

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO.III

Service Tax Appeal No. 50997 of 2020

[Arising out of Order-in-Original No.08/2020-ST dated 28.02.2020 passed by the Additional Director General (Adjudication), Directorate General of Goods and Service Tax Intelligence, New Delhi.]

M/S. SMC GLOBAL SECURITIES LIMITED

....APPELLANT

11/6B, Shanti Chamber,
Pusa Road, New Delhi – 110005

VERSUS

ADDITIONAL DIRECTORATE GENERAL

...RESPONDENT

(Adjudication), West Block VIII, Wing 6,
Second Floor, R.K. Puram New Delhi

APPEARANCE:

Shri A.K. Batra, Chartered Accountant for the appellant.

Ms. Jaya Kumari, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.50921/2025

DATE OF HEARING:04.06.2025

DATE OF DECISION:24.06.2025

BINU TAMTA:

1. The Appellant is a Stock Broker Company and acts as an intermediary between their clients and Stock Exchanges facilitating buying and selling of securities. When a client trades, they are liable to pay the stock exchange within the stipulated period, however if the client defaults, the appellant pays the due amount to the Stock Exchange to avoid adverse repercussions. The client then owes the appellant the amount advanced along with interest @18%, which is known as 'Delayed Payment Charges'(DPC). The appellant is paying service tax on its brokerage/commission income which is not in dispute. The current dispute

is limited to the applicability of service tax on the DPC i.e., interest on the delayed payment.

2. On the allegation that the delayed payment received by the appellant constitutes consideration for a declared service under Section 66 E(e) of the Finance Act, 1994, specifically agreeing to tolerate an act, i.e., clients failure to make timely payments. Show cause notice dated 03.04.2018 was issued for the period 01.07.2012 to 30.06.2017 raising demand of Rs.9,18,13,513/-. On adjudication, the demand of Rs.5,70,31,779/- along with interest and penalty was confirmed, granting benefit of limitation and cum-duty benefit. Hence the present appeal before this Tribunal.

3. Heard both sides and perused the records.

4. The limited issue for consideration in this appeal whether service tax can be demanded on 'Delayed Payment Charges' under the taxable category of 'Stock Broker Services'. The learned Authorised Representative agrees with the submission of the learned counsel for the appellant that the issue is no longer *res integra* and has been decided by this Tribunal and affirmed by the Apex Court in various decisions. The learned counsel has relied on the following decisions as under:-

- i. **M/s. Globe Capital Market Limited Vs. ADGGGI, New Delhi¹**
- ii. **M/s. Almondz Global Securities Ltd. Vs. The commissioner of Central Excise (Appeals), Delhi-IV New CGO Complex, NH-IV, Faridabad²**
- iii. **Religare Securities Ltd. Vs. Commissioner of Service Tax, New Delhi³**

¹ 2025 (5) TMI 1453 – CESTAT dated 13.05.2025

² 2024 (3) TMI 15 – CESTATT dated 29.02.2024

³ 2014 (36) S.T.R.937 dated 21.02.2014

- iv. **M/s India Infoline Limited Vs. Additional Director General (Adjudication) New Delhi** ⁴
- v. **Commissioner of Central Excise and Service Tax, Central Tax Delhi South Commissionerate Vs. M/s Power Limited** ⁵
- vi. **Hariyana Ship Demolition Pvt Ltd Vs. C.C.E & S.T. – Bhavnagar** ⁶
- vii. **SPFL Securities Ltd** ⁷
- viii. **M/s IIFL Holding Ltd. V/s Commissioner of CGST & Central Excise, Mumbai Central (Vice-Versa)** ⁸

5. The consistent view taken by the Tribunal is that the appellant had made payments to Stock Exchanges on behalf of their clients, who delayed the payments against their transactions of securities and the appellant charged the DPC from the said clients by making debit entries in their ledger, which cannot be termed as consideration for the service rendered. On the same analogy, it was held that it cannot be considered as service of tolerating or refraining from an act or to tolerate an act or situation, or to do an act and accordingly and the demand of service tax was therefore, set aside. We may refer to the decision of the Tribunal in **South Eastern Coalfields Ltd.**⁹, which has been affirmed by the Apex Court in **Commissioner of Central Excise and Service Tax Vs. South Eastern Coalfields Ltd**¹⁰. The relevant observations are quoted below :

"A service conceived in an agreement where one person, for a consideration, agrees to an obligation to refrain from an act, would be a 'declared service' under section 66E(e) read with section 65B (44) and would be taxable under section 68 at the rate specified in section 66B. Likewise, there can be services conceived in agreements in relation to the other two activities

⁴ 2025 (3) TMI 574- CESTAT dated 10-03-2025

⁵ 2024 (11) TMI 58 – CESTAT dated 04-11-2024

⁶ 2024 (11) TMI 404 – CESTAT dated 07.11.2024

⁷ 2019 (27) G.S.T.L. 95 dated 18.04.2019

⁸ 2024 (2) TMI 967 – CESTAT dated 19.02.2024

⁹ 2020 (12) TMI 912 – CESTAT

¹⁰ 2023 (8) TMI 606 – SC ORDER

referred to in section 66E(e). It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods, and for availing various types of services, the consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.

6. In view of the settled position of law, we hold that the impugned order is unsustainable being contrary to the decisions of the Tribunal and the Apex Court. The demand of service tax on DPC is accordingly set aside. The appeal stands allowed.

[Order pronounced on 24th June, 2025]

(BINU TAMTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)