivative;*
> *(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;*

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002;
(id) units or any other such instrument issued to the investors under any mutual fund scheme;
(ii) Government securities;
(iia) such other instruments as may be declared by the Central Government to be securities; and
(iii) rights or interest in securities.'

9. As per Section 2 (h) (i) and 2 (h) (id) of the Securities Contract (Regulation) Act, 1956 (42 of 1956), the activity of purchase and sale i.e., trading of units of Mutual Fund Schemes and Equity Share indulged by a taxpayer, is nothing but trading of '*securities'* . As '*goods*' include '*securities*' and trading of goods is an exempted service, the activity of purchase and sale of units of Mutual Fund Schemes and Equity Shares indulged by the appellant, is an exempted service.

10. Rule 6 provides for the obligation of manufacturer or service provider. It says that cenvat credit is not allowed on input services used for providing output services. Rule 6 (1) of the Cenvat Credit Rules, 2004, reads as follows –

'The Cenvat credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services, or input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services, except in the circumstances mentioned in sub-rule (2).'

11. Sub-rule (2) of Rule 6 of the Cenvat Credit Rules, 2004, reads as follows –

'where a manufacturer or provider of output service avails of Cenvat credit in respect of any inputs or input services and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for –

(a) the receipt, consumption and inventory of inputs used –

…..

(b) the receipt and use of input service –

(i) in or in relation to the manufacture of exempted goods and their clearance upto the place of removal;

(ii) in or in relation to the manufacture of dutiable final products, excluding exempted goods, and their clearance upto the place of removal;

(iii) for the provision of exempted services; and

(iv) for the provision of output services excluding exempted services and shall take Cenvat credit only on inputs under sub-clauses (ii) and (iv) of clause (a) and input services under sub-clauses (ii) and (iv) of clause (b)'

12. According to Department, the appellant has availed cenvat credit of service tax paid on common input services such as Banking and Other Financial Services, Chartered Accountant Service, telecommunication Service, Security Agency Service etc. used for providing taxable services (ITSS) as well as exempted service (trading of securities). The appellant had not maintained any separate account for receipt and use of input services used for taxable output services and exempted services. They had not paid any amount on the value of exempted services as stipulated under Rule 6 (3) (i) of Cenvat Credit Rules, 2004. So also, the appellant had not exercised any option to pay an amount as determined under Rule 6 (3A) of CCR 2004.

13. Hence a show cause notice dt. 16.10.2015 was issued for the period 2010-11 to 2014-15 on the basis of annual reports alleging contravention of the provisions of Rule 6 (1), 6 (2) and 6 (3) (i) of CCR 2004. The show cause notice proposed to recover an amount equal to 6% of the value of exempted services for the disputed period as provided in Rule 6 (3) (i) of CCR, 2004. It was also proposed to demand interest and to impose penalties. After due process of law, the original authority confirmed the demand, interest and imposed

penalties. Aggrieved by such order, the appellant is now before the Tribunal.

14. The Ld. Consultant Shri Rajaram Ramanan appeared and argued for the appellant. Para-28 of the show cause notice was adverted to by the Ld. Consultant to submit that the entire demand has been raised on the basis of annual reports of the appellants. The extracts of the Annual Report was placed before us to submit that the appellant had invested money in securities. The appellant gets income by providing Information Technology Software Services to their clients. Such income is judiciously invested by the appellant. They are not engaged in trading of securities and have only invested in securities as permitted by the provisions of the Companies Act and the guidelines issued by SEBI. The appellant has only deposited the surplus income received by them in specified investments for the purpose of appreciation and acquisition of the value in their investment. As and when the need for any expenditure arises, the appellant liquidates these investments which is part of their treasury operations. These facilities are essential for their own investment of funds and the appellant is in no way engaged in trading of securities. The appellant company has only one portfolio which investment portfolio and does not have two separate portfolios for investment and trading. The securities are valued and held as capital assets in their books and not as stock in trading.

15. The show cause notice has been issued on a misconception of facts and law, alleging that the appellant is engaged in the business of trading. The appellant does not engage in buying or selling of securities for any other person. They only invest their income by buying and selling of shares. All these investments is appropriately disclosed in their financial statements. Their financial statements for the year ending 31st March 2011 which was referred to by the Ld.

Consultant to substantiate their argument that they have only invested money in mutual funds is as under :

COGNIZANT TECHNOLOGY SOLUTIONS INDIA PRIVATE LIMITED

CASH FLOW STATEMENT FOR THE YEAR ENDED MARCH 31, 2011

	For the year ended 31-Mar-11 Rs.	For the year ended 31-Mar-10 Rs.
A. Cash flow from operating activities:		
Net profit before tax	**22,731,892,483**	**14,381,105,776**
Adjustments for:		
Depreciation	3,722,796,755	3,148,705,606
Interest Income	(729,911,792)	(503,848,147)
Income from Investment - Dividends	(74,679,200)	(72,083,308)
(Profit)/Loss on disposal of Fixed Assets	1,446,420	7,319,107
Capital Gains on Investments in units of Mutual Funds	(228,564,861)	(262,861,347)
Provision for doubtful debts	7,620,396	16,124,902
Unrealised foreign exchange (gain) /loss	(218,886,932)	(324,460,436)
(Gain)/Loss on outstanding forward contracts	738,118,917	(2,730,439,425)
Provision for warranty, rebates and reserves	(10,762,181)	57,270,244
Liabilities written back during the year	(926,115,803)	(371,321,815)
Lease equalisation charge	75,571,786	11,902,624
Operating profit before working capital changes	**25,088,726,188**	**13,357,413,961**
Adjustments for changes in working capital :		
(Increase)/ Decrease in Sundry Debtors	(24,470,005,572)	(2,416,325,580)
(Increase)/ Decrease in Other Receivables	(3,413,519,994)	(1,888,954,456)
Increase/ (Decrease) in Trade and Other Payables	4,197,621,605	2,663,936,920
Cash generated from operations	**1,402,822,227**	**11,716,070,865**
Taxes Paid(Net of Tax Deducted at Source)	(2,110,356,291)	(2,273,876,937)
Fringe Benefit Tax paid	-	(27,132,183)
Net cash (used in)/from operating activities	**(707,534,064)**	**9,415,061,745**
B. Cash flow from Investing activities:		
Purchase of fixed assets including Capital work in progress	(9,075,256,314)	(3,422,111,843)
Proceeds from disposal of fixed assets	194,786	8,553,713
Purchase of Money market mutual funds	(54,882,414,861)	(50,182,693,851)
Proceeds from sale of money market mutual funds	51,851,093,853	51,182,823,511
Investment in Subsidiaries	-	(3,808,620,407)
Interest Received	908,963,017	58,232,157
Dividend Received	145,579,200	1,183,308
Capital gains from investment in mutual funds	228,564,861	262,861,347
Fixed Deposits with Bank (net)	5,772,169,550	(14,012,726,000)
Net cash (used in)/from Investing activities	**(5,051,105,908)**	**(19,932,497,865)**
C. Cash flow from Financing activities:		
Loan given to related parties	(371,237,421)	(400,640,556)
Repayment of loan by related parties	372,018,164	348,117,043
Loan taken from related parties	48,293,476	120,600,000
Repayment of loan to related parties	(26,000,000)	(120,600,000)
Net Cash from/(used in) financing activities	**23,072,219**	**(54,523,513)**

Cognizant Technology Solutions India Private Limited

Lovelock & Lewes Chartered Accountants FRN 301356E Chennai

COGNIZANT TECHNOLOGY SOLUTIONS INDIA PRIVATE LIMITED

CASH FLOW STATEMENT FOR THE YEAR ENDED MARCH 31, 2011 - (contd.)

	As at 31-Mar-11 Rs.	As at 31-Mar-10 Rs.
Net (Decrease)/ Increase in Cash & Cash Equivalents	**(5,735,567,753)**	**(10,571,959,833)**
Cash and cash equivalents as at the beginning of the year	**6,918,358,000**	**17,490,317,833**
Cash and cash equivalents as at the end of the year	**1,182,790,247**	**6,918,358,000**
Cash and cash equivalents comprise		
Balance with Scheduled Banks excluding deposits which have a tenure of three months or more	1,185,978,110	6,813,360,534
Effect of Exchange rate changes- Gain/(Loss)	(3,187,863)	104,997,466
	1,182,790,247	6,918,358,000

Notes :

1 The above Cash flow statement has been prepared under the indirect method as setout in AS-3 on Cash Flow statement.
2 Figures in brackets indicate cash outgo.
3 Previous year's figures have been regrouped and recast wherever necessary to conform to the current year classification.
4 Balance with Scheduled Banks includes Rs. 32,785 (Previous Year -Rs. 184,883) in Escrow account for Stock Options

This is the Cash Flow referred to in our report of even date

For LOVELOCK & LEWES
Firm Registration Number 301056 E
Chartered Accountants

A. J. Shaikh
Partner
Membership No. 203637
Place : Chennai
Date : 21 th Sep, 2011

For and on Behalf of the Board of Directors

R. Chandrasekaran
President & Managing Director

K. Thiagarajan
Director

C. Vijayakumar
Company Secretary

Cognizant Technology Solutions India Private Limited

16. The show cause notice alleges that the buying and selling of shares / mutual funds is an activity of trading done by the appellant. The appellant engages other brokers / agents for sale and purchase of their shares in the stock exchange. They do not engage in any activity of trading of goods / securities for other and is not providing any such service. As the appellant is not providing any exempted services, they are not liable to maintain separate accounts. The demand raised alleging that the appellant is also engaged in providing exempted services is factually and legally erroneous.

17. It is submitted that the issue stands covered by the decision of the Tribunal in the case of **M/s.Instakart Services Pvt. Ltd. Vs Commissioner of Central Tax, Bangalore** Final Order No.20415/2024 dt. 13.03.2024 - CESTAT BANGALORE and **M/s.Ponni Sugars Erode Ltd. Vs Commissioner of GST & Central Excise, Salem -** 2024 (5) TMI 3 - CESTAT CHENNAI. It is prayed that the appeal may be allowed.

18. The Ld. Special Counsel Dr. S. Subramaniam appeared and argued for the Department. The findings in the impugned order was reiterated. The definitions as quoted above were referred to by the Ld. Counsel to submit that '*securities*' has been defined under Section 65B (43) of the Finance Act, 1944 by adopting the meaning given in Section 2 of Securities Contract (Regulation) Act, 1956. So also, Section 65 (50) of the Finance Act, 1994 adopts the meaning of '*goods*' as defined in Section 2 of the Sale of Goods Act, 1930. Clause 7 of Section 2 of the Sale of Goods Act, 1930 provides that '*goods'* means every kind of movable property and includes stocks and shares. Further, under Section 66D of Finance Act, 1944, it states that negative list shall comprise of following services viz., "*trading of goods*". These would go to show that the 'trading of goods' is considered as a 'service' under the Finance Act, 1944. Rule 2 (e) of CCR 2004 provides that trading is an exempted service. Therefore, the income received by the appellant by trading in securities is an exempted service and therefore the demand raised is legal and proper.

19. Countering the arguments put forward by the Ld. Consultant appearing for the appellant, it is submitted that the definitions contained in the Finance Act, 1994 as well as Cenvat Credit Rules, 2004 has to be interpreted literally as there is no ambiguity or room

for doubt. The provisions being very clear the contention of the appellant that they have not engaged in trading of goods or exempted services is not acceptable. It is prayed that the appeal may be dismissed.

20. Heard both sides.

21. The issue that arises for consideration is whether the demand confirmed alleging that appellant has availed common input services for taxable and exempted services (amount received from mutual funds / securities) is sustainable or not.

22. From the facts narrated above, it can be seen that the appellant is investing their surplus / income in mutual funds. The entire demand is raised on the basis of financial statements of the appellant for the disputed period. A sample of the financial statement for the year 2010-11 has been extracted above. In such financial statement the amount invested in mutual funds is shown under the heading 'purchase of money market mutual funds'. The profit received from sale of mutual funds is shown as 'proceeds from sale of money market mutual funds'. These fall under the main heading 'cash flow from investing activities'. The appellant has no where accounted the income from purchase and sale of securities under the head of 'trading'.

23. The appellant is engaged in providing Information Technology Software Servies and Business Support Services. They are not engaged in providing purchase and sale of mutual funds / securities. They are not licensed for engaging in such activities and do not have permissions from the Stock Exchange or SEBI for engaging in the activity of trading or shares / securities of others. The income received by the appellant is construed by the department as 'consideration' received from trading of securities / shares. It is not a consideration

received for providing any service. It is the surplus (capital gains) received from investment of income. The department seems to have confused by the interpolation of the meaning of the word '*goods'.* It has to be seen that whenever the Legislature in the Finance Act,1994 wanted to mention 'services' in regard to 'securities' it has used the word '*securities'* itself. For eg: Section 65 (95a) defines '*share transfer agent'* as under :

> *"Share transfer agent' means any person who maintains the records of holders of securities and deals with all matters connected with the transfer or redemption of securities or activities incidental thereto'*

The department has no case that appellant has provided taxable service of share transfer agent to any other. The taxable service is defined under Section 105 (zzzzg) which says – *'to any person, by a recognized stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities'.*

24. In the present case, the appellant has invested their income in shares / mutual funds and also sold certain investments. They have acted like any individual who would invest funds in shares / securities. The appellant is not engaged in the business of trading of shares / securities as provided under Section 105 (zzzzg) of the Act ibid. It requires to be stressed that the activity of engaging in sale and purchase of securities for another is a taxable service under Finance Act, 1994. Only a licensed person or agent can engage in doing such activity of sale and purchase of shares. The department seems to have confused purchase and sale of shares as an investment with the 'trading of goods' as a business. A manufacturer who also sells goods can be said to be engaged in trading of goods. Such manufacturer if avails common inputs / input services for manufacture of dutiable goods and for trading of goods is liable to reverse the proportionate

credit as under Rule 6 (3A) or pay amount as per Rule 6 (3) (i). This is because trading is a deemed exempted service w.e.f. 01.04.2011, and no credit can be availed in respect of trading. In this scenario, trading of goods is part of the business of the manufacturer. The appellant is not engaged in the business of trading of shares. In fact it is stated that they have only one portfolio which is investment portfolio. All this goes to establish that appellant is not engaged in trading of goods / securities.

25. The issue stands decided by the Tribunal in the case of **M/s.Instakart Services Pvt. Ltd**. (supra) . The Tribunal after detailed discussion has held that the investment income cannot be held to be trading of goods so as to demand 6% value under Rule 6 (3) (iii) of CCR 2004. The relevant paras reads as under :

> "5. Heard both sides and perused the records. The issues involved in the present appeal for determination are: (i) whether the amount 6% or 7% on is payable on the differential value of mutual fund investment and realization under Rule 6(3)(i) of CCR, 2004 being an exempted service; (ii) amount recovered from the employees in lieu of service period on leaving the employment is leviable to Service Tax.
>
> 6. The appellants are investing their surplus in mutual funds and not traded the same as securities. The Revenue considering such investment in mutual fund which later sold by the appellant, as trading in goods, accordingly is an exempted service, hence demanded 6% / 7% of the value under Rule 6(3)(i) of the CCR, 2004 as common input services were used in providing taxable services and exempted service. We find that this issue is no more res integra since considered in a series of judgments of this Tribunal. In **Ace Creative Learning (P.) Ltd. case** (supra), this Tribunal analyzing the provisions applicable to investment in mutual funds held as follows:
>
> > "5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant is providing Commercial Training and Coaching Services and they have also invested in the mutual funds and have earned profit during the year 2014-15, 2015-16 & 2016-17 which they have shown as under the head "other income". The Department has wrongly considered the investment in mutual fund as trading in mutual funds and has issued

a notice on the presumption that the appellant is providing exempted services which is trading in mutual funds and has not maintained separate records for common input services availed in providing the output services and exempted activity i.e. trading and hence are liable to pay 6%/7% of the amount of exempted services. Further I find that the 'trading' has not been defined under the Service Tax but in the context of securities, 'trading' means an activity where a person is engaged in selling the goods and occupy for the purpose of making profit but certainly trading is different from redemption of mutual fund units, in the present case appellant cannot transfer the mutual fund units to third party and give only by redemption to the mutual fund because the appellant is not permitted to trade mutual fund unit in the absence of a license from the SEBI. There is a restriction on the right to transfer unit and the appellant cannot transfer units to any other person. Further I find that the appellant cannot be termed as "service provider" because he only makes an investment in the mutual fund and earn profit from it which is shown in the Books of Accounts under the head "other income". Hence the question of invoking Rule 6 does not arise and I am of the view that Department has wrongly invoked the provisions of Rule 6(3) demanding the reversal of credit on the exempted services. I also find that substantial demand is timebarred as during the audit, the Department entertained the view that the appellant is engaged in providing the exempted services and consequently issued the show cause notice. The appellant has been filing the returns under the taxable service of 'Commercial Training and Coaching and has provided all the records to the Department during the course of investigation and has not suppressed any material fact from the Department and in view of the various decisions relied upon by the appellant, extended period cannot be invoked where the Revenue's case is based on Balance Sheet and income return and other records of the assessee. In view of my discussion above, I am of the considered view that the impugned order is not sustainable in law and the same is set aside by allowing the appeal of the appellant."

6.1 The laid down principle has been followed subsequently by the Tribunal in **Ambuja Cement Ltd.'s** case (supra) and **United Racing and Blood Stock Breeders Ltd.** (supra). No contrary decision has been placed by the Revenue.

6.2 Thus, following the said precedents, it can safely be inferred that the investment in mutual funds by the appellant cannot be considered as an activity involving exempted services nor sale/trading of exempted goods. Thus, the demand on this count cannot be sustained."

26. Similar view was taken by the Tribunal in the case of **M/s.Ponni Sugars Erode Ltd.** (supra). Relevant paras read as under :

> "3. On the issue of earning dividend income from the investment in shares and securities, and whether appropriate credit was required to be reversed by treating such investment as exempted Service, the first authority has held that it was proper for him to remand the issue back to the file of the Original authority to verify from the records if the appellant was involved in trading activity of shares and securities other than their own concern or was it done for third parties or subsidy concerns. It is against this order that the present appeal has been filed before this forum. The first appellate authority having observed that the bagasse is not an exempted, but is just an agricultural waste, has however, upheld the liability on the part of the appellant to maintain separate accounts in terms of rule 6(3) of CCR, failure to do so which would attract duty liability equal to 6% of the value of the exempted products/services.
>
> 4. In the second appeal, Order-in-Original No. 21/2017-CE dated 29.03.2017 passed by the Commissioner of Central Excise & Service Tax, Salem has been challenged, wherein, the Ld. Authority has confirmed the demand being 6% of the value of exempted service.
>
> … …. …..
>
> 12. Insofar as first issue is concerned, we find that the appellant had invested in shares/securities that were giving dividend income but, however, we fail to understand as to what was 'service' element involved in such investment. The revenue has only fastened the liability on surmises and without there being any positive findings in this regard. It was for the revenue to prove that 'investment' itself was a service, in order to demand service tax. Rather, the first appellant authority himself has at paragraph No.14.01 observed that "… such investment would be an activity outside the definition of service, being a mere transaction in money" but, however, has concluded in the same para that activity of investment in shares and derivative trade satisfy the definition exempted services under Cenvat Credit Rules, 2004.
>
> 13. We fail to understand the logic in treating the mere 'investment' as an exempted service because, the revenue has not specifically alleged if there is any 'service' in the first place. Secondly, up to 01.07.2012, even if it is assumed to be an exempted service, then the same was not taxable. With the introduction of negative list w.e.f.

01.07.2012, S. 66B of the Finance Act empowers the levy of service tax on the value of all services other than those in the negative list, which are provided or agreed to be provided, by one person to another. Exempted service, although 'exempted', nevertheless should satisfy the ingredients of 'service' in the first place.

14. It is clear from Rule 6(1) of the Cenvat Credit Rules, that reversal of CENVAT Credit is warranted only where the output is an 'exempted service'. In this regard, it is important to note that for an activity to qualify as 'exempted service', it should first be a 'service'. Prior to the negative list tax, was leviable not on any service but only on a 'taxable service', as referred by the Finance Act, 1994. With the introduction of the negative list 'service' was defined under Section 65 B(44). Section 65B (44) of the Finance Act, is reproduced hereunder for ready reference:

"Section 65B. Interpretation-

In this Chapter, unless the context otherwise requires:-

…(44) "service" means <u>any activity carried out by a person for another for consideration</u>, and includes a declared service, but shall not include-

(a) an activity which constitutes merely,–

(i) <u>a transfer of title in goods or immovable property, by way of sale, gift or in any other manner</u>…"

15. In this case, by making an investment the appellant does not do any activity for another for a consideration. Further, specific exclusion from the definition of 'service' is given to transactions involving 'transfer of title in goods or immovable property by the way of sale', since trading in security involves transfer of title in goods, the activity of 'trading in securities' cannot therefore be said to be a service.

16. In the light of our discussion above, we hold that:

(a) investment in shares/security does not per se tantamount to 'trading in securities',

(b) inputs/ input services cannot be said to be used in or in relation to 'trading in securities', and

(c) 'trading in securities' is not a service, let alone an 'exempted service'.

> 17. We thus hold that the authorities below have grossly erred in demanding the tax on the 'investment' made, by treating the same as 'service' although exempted and consequently, we set aside the impugned order."

27. After appreciating the facts, and following the decisions as above, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 01.08.2024)

sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

sd/-
(SULEKHA BEEVI. C.S)
Member (Judicial)

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