

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 85844 of 2016**

(Arising out of Order-in-Appeal No. MUM-II-STAX-000-APP-80-15-16 dated 28.12.2015 passed by the learned Commissioner (Appeals), Service Tax-II, Mumbai)

**M/s State Bank of India, Mumbai**

**.... Appellant**

Finance Reporting & Taxation Department,  
State Bank Bhavan, Madame Cama Road,  
Nariman Point, Mumbai-400 021

Versus

**Commissioner of Service Tax-II, Mumbai**

**.... Respondent**

9<sup>th</sup> Floor, Piramal Chambers.  
Jijibhoy lane, Lalbaug, Parel,  
Mumbai-400012

Appearance:

Shri Krishna Kumar & Sanjay Khemani, C.A. for the Appellant  
Shri Vinod Kumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85972/2023**

Date of Hearing: 28.02.2023

Date of Decision: 19.06.2023

***Per: M.M. Parthiban***

This appeal has been filed by M/s State Bank of India, Mumbai (referred to as Appellants) against the Order-in-Appeal No. MUM-II-STAX-000-APP-80-15-16 dated 28.12.2015 (referred to as impugned order) passed by the learned Commissioner (Appeals), Service Tax-II, Mumbai.

2.1. Briefly stated, the facts of the case are that the appellant herein is registered with the jurisdictional Commissionerate under service tax centralized registration No.AAACS8577KSDB73 for providing taxable services under the category 'Banking and Other Financial Services' enumerated under Section 65 (105)(zm) of the Finance Act, 1994.

2.2. The appellant, on 30.03.2005 had received an intimation from the Reserve Bank of India, Public Accounts Department, New Delhi stating that an

amount of Rs.7,13,15,955/- is being paid as commission charges relating to the financial year 2003-2004. Since the payment was received by the appellant on 30.03.2005, and as the Mumbai Branch did not receive clarity from their head office on taxability of such commission received from RBI for maintenance of Public Provident Fund (PPF) accounts, the appellants had deposited service tax rate of 10.2% for an amount of Rs.72,74,227/- along with other service tax dues payable to the government on the taxable services under the head of account 0044-143 Service Tax on banking and other financial services vide GAR-7 Challan dated 31.3.2005 for a total amount of Rs.12,76,16,122/- specifically mentioning that the payment of service tax is being made under protest subject to notification of Government of India. Subsequently realizing their mistake and that the appellant is not engaged in fund management service in respect of PPF accounts maintained by them, they had filed refund application for Rs.72,74,227/- enclosing various supporting documents before the original authority i.e., Assistant Commissioner of Service Tax, Division-V, Navi Mumbai. The original authority having considered the written submission dated 12.01.2001 of the appellants and after giving personal hearing to them on 10.02.2011, had concluded that the appellant is engaged in the service of management of PPF fund and the words '*all forms of fund management*' appearing in the sub-clause (v) of the definition given under section 65(12) of the Finance Act, 1994 is all about management of funds and allied activities; even the claim of the appellant that the service namely 'operation of bank accounts' cannot be remotely related to service of 'management of PPF account' rendered by the appellants to the RBI. The service of 'management of PPF funds' rightly fits into the service of 'all forms of fund management' appearing in the definition of banking and other financial services itself. On this basis the original authority concluded that the service of management of PPF funds rendered by the appellants to the RBI by default falls under the category of banking and other financial services and is a taxable service. The original authority also referred to an internal communication of the CBEC dated 5.12.2008, which mentioned that "*while auditing a bank it was noticed that the bank was not paying service tax on the amount of commission received from RBI for doing government -related business transaction e.g. disbursement of pensions, maintenance of PPF account etc. Notification No.13/2004 dt. 10.09.2004 as amended by 19/2006 dt. 24.04.2006 exempts from service tax banking company or financial institution providing service in relation to collection of duties or taxes levied by the Government. The said commission is not earned towards 'collection of duties and taxes' levied by the government, therefore*

*tax is payable on such commission received by the bank from the RBI.*". Accordingly, the original authority passed an order dated 22.02.2011 rejecting the refund claim on the above conclusions arrived by him and on the ground of limitation of time, as refund was filed beyond the prescribed period of one year from the date of payment of tax and that there was no concrete evidence in the form of a formal letter of protest having been submitted by the appellant with the Department before making such payment.

2.3. On an appeal preferred by the appellants before the Commissioner (Appeals), Service Tax-II, Mumbai, the first appellate authority after hearing them on 23.11.2015, had come to the conclusion that appellant is liable to pay service tax on the remuneration received from RBI in relation to PPF management in terms of clause (v) of Section 65(12) of the Finance Act, 1994. According to him the appellant had provided the service of managing the Public Provident Funds to the RBI on behalf of the Government of India against remuneration. By referring to various definitions of fund management as per Financial Dictionary, Investopedia, Cambridge business English dictionary, Wikipedia he concluded that the service or maintaining PPF Accounts fall under the category of fund management. He also gave the reason that PPF account though maintained in favour of the customer/investor for earning better interest rates and definite returns with security, but the appellant had received a remuneration against the same from RBI. Hence according to him the service provided by the appellant to a customer is not the subject matter of this case, but the service provided by the appellant to RBI is the subject matter under consideration. He had in his order at paragraph 9 had observed that the money deposited in PPF accounts are also used for banking/financing purposes including advancing loans and further investments into other options by the appellant. Thus he concluded that the services provided by the appellant to RBI as taxable under the category of all forms of fund management as covered under clause (v) of Section 65(12) of the Finance Act, 1994.

2.4. He also observed that the benefit of exemption notification No.25/2004-ST dated 10.09.2004 exempted services of operation of bank account when provided to a customer. Since the RBI could not be treated as customer to the appellant, the said exemption cannot be applied for the case of the appellants.

2.5. Thus he concluded that the service tax has been paid correctly and the question of refund of the same does not hold good. As the refund was held by him is not admissible on merits, he did not consider it necessary to go into the

limitation of time. Finally he rejected the appeal of the appellant by upholding the impugned order-in-original passed by the original authority. The appellants having been aggrieved by the order passed by the Commissioner (Appeals), Service Tax-II had filed this appeal before the tribunal.

3.1. Learned Counsel for appellant submits that the activity performed by the appellant M/s State Bank of India, Mumbai is not management of PPF funds but maintenance of PPF accounts, which can be considered as taxable only w.e.f. 10.09.2004 when the present sub-clause (ix) was inserted in clause (a) of section 65B (12) to cover other financial services like lending, issue of pay order, operation of bank accounts etc. under the scope of taxable category of Banking and Other Financial Services. As per the policy of the government and the procedure as per the Civil Accounts Manual, all money under the PPF shall be credited to the government account at RBI CAS Nagpur within 3 days, and are subject to observance of rules and regulations of the PPF scheme notified by the government from time to time. A 'National Small Savings Fund (NSSF)' in the Public Account of India was established with effect from 1.4.1999. All collections for small savings and Public Provident Fund are credited to this NSSF fund. All withdrawals by the deposit are made out of the accumulations in this fund. The balance in the fund is invested in special Government Securities. The investment pattern is as per norms decided from time to time by the Central Government. The liabilities outstanding as on 1st April of an year and the accretion to liabilities during the year are shown in the Sources and Application of NSSF as on 31<sup>st</sup> March in the Receipts Budget for each year as a part of Budget documents. The appellants have no say in the matter of PPF accounts, as these are transferred to government account and the investments made in government securities as per the extant policy. Thus the Learned Counsel for appellant contended that maintaining the PPF accounts cannot by any stretch of imagination be termed as a fund management. Thus the Learned Counsel for the appellant pleaded that refund of service tax denied by the department in this case, treating the services under the taxable category of 'all forms of fund management services' is not legally sustainable.

3.2. The Learned Counsel for the appellant also submits that during Budget 2004, the services of operation of bank accounts was brought under the expanded scope 'banking and other financial services' vide clarification issued by the TRU, Ministry of Finance in Explanatory Notes to budget changes providing the scope of imposition of levy. Further, it is claimed by them that where the tax has been paid under protest, then the period of limitation of one year for filing refund application from the relevant date shall not apply.

Hence the Counsel stated the limitation of time does not apply in this case and that the appellant is not liable to pay service tax and is rightly entitled for refund of service tax paid under protest as per the Finance Act, 1994. Hence they pleaded that their appeal be allowed by setting aside the impugned order.

5. The Learned Authorised Representative, by reiterating the findings made in the impugned order, had stated that the appellant is liable to pay service tax on the remuneration received by them from RBI in relation to PPF funds management during the relevant period as part of taxable services under the head Banking and Other Financial services.

6. Heard both sides and perused the records of the case.

7. We find that the issue for consideration before us is whether the appellant are liable for payment of service tax in respect of services rendered by them in terms of section 65 (105)(zm) of the Finance Act, 1994. We also note that the scope of Banking and other Financial Services (BOFS) had undergone a change through amendments introduced by the Finance (No.2) Act, 1994 brought into effect from 10.9.2004. As the service tax on which the refund has been claimed was paid on 31.3.2005, we find that the amendments made to said legal provision under section 65 (12) during the disputed period is also required to be examined in this case.

7.1. The said 65 (105)(zm) of the Finance Act, 1994 as it stood during the disputed period is extracted below:

*"65 (105). "taxable service" means any service provided, (zm) to a customer, by a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services;"*

7.2. Further, the said 65 (105)(zm) of the Finance Act, 1994 which was amended on 10.09.2004 and subsequently, has also been extracted, for better appreciation of the scope of taxable services, below:

*65 (105). "taxable service" means any service provided <sup>3</sup>[or to be provided], (zm) <sup>2</sup>[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;]*

1 Substituted (w.e.f. 10.09.2004) by s. 90 of the Finance (No. 2) Act, 2004 (23 of 2004).

2 Substituted (w.e.f. 16.05.2008) for the words "to a customer" by s. 90 of the Finance Act, 2008 (18 of 2008).

3 Substituted (w.e.f. 16.06.2005) by s. 88 of the Finance Act, 2005 (18 of 2005).

7.3. In addition to the above, the definitions provided under section 65 of the Finance Act, 1994 which are relevant to the above taxable services is extracted below:

*Section 65. Definitions. – In this Chapter, unless the context otherwise requires, --*

*(11) "banking company" has the meaning assigned to it in clauses (a) of section 45 A of the Reserve Bank of India Act, 1934 (2 of 1934);*

<sup>1</sup>*[(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 <sup>2</sup>[commercial concern], namely:—*

*(i) financial leasing services including equipment leasing and hire-purchase;*

<sup>3</sup>*[Explanation.—For the purposes of this item, "financial leasing" means a lease transaction where— (i) contract for lease is entered into between two parties for leasing of a specific asset; (ii) such contract is for use and occupation of the asset by the lessee; (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;]*

<sup>4</sup>*[(ii) omitted]*

*(iii) merchant banking services;*

<sup>5</sup>*[(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, <sup>6</sup>[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;*

<sup>7</sup>*[(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**;]*

<sup>8</sup>*[(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);]*

<sup>9</sup>*[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;]*

<sup>1</sup> Substituted (w.e.f. 10.09.2004) by s. 90 of the Finance (No 2) Act, 2004 (23 of 2004).

<sup>2</sup> Substituted (w.e.f. 01.06.2007) by s. 135 of the Finance Act, 2007 (22 of 2007).

<sup>3</sup> Inserted (w.e.f. 01.06.2007) by s. 135 of the Finance Act, 2007 (22 of 2007).

<sup>4</sup> Omitted (w.e.f. 01.05.2006) by s. 68 of the Finance Act, 2006 (21 of 2006).

<sup>5</sup> Substituted (w.e.f. 16.05.2008) by s. 90 of the Finance Act, 2008 (18 of 2008).

<sup>6</sup> Substituted (w.e.f. 01.06.2007) by s. 135 of the Finance Act, 2007 (22 of 2007).

<sup>7</sup> Substituted (w.e.f. 01.05.2006) by s. 68 of the Finance Act, 2006 (21 of 2006).

<sup>8</sup> Substituted (w.e.f. 16.05.2008) by s. 90 of the Finance Act, 2008 (18 of 2008).

<sup>9</sup> Inserted (w.e.f. 16.05.2008) by s. 90 of the Finance Act, 2008 (18 of 2008).

*(74) "non-banking financial company" has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);*

*(93) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);*

*(121) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made there under, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.*

*65A. Classification of taxable services –*

*(1) For the purposes of this chapter, classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65;*

*(2) When for any reason , a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-*

*(a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;*

*(b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;*

*(c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration;*

*(3) The provisions of this section shall not apply with effect from such date as the Central Government may, by notification, appoint.*

8.1. On harmonious reading of the sub-section (105)(zm) we find that the legal provisions which are relevant to this case during the disputed period is as provided in para 7.1. The amendments to sub-section (105)(zm) that are mentioned in para 7.2 are not relevant as these were brought subsequent to the disputed period. Further, in order to understand the scope of taxable services, careful perusal of the definition provided under sub-section (12) of section 65 for "Banking and Other Financial Services (BOFS), and detailed examination of the same are required, which we have attempted in the subsequent paragraphs hereunder.

8.2. The appellants have claimed that they open PPF accounts for the public as per PPF scheme notified by the government for receiving the subscriptions and maintaining the PPF accounts as an "Account Office" provided under the PPF scheme. In consideration of SBI being appointed as the sole agent of RBI, at all places where RBI do not have an office or a branch and for performance of the functions entrusted to them on behalf of RBI, for conducting general banking business of the Central and State Governments with the exception of the functions relating to management of public debt, RBI shall pay to SBI,

certain remuneration as laid down under an agreement. In view of the above, the appellants claimed that they only maintain PPF accounts and in no way concerned with management of PPF funds, and thus they are not performing any taxable services in relation to PPF accounts. Hence the appellants claim that these are not covered under the scope of taxable services until 10.09.2004, subsequent to which 'operation of bank accounts' was brought under the tax net.

8.3. On the other hand, the learned AR for the Department claimed by quoting the impugned order that the appellant is providing the taxable services under the category of 'all forms of fund management' as they are managing the PPF funds, on the reasoning that the funds in PPF accounts are also used for banking/financing purposes including advancing loans and further investments into other options by the appellant.

8.4. In view of the contentious stand taken by the appellant and the AR for the Department, we find that it is necessary to examine the details of the services provided by way of PPF accounts. In the impugned order it is stated that the activities undertaken by the appellant in relation to maintenance of PPF accounts are as follows:

- (i) opening of the PPF accounts
- (ii) allowing deposits/withdrawals from such PPF accounts in accordance with the PPF scheme
- (iii) crediting interest at the yearend in various PPF accounts
- (iv) maintaining the KYC records including nominations
- (v) closure of accounts on maturity
- (vi) maintaining records of the above mentioned activities in relation to PPF.

8.5. We also find that PPF accounts have been operated and maintained on the basis of separate enactment namely Public Provident Fund Act, 1968. The extract of the relevant portions of the above legislation is as below:

*1. Short title and extent.—*

- (1) *This Act may be called the **Public Provident Fund Act, 1968.***
- (2) *It extends to the whole of India.*

*2. Definitions.—In this Act, unless the context otherwise requires,—*

- (a) *"Fund" means the Public Provident Fund established under the Scheme;*
- (b) *"minor" means a person who is not deemed to have attained majority under the Indian Majority Act, 1875 (9 of 1875);*

(c) "Scheme" means the Public Provident Fund Scheme framed under sub-section (1) of section 3;

(d) "subscriber" means an individual who makes subscription to the Fund under section 4 and where such subscription is made by an individual on behalf of a minor, of whom he is the guardian, such minor;

(e) "year" means the financial year.

**3. Public Provident Fund Scheme. —**

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Public Provident Fund Scheme for the establishment of a provident fund for the general public and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(2) Subject to the provisions of this Act, the Scheme may provide for all or any of the matters specified in the Schedule.

(3) The Scheme shall have effect notwithstanding anything contained in any law for the time being in force other than this Act or in any instrument having effect by virtue of any law other than this Act.

(4) The Central Government may, from time to time, by notification in the Official Gazette, add to, amend or vary the Scheme.

**4. Subscriptions to Fund. —**

Any individual may, on his own behalf or on behalf of a minor, of whom he is the guardian, subscribe to the Fund in such manner and subject to such maximum and minimum limits as may be specified in the Scheme.

**5. Interest. —**

All subscription made under section 4 shall bear interest at such rate as may be notified by the Central Government in the Official Gazette, from time to time, and the interest shall be calculated in such manner as may be specified in the Scheme.

**6. Withdrawals. —**

(1) A subscriber shall be entitled to make withdrawals from the amount standing to his credit in the Fund (including any interest accrued thereon) to such extent and subject to such terms and conditions as may be specified in the Scheme: Provided that such withdrawals shall be allowed only after the expiry of a period of five years from the end of the year in which he makes the initial subscription to the Fund

(2) Notwithstanding anything contained in sub-section (1), a subscriber shall be entitled to withdraw the entire balance standing to his credit in the Fund after the expiry of a period of fifteen years from the end of the year in which he makes the initial subscription to the Fund.

(3) Subject to the provisions of sub-sections (1) and (2), an individual who has made subscriptions to the Fund on behalf of a minor, of whom he is

*the guardian, shall be entitled to withdraw any amount from the Fund only for the use of the minor.*

....

8.6. We also find that in exercise of the powers conferred by section 3 of PPF Act, 1968, the "Public Provide Fund Scheme" had been notified on 1.7.1968. The PPF scheme provides for any individual desirous of subscribing to the PPF account, for opening an account by applying to an 'accounts office' i.e., an office or branch of SBI or other authorized offices. Further, the said PPF scheme provides for the manner of making subscriptions, limit and no. of subscriptions, withdrawals from the fund, interest, transfer of accounts, loans, repayment of loans and interest, nomination and repayment after death of subscriber etc. Further, we find that at the time of introduction of the PPF Bill, 1968, the operation of the scheme including use of the funds under PPF have been enunciated in detail by the then Hon'ble Deputy Prime Minister and Minister of Finance as follows:

*"The House will recall that in my Budget Speech of the 29<sup>th</sup> February, 1968, I had referred to the fact that self-employed persons do not have the facility of saving through Provident funds. I had also then indicated that I proposed to introduce a public provident fund scheme under which all sections of the community will have the opportunity of contributing to a provident fund and incidentally of availing of the income tax benefits provided for under the law in respect of contributions to such funds. Accordingly and in order to obtain the necessary legislative authority to institute a public provident fund scheme, the Public Provident Fund Bill was introduced in this House on the 18<sup>th</sup> April, 1968.*

.....

*The Scheme will be operated the offices of the State Bank of India and its Subsidiary Banks on behalf of the Government. These banks will receive subscriptions and allow withdrawals and also issue special passbooks in which the deposits, withdrawals and annual interest will be entered by the bank. The deposits received by the State Bank of India and its subsidiaries will be transferred to Government Account and likewise the withdrawals allowed by them will be got reimbursed by the Government. Thus, the monies in the Fund will remain with Government and will be accounted for in the Government account."*

8.7. We also find that in the relevant years' Union Budget documents, in Receipts Budget 2004-2005 under Table-I, sources and application of National Small Savings Fund as on 31<sup>st</sup> March, the liabilities outstanding as on 1st April and accretion to liabilities during the year under Public Provident Fund has

been accounted as Sources of Funds under the head "Capital Receipts" with the following explanation.

**"National Small Savings Fund.** (i) All deposits under small savings schemes are credited to the " National Small Savings Fund" (NSSF) established in the Public Account of India with effect from 1.4.1999. All withdrawals by depositors are made out of the accumulations in this Fund. The balance in the Fund is invested in special Government Securities as per norms decided from time to time by the Central Government. Pursuant to the recommendations of the Expert Committee on Administered Interest Rates and other related issues, chaired by Dr. Y.V.Reddy, then Deputy Governor of the Reserve Bank of India, since 1st April, 2002, the entire net collections (deposits minus withdrawals by subscribers) under small saving schemes in each State and Union Territory (with Legislature) are advanced to the concerned State/Union Territory (with Legislature) Government as investment in its special securities. The debt servicing of Government securities is an income of Fund while cost of the interest paid to the subscribers and cost of management of small savings schemes are expenditure of Fund."

Further, we also find that Department of Economic Affairs (DEA) in the Ministry of Finance had notified the pattern of investment to be followed by Non-Government Provident Funds, Superannuation Funds and Gratuity Funds prescribing the investment pattern in specific Government securities, Debt instruments, Equities and related investments which are specifically mentioned by name therein. Further, DEA also specified therein and also prescribed the percentage of the amount to be invested in various government securities vide notification F. No.5(88)/2006 – PR dated 14.8.2008 as amended by notification F. No.11/14/2013-PR dated 2.3.2015.

9. On the basis of the above, we come to the conclusion that the PPF accounts are opened, maintained, operated by the appellant as per the scheme notified by the Government and the funds of the PPF accounts are credited to the Public Account of India, which are ultimately used/invested in the manner prescribed under notification issued by the Department of Economic Affairs in the Ministry of Finance. Thus it appears that there is no discretion for the appellant in handling the funds under the PPF accounts and the PPF funds are entirely managed by the Government of India. In such a scenario, we find there is no question of management of funds lying in the PPF accounts, by the appellants.

10. In the impugned order, the learned Commissioner going by various definitions of 'funds management' as appearing in Financial Dictionary, Cambridge Business English Dictionary, Investopedia, dictionary of banking terms in website [www.allbusiness.com](http://www.allbusiness.com); 'investment management' and 'asset management' as per Wikipedia/Investopedia had come to the conclusion that appellants are providing the service of fund management in operating PPF

accounts. In this regard we find that it is a common practice to define certain terms in the Act itself in order to provide as an aid for construction or for interpretation of an issue. The definitions could broadly be classified into three categories viz., 'means', 'includes' and 'means and includes'. The Legislature has power to define a word even artificially. So the definition of word in the definition section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to 'mean' such and such, the definition is *prima facie* restrictive and exhaustive; whereas, where the word defined is declared to 'include' such and such, the definition is *prima facie* extensive. We find that the definition provided under section 65(12) for 'banking and other financial service' proceeds with the word 'means' and that for a specific sub-group of such service have used the expression 'including' to specify the services covered under its scope and used the expression 'does not include' to exclude certain services from the scope of taxation. When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which the word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that "*the meanings of words and expressions used in an Act must take their colour from the context in which they appear; when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers*" as held in various judgements<sup>1</sup> by the Hon'ble Apex Court. Therefore we find that the approach adopted in the impugned order for coming to the conclusion that the services provided by the appellant falls under the scope of 'funds management' based on the dictionary meanings is not supported by law.

11. Further, we find that the Government had enacted the Securities and Exchange Board of India Act, 1992 to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. All forms of fund management and how this is regulated is elaborated in the said legal provisions and the regulations made there under. Under these provisions, SEBI is *inter alia* regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any

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<sup>1</sup> Mangoo Singh Vs. Election Tribunal, Bombay – AIR 1957 SC 871.

manner; the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies; venture capital funds and collective investment schemes, including mutual funds; by registering them and regulating their working. Accordingly, for 'fund management', the portfolio manager, before taking up an assignment of management of funds or portfolio of securities on behalf of the client, is required to enter into an agreement in writing with the client, clearly defining the inter se relationship and setting out their mutual rights, liabilities and obligations relating to the management of funds or portfolio of securities, containing the details as specified in Schedule IV of the SEBI (Portfolio Managers) Regulations, 1993. These *interalia* include, Investment objectives and guidelines - (i) Types of securities in which investment would be made specifying restrictions, if any. (ii) Particulars regarding amount, period of management, repayment or withdrawal. (iii) Taxation aspects such as Tax Deducted at Source etc., if any. (iv) Condition that the portfolio manager shall not lend the securities of the client unless authorized by him in writing. In view of the above, we find that in the given case of appellants, there was no fund management involved and the entire amount was credited to the Public Account of the Government, to be used as per the instructions, norms, scheme of PPF notified by the government. Hence we conclude that there was no 'fund management' services rendered by the appellants in this case.

12. It is also important to note that in the impugned order, the learned Commissioner (Appeals) had taken a contrary stand, firstly at para 9 for coming to a conclusion that the service provided by the appellant to RBI being the subject matter under consideration and that the service provided to the customers who open PPF account is not the subject matter of this case, for bringing the services provided by the appellant under the scope of taxable services. However, subsequently at para 11, he had excluded the services provided to RBI, as they (RBI) cannot be treated as a customer of the appellant for denial of the benefit of exemption notification No.25/2004-ST for the taxable services 'operation of bank account' for the period prior to 10.09.2004. During the relevant point of time, the taxable services under banking and other financial services, meant to include **only the services provided to a customer, and not the services provided to any person**, as can be seen here under.

"65 (105). "taxable service" means any service provided, (zm) to a customer, by a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services;"

The subsequent amendment brought by the Finance Act, 2008 (18 of 2008) made the change w.e.f. 16.05.2008, so as to include the taxable services provided to 'any person' instead of services provided to 'a customer'. The explainer memorandum of the budget changes explain the same as follows:

'9.1 Replacement of "client" or "customer" with "any person":

*In number of taxable services, recipient of service is specified as "client" or "customer". Service tax is levied on services. Ordinarily, the status of recipient of service should not determine the tax treatment of a given service. 39 specified taxable services are being amended so as to substitute "any person" in place of "client" or "customer". This change will come into effect from a date to be notified after enactment of the Finance Bill, 2008.'*

Thus, during the relevant period of time i.e. in 2004-2005, if RBI was not treated as a customer as held by the learned Commissioner in para 11 of impugned order, then the whole issue of taxability of services falls flat, as this is not covered under the scope of taxable services. Hence, the impugned order is liable to be set aside on this ground alone.

13. We further find that the letter of Joint Secretary (TRU) in D.O.F. No.334/ 3/2004-TRU dated 8.7.2004 explaining the salient features of the proposals involving changes brought in through Union Budget 2004, in respect of service tax were explained at para 6.4.4 as follows:

*"6.4.4. The scope of certain existing services is being extended as follows:*

...

*(e) Financial services are also to include other specified financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit, bill of exchange, providing a bank guarantee, overdraft facility, bill discounting, safe deposit locker or safe vaults, **operation of bank accounts.***

From the above, we find that it is clearly laid down that as per the legal provisions enacted in the Finance Bill, 2004 which became the Finance Act, 2004 on 10.9.2004, all services provided by the appellants with respect to "operation of bank accounts" became taxable under the service tax net w.e.f. 10.9.2004. Further, an exemption from payment of service tax, *inter alia*, on the value of taxable services provided to a customer by a banking company in respect of operation of bank accounts was issued vide notification No.25/2004-ST dated 10.9.2004. This made the legal position abundantly clear that the value of services received by a service provider prior to 10.9.2004, in respect of "operation of bank accounts" is not subject to payment of service tax. Thus, we conclude that operation of PPF accounts was brought into service tax net w.e.f. 10.09.2004.

14. We also find that the issue of refund of service tax paid by the appellants specifically mentioning in the GAR-6 Tax payment Challans that the payment of service tax is made under protest, is no more *res integra* in view the decision taken in a number of cases both by this Tribunal and by the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise Vs. F.D.C. Limited 2009 (238) ELT 708 (Bom.). The relevant portion of the order is extracted below:

*'3. In the peculiar facts of this case, the Tribunal noticed that the respondent-Assessee has during the course of proceedings urged that while making payment of duty, during the period in dispute, the relevant invoices and ER-1 returns filed would show that they were marked with the endorsement "duty paid under protest". The learner Assistant Solicitor General does not dispute that the forms are so marked, but he places reliance upon letter dated 15.5.2004, wherein the Assessee admits that it has not written any letter to the Department about paying duty under protest.*

*4. In our view, once the forms and invoices are marked as above, then, the Tribunal was right in concluding that the ground of non-forwarding of a letter as contended by the Department would not be of any significance. It does not mean that the claim for refund is ex facie not maintainable so as to extend the benefit of the provisio to sub-section (1) of section 11B of the Central Excise Act, 1944'.*

In the case of M/s. Poddar Pigments Ltd. Vs. Commissioner of Customs & Central Excise, Jaipur 2006 (206) ELT 563, the Principal Bench of this Tribunal decided as follows:

*'I find from the record that the TR-6 Challans specifically and clearly mention that interest is paid Under Protest. It is very clearly brought out by the appellants that they wished to pay the "interest under protest" when they cleared the goods from CWC. By not furnishing a letter for 'under protest payment', the appellants have not done anything wrong, since TR-6 challans themselves on which the payment is made could be considered as intention of making the payment of interest 'under protest'.'*

We also find that the legal provisions of Section 83 of the Finance Act, 1994, *inter alia*, specifically provide that the provisions of Section 11B of the Central Excise Act, 1944, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise. Hence, the said provisions *mutatis mutandis* apply to service tax.

Section 11B. Claim for refund of duty and interest, if any, paid on such duty .

*(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and*

*interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :*

*Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :*

***Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.***

*(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund :*

*Provided that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -*

*(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;*

*(b) unspent advance deposits lying in balance in the applicant's account current maintained with the Principal Commissioner of Central Excise or Commissioner of Central Excise;*

*(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;*

*(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;*

*(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;*

*(f) the [duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :*

*Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.*

***(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).***

*(Emphasis supplied)*

In view of the above legal position and the decisions in the order of the Hon'ble High Court of Bombay and order of this Tribunal referred above, we find that the appellant is eligible to claim refund of service tax paid under protest in terms of the proviso to Section 11B, subject to the condition that such a refund claims are required to be filed in terms of section 11B of Central Excise Act, 1944, which have been made applicable to service tax as per Section 83 of the Finance Act, 1994.

15. In view of the detailed findings rendered in the above paragraphs, we find that the impugned order of the Commissioner(Appeal) holding that the services provided by the appellants are taxable under the category of 'funds management', is not legally sustainable. Accordingly, on the basis of above discussions and findings recorded in the preceding paragraphs, we are of the considered view that the impugned order of Commissioner (Appeals), Service Tax-II, Mumbai is liable to be set aside as being not sustainable in law and therefore the appeals filed by the appellants deserve to be allowed with consequential relief.

16. In view of the above, we set aside the impugned order passed by the Commissioner (Appeals), Service Tax-II, Mumbai, and allow the appeals filed by the appellants by way remand of the refund application for fresh adjudication to the original authority for the limited issue of satisfying the unjust enrichment angle.. As the issue is pending for long, we direct that the original authority should decide the case of refund within next three months for satisfying himself on the grounds of unjust enrichment. Needless to say that opportunity of personal hearings shall be given to the appellants for submission of their case.

17. Appeal is disposed off in the above manner.

(Order pronounced in the court on 19.06.2023)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**