

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Service Tax Appeal No. 76450 of 2014**

(Arising out of Order-in-Appeal No.46/DIB/CE(A)/GHY/14 dated 31/07/2014 passed by Commissioner, Customs & Central Excise (Appeals), Guwahati.)

**The Assam Cooperative Apex Bank Ltd**

(Head Office, Panbazar, H B Road  
Guwahati-781001)

**Appellant**

*VERSUS*

**Commr. of CGST, Customs & Central Excise, Guwahati**

(Sethi Trust Building, 5<sup>th</sup> Floor, G S Road,  
Bhangarh, Guwahati, 781005)

**Respondent**

**APPEARANCE :**

Mr. Suprakas Chaudhury, FCA for the Appellant

Mr. S. Mukhopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)**

**HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)**

**FINAL ORDER NO.76120/2024**

Date of Hearing : 12 June 2024

Date of Decision: 12 June 2024

**ORDER [PER RAJEEV TANDON]:**

The appellant has filed the present Appeal assailing the order of the Learned Commissioner (Appeals), whereby the Learned Commissioner (Appeals) has upheld the order passed by the lower authority confirming Service Tax amount (under Sec. 68 of Finance Act, 1994) of Rs.4,54,838.00/- along with interest under section 75 of the act ibid besides imposing penalty under Section 78 of the act ibid, amongst others.

2. The brief facts of the case are that consequent to the visit of the Internal Audit Party of the Dibrugarh Commissionerate, a demand of Service Tax on interest earned on Overdraft and Cash Credit for the

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period 2008-09 to 2011-12 was issued to the appellant contending that the Invoice, Bills and Challans as mentioned were not in accordance with the stipulations of Rule 4A of the Service Tax Rules, 1994 and therefore the assessee was liable to pay Service Tax thereon. The Learned Adjudicating Authority as well as the Commissioner (Appeals) have essentially gone by the fact of non-adherence of prescriptions of the Rule *ibid*, thereby disentitling the appellant of the benefit of Notification No. 29/2004-ST. Thus the said Show Cause Notice for non-payment of Service Tax on taxable service rendered (equivalent to the amount of interest), under the category of "Banking and other Financial Services" was issued for purpose of tax recovery. The orders of the two lower authorities *inter alia* state that the appellants failed to produce such invoice, bill or challan and therefore, they have confirmed the aforesaid amount of Service Tax. The Commissioner (Appeals) while relying on the amendment to Rule 4A(1) of the Service Tax Rules vide Notification No. 30/2004-ST dated 22/09/2004 has observed that the required stipulation was not fulfilled and therefore, his orders accordingly.

3. For sake of ready reference and better appreciation, it would be essential to go through Rule 4A of the Service Tax Rules as it is stood post amendment vide Notification No. 30/2004-ST which added proviso thereto. The said Rule is incorporated as hereunder:-

**"4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan-**

*(1) Every person providing taxable service [not later than [thirty] days from the date of [completion] of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect such taxable service provided or [agreed] to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely;-*

- (i) the name, address and the registration number of such person*
- (ii) the name and address of the person receiving taxable service;*



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purpose. They further submit that were the applicability of Rule 4A to be made mandatory for exempt services, it would have been reflected in the Notification itself. They fortify their argument with the plea that the Notification exempting income from levy of Service Tax could not obviously impose the burden of maintaining documents applicable for taxable services. It is noted that Clause 1(iv) of Rule 4A requires disclosure of Service Tax payable on the value of service provided, thus, it cannot be said to include exempt services. Moreover a proviso inserted to the Rule by way of an amendment cannot have the effect on enlarging the scope of the provision, at best it is only clarificatory.

7. Notification No. 29/2004-ST, clearly exempts service tax on interest income on such overdraft/cash credit facilities and the same is required to be shown separately in invoice, bill or the challan for the purpose. Rule 4A(1) however mandating certain basic details like, name, address, registration number etc. of both the service provider and the service recipient, value of taxable service etc. The appellant has affirmed that such details are incorporated in the monthly statements issued for the purpose. With the expansion of the scope of acceptable documents for the purpose vide notification No. 30/2004-ST dated 22.09.2004, we see no reason why such bank statements cannot be considered as to serve the purpose. Thus the withholding of eligibility of exemption and consequent demand of service tax from the appellant is grossly illegal and cannot be sustained.

8. Under the circumstances, we are not in agreement with the findings of the lower authority upholding the demand for Service Tax on the amount of interest equivalent on overdraft/cash credit extended by the appellant.

9. Moreover, it is settled proposition of law that technical barrier, if any, cannot be an impediment to grant appropriate relief. In the context of amendment rendered vide Notification No. 30/2004-ST dated 22.09.2004, the present scenario certainly would not call for a strict construction.

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10. In view of our discussions aforesaid, the order passed by the lower authority is set aside and the Appeal filed is therefore allowed.

(Dictated and pronounced in the open court.)

Sd/-  
**(R. Muralidhar)**  
**Member (Judicial)**

Sd/-  
**(Rajeev Tandon)**  
**Member (Technical)**