



सत्यमेव जयते

आयुक्तकाकार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeal Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी अहमदाबाद ३८००१५.  
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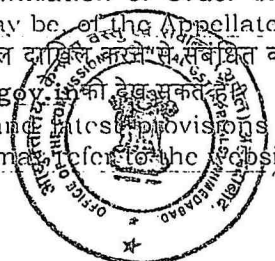


**By Regd. Post**

**DIN NO.: 20240164SW000005480B**

(क)	फाइल संख्या / File No.	GAPPL/ADC/GSTP/3285 to 3295/2023 / 10-S2
(ख)	अपील आदेश संख्या और दिनांक / Order-In - Appeal and date	AHM-CGST-001-APP-JC-191 to 201/2023-24, Date: 29.12.2023
(ग)	पारित किया गया / Passed By	श्री आदेश कुमार जैन, संयुक्त आयुक्त (अपील) Shri Adesh Kumar Jain, Joint Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	02.01.2023
(ङ)	Arising out of Order-In-Original Nos. ZL2406230424743, ZM2406230424787, Z12406230424832, ZM2406230424865, ZJ2406230424932, ZF2406230425032, Z12406230425065, ZK2406230425143, ZK2406230425243, ZM2406230425309, and ZK2406230424698 all dated 30.06.2023 and all passed by The Assistant Commissioner, CGST & CX, Div-I Rakhial, Ahmedabad South.	
	<b>Name of the Appellant</b>	<b>Name of the Respondent</b>
(च)	M/s State Bank of India, 1, State Bank of India, Local Head Office, Lal Darwaja, Bhadra, Ahmedabad, Gujarat, 380001	The Assistant Commissioner, CGST & CX, Div-I Rakhial, Ahmedabad South

- (A) इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी /प्राधिकरण के समक्ष अपील दायर कर सकता है।  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
- (i) National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
- (ii) State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017
- (iii) Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
- (B) Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
- Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying -
- (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant; and
- (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
- (ii) The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
- (C) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbic.gov.in](http://www.cbic.gov.in) की देखा सकते हैं।  
For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website [www.cbic.gov.in](http://www.cbic.gov.in).



**ORDER IN APPEAL****Brief Facts of the Case :-**

These appeals have been filed under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "*the Act*") by **M/s. State Bank of India**, 1, State Bank of India, Local Head Office, Lal Darwaja, Bhadra, Ahmedabad, Gujarat – 380001 (hereinafter referred to as "**Appellant**") against the Order Numbers as tabulated below (hereinafter referred to as "**Impugned Orders**") passed by the Assistant Commissioner, Division-I (Rakhial), CGST, Ahmedabad South (hereinafter referred to as "**the Adjudicating Authority/Proper Officer**").

SL No.	Appeal No. & Date (All appeals filed on <b>07.09.2023</b> )	OIO (All dated <b>30.06.2023</b> )	Refund ARN No. (all dated <b>02.05.2023</b> )	Refund Amount Claimed	Period of refund claimed
1	GAPPL/ADC/GSTP/3285/2023	ZL2406230424743	AA2405230079295	1,73,865	May'2021
2	GAPPL/ADC/GSTP/3286/2023	ZM2406230424787	AA240523007973C	99,615	June'2021
3	GAPPL/ADC/GSTP/3287/2023	Z12406230424832	AA240523008007S	3,20,123	July'2021
4	GAPPL/ADC/GSTP/3288/2023	ZM2406230424865	AA240523008051Z	1,16,753	August'2021
5	GAPPL/ADC/GSTP/3289/2023	ZJ2406230424932	AA240523008139J	2,90,818	Sept.'2021
6	GAPPL/ADC/GSTP/3290/2023	ZF2406230425032	AA240523008184O	37,561	October'2021
7	GAPPL/ADC/GSTP/3291/2023	Z12406230425065	AA240523008211Z	36,881	Nov.'2021
8	GAPPL/ADC/GSTP/3292/2023	ZK2406230425143	AA240523008319H	23,53,239	Dec.'2021
9	GAPPL/ADC/GSTP/3293/2023	ZK2406230425243	AA240523008344O	1,65,341	January'2022
10	GAPPL/ADC/GSTP/3294/2023	ZM2406230425309	AA240523008372P	1,31,046	March'2022
	GAPPL/ADC/GSTP/3295/2023	ZK2406230424698	AA2405230078669	1,68,421	April'2021

The Appellant is engaged in providing Banking and Other Financial Services (BOFS) services within India under GST No. 24AACS8577K1ZV. The appellant is providing various financial services in India under the category of Banking and Financial services. Amongst various other services, they also provide banking services to importer/exporters. They facilitate the settlement of payment relating to import and export goods/services between the importer and exporter. All foreign trade transactions have to be necessarily routed through normal banking channels. For settlement of payment between the importer and exporter, banks of importer and exporter has to play their role of making/collecting payment. If the importer's and exporter's banks are different, then the settlement transactions are governed by the URC522 and UCP 600 protocol which is issued by International Chamber of Commerce (ICC). The protocol defines the obligations of each party (i.e. exporter, importer and their respective banks) to international trade.

2.1 In the case of export trade, as per the specific instructions of Indian exporter, the claimant provides services like sending of export

documents to exporter's buyer's bank, collection for payment of bill of exchange, etc. Similarly, in the case of import trade, at the request of the importer, the appellant provides services like issue and amendments of Letter of Credit, making payments in foreign currency to foreign supplier of Indian importer on receipt of documents covering the imports etc.

2.2 In this regard, the appellant charges commission/fees for the provision of such services to the importer/exporter. The appellant duly pays GST on the fees received by them for providing such services.

2.3 The appellant has filed refund of such IGST paid under reverse charge mechanism (RCM) on Foreign bank charges in form RFD-01 under various ARNs as tabulated above for the period from April'2021 to March'2022 (except February'2022) under the category of 'Any Other' under Section 54 of CGST Act 2017 read with Rule 89 of the CGST Rules, 2017 on the ground that the claimant is not liable to pay IGST under reverse charge on Foreign Bank Charges.

3. Show Cause Notices dated 25.05.2023 was issued to the appellant asking them to produce cause, as to why their refund claims should not be rejected Section 54 of the CGST Act, 2017 on the following reasons;-

- As per proviso to Section 13(2) of IGST Act, 2017 read with SL No. of Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017, the claimant is liable for payment of IGST under reverse charges on Foreign Bank Charges, therefore, refund claim filed by the claimant is liable for rejection;
- Further, on the basis of the documents submitted by the claimant, it appeared that the claimant has failed to substantiate their claim for refund of IGST on footing of "Unjust Enrichment". The claimant has submitted a certificate wherein it is mentioned that incidence of duties has not been passed on. However, the claimant has failed to produce documentary evidences, i.e. Treatment given to the IGST paid - in their books of accounts for the period from date of payment to till date, proof that they had not passed on the incidence of duty/tax to their clients subsequently, etc. In the absence of any such proof / documents, it appears that under the provisions of Section 54 of the CGST Act, 2017 that the claim is hit by Unjust Enrichment clause;
- The claimant has filed refund claim on ground that IGST paid under reverse charge under protest on Foreign Bank Charges. However, claimant has not submitted any documentary evidence that the IGST paid by them was paid under protest;
- Further, the claimant had submitted a FINAL ORDER NO. 50737/2020 of the CESTAT, New Delhi which pertains to Service tax regime and is not related to the payment of GST on reverse charge on Foreign Bank Charges for which the refund has been claimed;
- No dispute has been raised by the claimant regarding the payment of IGST on reverse charges on Foreign Bank charges for which refund has been claimed;

4. The adjudicating authority vide her impugned orders detailed as in the tabulation above, rejected all the refund claims on the grounds as is in the show cause notice dated 25.05.2023.

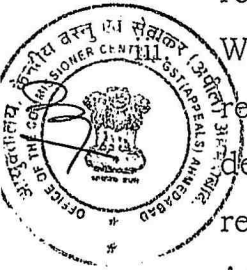


5. Aggrieved by the impugned orders rejecting their refund claims, the appellant filed their appeals on 07.09.2023 on the following grounds:-

- i. Impugned order has been passed ex-parte without providing any opportunity of personal hearing and therefore, not sustainable. a. In the present case, the Adjudicating Authority has not provided any opportunity of personal hearing before passing the impugned order as required under Proviso to Rule 92 (3) of CGST Rules, 2017. It is also evident from the case history available on the GSTN portal that after filing of reply to the SCN by the Appellant, the Adjudicating Authority has passed adjudication order without providing any opportunity of personal hearing.
- ii. It is alleged in the SCN and discussed in impugned order that foreign bank charges are governed by Sr. No. 1 of Notification No. 10/2017-IGST (Rate) dated 28h June 2017 which specifies that for any service supplied by any person who is located in a non-taxable territory to any person, the whole of Integrated Tax leviable under Section 5 of IGST Act, 2017, shall be paid on reverse charge basis by the recipient of such services.

While the department has alleged that in case of foreign bank charges, recipient of service is liable to pay GST under reverse charge however, the department has not discussed as to why the Claimant can be considered as recipient of service provided by the foreign bank Claimant submits that the Appellant has provided the service of collection of export proceeds, issue and amendment of letter of credit, etc. at the instance of the exporters/importers. Thus, the Appellant is not the receiver of service and exporter/importer is the receiver of service.

- iv. In the case of export trade, the service provided by the Applicant to exporters is sending export documents to buyer's bank abroad and collection for payment of bill of exchange, as mentioned in brief facts above. The name and branch of exporter's buyer's bank to whom export documents are to be sent and export bill proceeds are to be realised are informed by the exporter. The Applicant's role is to settle the payment relating to import/export trade, as the case may be, by forwarding of documents to exporters' buyer's bank abroad and realisation of proceeds by way of receiving of remittance in foreign currency. For performance of such activity, the Applicant charges the exporters, the GST of which is duly paid by the Applicant. h. The Applicant submits that for the activities undertaken outside India by the Foreign Banks, the charges for which are deducted at source from the export bill, the Applicant cannot be considered as a recipient of service.
- v. The Applicant relies on the judgement of Honourable CESTAT Delhi in the case of State Bank of Bikaner and Jaipur (which is merged with the



Appellant. w.e.f. 1st April 2017) order no. 50737/2020 dated 5 August 2020, wherein the Honourable CESTAT Delhi has analysed the impugned transaction in detail and has held that the Indian Bank is not recipient of service provided by the Foreign Bank and therefore, the Indian Bank is not liable to pay Service Tax under reverse charge.

*50. The inevitable conclusion that follows from the above discussion is that the Indian Bank is not the recipient of any service rendered by the Foreign Bank and, therefore, there is no liability to pay service tax on a reverse charge mechanism.*

- vi. It is stated in the SCN and discussed in impugned order that as per section 13(2) of IGST Act, 2017 read with Sr. No. 1 of Notification No. 10/2017 - Integrated Tax (Rate) dated 28th June 2017, the Bank is liable for payment of IGST under reverse charge on foreign Bank charges. As explained in grounds of appeal above, GST under reverse charge is payable by the recipient and the Claimant is not the recipient of service provided by the Foreign Bank.
- vii. The Appellant submits that the Appellant is facilitating the import/export trade by forwarding/receiving the documents and collection/payment of bills. The Foreign Banks are also facilitating the trade by undertaking the same activity i.e. forwarding/receiving the documents and collection/payment of proceeds from export/import. Thus, the Appellant submits that both the Appellant and the Foreign Banks are undertaking the same activity of import and export of goods. The Appellant submits that there is no doubt with regard to the fact that both the Appellant and the Foreign Banks are facilitating the.
- viii. Submission with respect to submission of proof of non-passing on the incidence of tax: Claimant refers to Rule 89(2)(m) of CGST Rules, 2017 which is reproduced as under:
- “(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees “*
- ix. Complying with the requirement of the above rule, the Claimant has submitted a certificate issued by independent chartered accountant certifying that the Claimant has paid IGST under reverse charge on foreign bank charges and has not passed on incidence of tax to any other person. Submission of CA certificate is an admitted fact in SCN also.
- x. Submission with respect to non-submission of documentary evidence of tax paid under protest Claimant submits during the erstwhile Service Tax regime, department has issued Show Cause Notices (SCNs) demanding Service Tax on Foreign Bank Charges on the premise that the Bank is the recipient of services provided by the Foreign Banks. Subsequent to receipt of SCNs, in order to avoid interest and penalty, in case SCNs are decided

against the Bank, the Claimant has started paying Service Tax under reverse charge without accepting our liability under protest. Subsequently, Honourable Principal Bench of CESTAT has decided the matter in favour of the Bank

- xi. Submission with respect to finding that judgement issued under Service Tax regime cannot be considered: a. While filing the refund application, the Claimant has submitted a copy of judgement of Honourable CESTAT Delhi in the case of State Bank of Bikaner and Jaipur (which is merged with the Claimant w.e.f. 1s April 2017) order no. 50737/2020 dated 5h August 2020 wherein the Honourable CESTAT Delhi has held that the Indian Bank is not the recipient of service provided by the Foreign Bank and therefore, the Indian Bank is not liable to pay Service Tax under reverse charge. Claimant submits that GST had been implemented w.e.f. 1s July 2017 and the provisions related to levy of GST on banking and financial services including applicability of reverse charge contained in GST law are pari materia to provisions of erstwhile Service Tax Law. It is admitted by the Adjudicating Authority that under Service Tax regime, similar provisions were prevailing URC 522 and UCP 600 are protocols and not agreements and exporters/importers are also party to it: a The Appellant submits that URC 522 and UCP 600 are the codified rules to be followed in the international trade as published by International Chamber of Commerce." ICC makes it easier for merchants from different countries to trade with each other. With the universal acceptance of these rules, traders worldwide do not have to cope with often conflicting national regulations (refer forward to UCP 600).
- xiii. The Appellant submits that it a protocol to be observed by all the parties involved in international trade including the exporter/drawer (referred to as Principal in Article 3 of URC 522) as well as the importer (referred to as drawee in Article 3 of URC) and all the concerned banks and not just confined to the Banks.
- xiv. The Appellant submits that it is evident from the above submission that the exporters/importers are also bounded by the protocols and not only Indian banks and Foreign Bank. The Appellant submits that the Adjudicating Authority has not taken any pain to examine whether there could be implied contract between Foreign Banks and the exporter as well.
- xv. Foreign Bank charges not accounted in the Appellant's book The charges of Foreign Bank are in no form or manner accounted for in the books of the Appellant. Also, the Appellant's charges are not inclusive of and do not incorporate the Foreign Bank charges within its charges and it are borne directly by the exporter. In the example provided at Para 9(f) of statement of facts, the Appellant shall account for income of Rs. 1,000 plus applicable IGST recovered. The Appellant pays IGST on \$ 8 under reverse charge.



Whereas the importer/exporter shall account for bank charges of \$ 38 and Rs. 1,000.

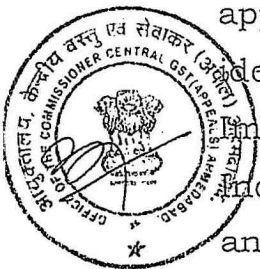
- xvi. The Appellant submit that there is no value addition done by the Appellant on the services provided by the foreign bank. Similar to Service Tax, GST is also a VAT which in turn is destination based consumption tax in a sense that it is on commercial activities and is not a charge on the business but on the consumer. Just as excise duty is a tax on value addition on goods. GST is on the value addition by rendition of service. VAT is a consumption tax as it is borne by the consumer.
- xvii. The Appellant most humbly and respectfully prays that the Honourable Appellate Authority may be pleased to:
- to set aside the impugned order passed by the Adjudicating Authority and allow the appeal in full with consequential relief to the Appellant;
  - order the Adjudicating authority to grant refund claim filed by the Appellant in full.

**Personal Hearing:**

6. An opportunity of personal hearing was granted to the appellant on 30.11.2023 virtually. Mr. Krishan Kumar Sharma C.A. and Mr. Labana, appeared before me as authorized representatives on behalf of the appellant and submitted that all provisions of Service Tax era are identical to CGST. Foreign Bank Charges are borne by the Importer/Exporter as the case may be and not by the State Bank of India. All the taxes are paid on service charges by State Bank of India, and in this case SBI is not the intermediary and also not the recipient of the service. Chartered Accountant Certificate is produced that incidence on GST paid is not passed on. Since the provisions of GST and ST are identical, therefore the decision of CESTAT in case of Service Tax is applicable. Reference to Para-5, 9, 14, 41,46 and 50 referred in grounds of appeal given. He further reiterated the written submissions and requested to allow appeal in the light of the CESTAT Judgement attached with the appeal memorandum.

**Discussion and Findings :-**

7. I have carefully gone through the facts of the case, grounds of appeal, submissions made by the *appellant* and documents available on record. At the outset, it is observed that the *impugned order* was issued on dated 30.06.2023 and present appeal was filed online on dated 07.09.2023 i.e. within the three months time limit as prescribed under Section 107 of the CGST Act, 2017.



8. The main issue in the instant case is that whether the IGST paid under reverse charge mechanism (RCM) on Foreign bank charges by the appellant can be refunded or not.

9. Before proceeding to decide, whether the appellant is eligible for such refund, for this purpose, it is mandatory to understand the kind/nature of service provided by the appellant to their exporters and importers. The appellant provides the service of collection of export proceeds, issue and amendment of letter of credit, etc., at the instructions of the exporters/importers. In the case of export trade, the service provided by them to exporters is sending export documents to buyer's bank abroad and collection for payment of bill of exchange. The name and branch of exporter's buyer's bank to whom export documents are to be sent and export bill proceeds are being realized as informed by the exporter.

10. Hence, it is clear that the appellant role is to settle the payment relating to import/export trade, as the case may be, by forwarding of documents to exporter's buyer's bank abroad and realization of proceeds way of receiving of remittance in foreign currency. Thus, the appellant functions as an agent in between the exporter/importer and the foreign bank. For performance of such activity, the appellant charges the exporters, and the GST is duly paid by the appellant as per their contentions. **In respect of the activities undertaken outside India by the Foreign Banks, the charges are deducted at source from the export bill.**

11. As per proviso to Section 2(5)(33) of the CGST Act, 2017

(5) "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

"consideration" in relation to the supply of goods or services or both includes-

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

(33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such



services as the Government may, subject to such conditions, as it may, by notification, specify;

12. As per provisions of Section 2(5) & 2(33) of CGST Act, 2017 as given above, the services provided by the Appellant to their exporters/importers is taxable. However, from the impugned order, it is not forth coming about such taxability on the services as detailed at Para 9 & 10 above provided by the appellant. **The appellant in their grounds of appeal have clearly stated that the charges for carrying out these services are deducted at source from the export bill and remaining proceeds realized is passed on to the exporter/importer.**

13. In respect of paying IGST on the foreign bank charges, Section 9(3) of the CGST Act and Section 5(3) of the IGST Act identify the specific goods or services notified by the Government under RCM. Whereas Section 9(4) of the CGST Act and Section 5(4) of the IGST Act, provides supply of goods or services by an unregistered supplier to registered recipient under RCM.

**Section 5(3) & (4) of IGST Act, 2017 read as under :-**

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

5. Sr. No. 1 of Table of Notification No. 10/2017 - Integrated Tax (Rate) dated 28.06.2017

Table SI.	Category of Supply of Services	Supplier of service	Recipient of Service
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

It appears that foreign bank charges are governed by SL no. (1) of Notification No 10/2017 - IGST(Rate), which specifies that for any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient, the whole of Integrated Tax leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services. Further, Section 13 of the IGST Act, 2017 reads as under:-

**Section 13. Place of supply of services where location of supplier or location of recipient is outside India.-**

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in subsections (3) to (13) shall be the location of the recipient of services:

**Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.**

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:-

(a) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

[Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;]

(b) Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

(6) Where any services referred to in sub-section (3) or sub-section (4) or subsection (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(7) Where the services referred to in sub-section (3) or sub-section (4) or subsection (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(8) The place of supply of the following services shall be the location of the supplier of services, namely:- (a) services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders; (b) intermediary services (c)

services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month. Explanation .- For the purposes of this sub-section, the expression,- (a) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account; (b) "banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934; (c) "financial institution" shall have the same meaning as assigned to it in clause (c) of section 45 of the Reserve Bank of India Act, 1934; (d) "non-banking financial company" means, - (i) a financial institution which is a company; (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey. (11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services. Explanation .-For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:- (a) the location of address presented by the recipient of services through internet is in the taxable territory; (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory; (c) the billing address of the recipient of services is in the taxable territory; (d) the internet protocol address of the device used by the recipient of services is in the taxable territory; (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory; (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory; g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

14. **Thus from the plain reading of the provisions as detailed above, it is clear that in lieu of Section 13(2) of IGST Act, 2017 read with SL No. of Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017, the appellant is liable for payment of IGST under reverse charges on Foreign Bank Charges which is being deducted at source by the foreign bank.**

15. Therefore, it is observed that the appellant is liable for payment in both ways ie. CGST plus SGST for the services provided to the exporter/importer (as detailed in Para 9 & 10 above) for having provided services to any person located in the taxable territory and **IGST on reverse charge basis on the services received from the Foreign Bank in lieu of Section 9(3) of the**



**CGST Act and Section 5(3) and Section 9(4) of the IGST Act read with Notification No.10/2017-Integrated Tax (Rate) dated 28.06.2017..**

16. Now coming to the other aspects of appeal memorandum, the appellant in their appeal memorandum have claimed that though they were paying service tax in the service tax regime on such foreign bank charges and were regularly issued with show cause notice. In the GST era, they were paying the tax (IGST) under protest on such charges. In this regard, it is observed that at no point of time they disputed about the payment of IGST on reverse charges on Foreign Bank Charges, for which refund has been claimed. Thus, as per the impugned order, it is seen that they had not produced any documentary evidence that they were paying the IGST under protest. I don't see any farce in the contentions of the appellant, that they are paying IGST under protest.

17. Further, as per the grounds of appeal and submissions made by the appellants, it is observed that they have not substantiated their claim for refund of IGST on footing of 'Unjust Enrichment'. The appellant has just submitted a Chartered Accountant Certificate mentioning that the duties have not been passed on. The appellant's contention of referring to Rule 89(2)(m) of CGST Rules, 2017 does not suffice in the absence of any documentary evidences such as copy of Ledger of Refund receivable, Profit and Loss accounts, GSTR-9/9C where amount of excess payment of IGST should clearly mentioned. The appellant's claim, that they do not maintain any accounting in this regard is also not sustainable. Hence, the proof that they had not passed on the incidence of tax to their clients, when not furnished, under the provisions of Section 54 of the CGST Act, 2017, their claim is hit by Doctrine of Unjust Enrichment.

18. Now coming to the contention of the appellant's that they are not the recipient of the service and the exporter / importer whoever gets the documentation done through them is the recipient of the service and they are just intermediaries who carry out the documentation part and realization of the proceeds by way of receiving of remittance in foreign currency; it is observed from the appeal memorandum and the Annexure to the Certificate issued by their Chartered Accountant, the appellant has availed input tax credit to the tune of 50% of the IGST paid by them under RCM during the month's from April'2021 to June'2021. Further, it is seen that even in the Service Tax regime they were paying tax on the same service as recipient of service. However, it appears that only in the GST regime, they found out, that their role is of

intermediaries and not as recipient of service. Hence, it is observed that claiming of refund of the IGST paid under RCM on Foreign Bank charges is merely an afterthought of the appellant, and it appears that they were not in decision for claiming refund of such tax paid. Thus, it appears that they were sure enough as per law they are not eligible to claim refund of the IGST paid. Thus, it is proved that though they claim themselves as intermediaries, ultimately by enjoying the liberty to avail the ITC, they ended up being recipient of the service.

19. Thus it is evident from the above discussions, that the appellant is providing services in the form of collection of export proceeds, issue and amendment of letter of credit, etc. at the insistence of the exporters/importers. The appellant sends export documents to buyer's bank abroad and collection for payment of bill of exchange on the directions of the exporters. On behalf of the exporter, the appellant forwards the export documentation to the buyer's bank and in return, the buyers' foreign bank after the deduction of their charges from the export proceeds, forwards the remittances to the appellant, and the appellant at the later point of time provides services to the exporter by crediting the export proceeds to his account. Thus, in the first place, it is the appellant who receives/avails the services of the foreign bank for which the buyer's foreign bank, charges the appellant. The foreign bank, who is located in non-taxable territory supplies the services to the appellant who is located in taxable territory for certain consideration. Hence, the appellant is liable to pay IGST on the services availed from the foreign bank under RCM, as they are located within the taxable territory.

20. The appellant has relied upon the judgement of CESTAT Delhi in the case of State Bank of Bikaner and Jaipur Order No.50737/2020 dated 05.08.2020, wherein it has been held that the Indian Bank is not the recipient of service provided by the Foreign Bank and therefore, the Indian Bank is not liable to pay Service Tax under reverse charge. It is observed that the aforesaid order has been passed in respect of Service Tax matter. In the GST era, the Acts and Rules have changed to some extent that an order passed in the Service Tax regime cannot be taken as precedence / relied upon judgements in the instant case. Further, the said CESTAT order has not yet reached its finality as the Department has preferred appeal in the Supreme Court.

21. In view of the above discussions and findings as in para 13-15, the appellant is liable to pay the tax on reverse charge mechanism on the foreign bank charges. I accordingly, uphold the impugned order passed by the



adjudicating authority and reject all the 11 appeals as detailed in the table at para 1 above.

22. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeals filed by the *appellant* stands disposed of in above terms.

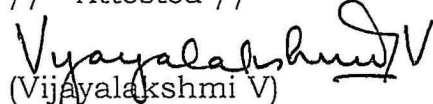


(Adesh Kumar Jain)

Joint Commissioner (Appeals)

Date: .12.2023

// Attested //

  
(Vijayalakshmi V)  
Superintendent (Appeals)  
Central Tax, Ahmedabad



By R.P.A.D.

To,  
M/s. State Bank of India,  
1, State Bank of India, Local Head Office,  
Lal Darwaja Bhadra,  
Ahmedabad, Gujarat -380 001.

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner, CGST & C. Ex., Appeals, Ahmedabad.
3. The Commissioner, CGST & C. Ex., Ahmedabad-South.
4. The Dy/Asstt. Commissioner, CGST, Division-I, Ahmedabad South.
5. The Superintendent (Systems), CGST & C. Ex., Appeals, Ahmedabad.
6. Guard File.
7. P.A. File

