

FAX : 0172-2720064

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR-17C, CHANDIGARH-160017
DIVISION BENCH


Dated: 01/07/2019

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/60660-60662/2019-CU|DB| dated 22/05/2019

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.


Assistant Registrar/SPS
CESTAT CHANDIGARH

<u>Application</u>	<u>Appeal</u>	<u>Name and Address of Appellant</u>
1	ST/MISC/60106/2019, ST/60753/2017	Ms Dlf Cyber City Developers Ltd 10th Floor, gateway Tower, dlf City, phase-iii, Gurugram, Haryana 122002
2	ST/60758/2017	Ms Dlf Utilities Ltd 7th Floor, dlf Gateway Tower, dlf Cyber City, Gurugram, Haryana, 122001
3	ST/60857/2017	Central Excise and Service Tax and Customs-Gurgaon I Plot No 36 & 37, Sector 32, NEAR MEDANTA HOSPITAL-Gurgaon Haryana-122001

Name and Address of Respondent

4	C.C.E.-Delhi-iv Plot No. 36-37, Sector 32 Opp. Medanta Hospital NH-IV-GURGAON, HARYANA-121001
5	C.C.E.-Delhi-iv Plot No. 36-37, Sector 32 Opp. Medanta Hospital NH-IV-GURGAON, HARYANA-121001
6	Dlf Utilities Ltd 7th Floor, Gateway Tower, Dlf Cyber City,,,GURGAON, HARYANA

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Other Appellants and Respondents as per Annexure

Copy To

7 Advocate(s) / Consultant(s):

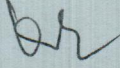
**PRADEEP K MITTAL AND PRAVEEN
K MITTAL
171-CHITRA VIHAR, DELHI-110092**

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 M/S Easy Service Taxonline.com Pvt Ltd. 407 A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahemdabad-15.

10 Office Copy

11 Guard File


Assistant Registrar/SPS
CESTAT CHANDIGARH

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

REGIONAL BENCH - COURT NO. 1

**Appeal No. ST/60753/2017
Application No. ST/MISC/60106/2019**

[Arising out of OIO-DLI-SVTAX-004-COM-005-17-18 09/06/2017 passed by the Commissioner of Central Excise and Service Tax-DELHI-IV AUDIT-II]

M/s DLF Cyber City Developers Limited : Appellant (s)
10th Floor, gateway Tower, dlf City, phase-iii,
Gurugram, Haryana, 122002

Vs

CST, Delhi-IV : Respondent (s)
Plot No. 36-37, Sector 32 Opp. Medanta Hospital
GURGAON, HARYANA, 121001

**WITH
Appeal No. ST/60758/2017**

[Arising out of OIO-DLI-SVTAX-004-CCM-005-17-18 09/06/2017 passed by the Commissioner of Central Excise and Service Tax-DELHI-IV AUDIT-II]

Ms Dlf Utilities Ltd : Appellant (s)
7th Floor, dlf Gateway Tower, dlf Cyber City,
Gurugram, Haryana, 122001

Vs

CST, Delhi-IV : Respondent (s)
Plot No. 36-37, Sector 32 Opp. Medanta Hospital
GURGAON, HARYANA, 121001

APPEARANCE:

Shri P. K. Mittal Advocate for the Appellant
Shri Atul Handa, Shri Vijay Gupta, ARs for the Respondent

**AND
Appeal No. ST/60857/2017**

[Arising out of OIO-DLI-SVTAX-004-COM-005-17-18 09/06/2017 passed by the Commissioner of Central Excise and Service Tax-DELHI-IV AUDIT-II]

CCE & ST- Gurgaon-I : Appellant (s)
Plot No 36 & 37, ,Sector 32, NEAR MEDANTA HOSPITAL
Gurgaon, Haryana, 122001

Vs

DLF Utilities Ltd. : Respondent (s)
7th Floor, dlf Gateway Tower, dlf Cyber City,
Gurugram, Haryana, 122001

APPEARANCE:

Ashwini

Shri Atul Handa, Shri Vijay Gupta, ARs for the Appellant
Shri P. K. Mittal Advocate for the Respondent



CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE Mr. BIJAY KUMAR, MEMBER (TECHNICAL)

ORDER No. A/60660-60662/2019

Date of Hearing 22.05.2019
Date of Decision: 22.05.2019

Per : ASHOK JINDAL

Appeal No. ST/60753/2017 and ST/60758/2017 were filed by the appellant-assessee and Appeal No. ST/50857/2017 filed by the Revenue.

2. Appeal No. ST/60753/2017 and ST/60758/2017, as these appeals are having a common issue, therefore, both appeals are disposed by way of a common order. The appellant-assessee is also filed a miscellaneous application to bringing additional evidence on record. The additional evidence produced by the appellant-assessee is very necessary for disposal of the appeal, therefore, the same were taken up on record and the application is allowed.
3. The facts of the case are that appellant-assessee is engaged in the providing various taxable services and are registered with the department paying service tax thereon. During the course of Audit, it was found that the appellant-assessee has provided corporate guarantee to various banks/ financial institutions on behalf of their holding companies/Associate enterprises/ Joint Venture and Other loan facilities. The Revenue alleges that the such activity is taxable under Banking and Finance Institution Services whereas the appellant-assessee is contesting that they are not liable to pay service tax on the said activity as they have not received any consideration for providing corporate guarantee to various banks on behalf of their associates. In these set of facts, the two show cause notices were issued to the appellant-assessee to demand service tax on corporate guarantee provided by the appellant-assessee to various financial institutions on behalf of their holding company/associate enterprises. The matters were adjudicated and the demand of service tax was

ASHOK JINDAL

confirmed. Against the said order, the appellant-assessee is before us.

2. Heard the parties.

3. It is an admitted fact that the appellant-assessee has not received any consideration from either from the financial institutions or from their associates for providing corporate guarantee, in that circumstances, no service tax is payable by the appellant-assessee. Moreover, the demand raised in the show cause notices are on the basis of assumption and presumption presuming that their associates have received the loan facilities from the financial institution at lower rate, therefore, the differential amount of interest is consideration, but there is no such evidence produced by the revenue on that behalf. In that circumstances, we hold that the appellant-assessee are not liable to pay any service tax on corporate guarantee provided by the appellant assessee to various banks/financial institutions on behalf of their holding company/associate enterprises for their loan or over draft facility under Banking and Financial Institutions after or before 01.07.2012.

4. In view of this, we set-aside the impugned orders qua demand of service tax on corporate guarantee provided by the appellant-assessee. Therefore, no penalty is imposable on the appellant-assessee. Therefore, the appeals filed by the appellant-assessee are allowed.

5. Appeal No. ST/60857/2017, the Respondent is engaged in providing various services such as maintenance of Office Complex, Commercial Complex owned by the Group Companies. Two show cause notices were issued to the respondent to levy of service tax on "OFFSHORE UPFRONT FEE" paid to the foreign bankers on "Foreign Currency Buyer Credit Facility" chargeable under Banking and other Financial Services. It is alleged in the show cause notice that Offshore Upfront Fee is a fee charged by the foreign banks in addition to interest on these credit facilities. The respondent stated that the Offshore lender does not provide any service and upfront fee is nothing but the element of cost of capital provided by the Offshore Lenders to the Respondent. In the impugned order, the said demand has been dropped by the Ld. Commissioner, but, revenue filed appeal

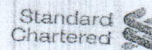
Aditya

against the said order on the ground that it is not a fee but interest paid by the respondent, therefore, on the said amount, they are liable to pay service tax.

6. Heard the parties.

7. The sole issue is to be decided by us is that the Offshore Upfront Fee paid by the respondent is an interest or a fee.

We find that if it is an interest then service tax is not payable by the appellant in terms of the Circular No. F.No. B2/8/2004-TRU dt. 10.09.2004 wherein interest on loan is not the part of taxable value. We have gone through the facts of the case and the respondent has produced a letter from the Standard Chartered Bank dated 15.12.2014 to show that the Offshore Upfront Fee is nothing but an interest on buyer credit transaction as stipulated by the RBI Guidelines. For better appreciation, the said letter has extracted herein below:-



Kind Attention

Mr. Manik Khanna
DLF Limited

Sub: Upfront Interest/fees Charged on the Buyers Credit Loan

15th December 2014
Gurgaon

This is further to your mail and subsequent discussions. Please note that for the buyer's credit facilities availed by DLF Utilities Limited under the offer letter with the below details

S. No.	Offer Letter No	Offer letter date	Foreign Currency	BC Loan Amt In Foreign Currency
1	OBU IN BC FL / DLF Utilities Limited Rollover 110510	11-May-10	Euro	1,574,230
2	OBU IN BC FL / DLF Utilities Limited 090610A Rollover - EUR	9-Jun-10	Euro	2,361,390
3	OBU IN BC FL / DLF Utilities Limited Rollover 080410	9-Apr-10	USD	2,550,000
4	OBU IN BC FL / DLF Utilities Limited Rollover USD 211010b	21-Oct-10	USD	2,774,200
5	OBU IN BC FL / DLF Utilities Limited Rollover 070111	7-Jan-11	USD	4,047,200
6	OBU IN BC FL / DLF Utilities Limited Rollover 090910	9-Aug-10	USD	3,750,000
7	OBU IN BC FL / DLF Utilities Limited Rollover 121110	12-Nov-10	JPY	13,296,600
8	OBU IN BC FL / DLF Utilities Limited 090610B Rollover - JPY	9-Jun-10	JPY	259,587,500
9	OBU IN BC FL / DLF Utilities Limited 290610 Rollover	29-Jun-10	JPY	387,786,900
10	OBU IN BC FL / DLF Utilities Limited Rollover 251110	25-Nov-10	JPY	60,017,650
11	OBU IN BC FL / DLF Utilities Limited Rollover 021110	2-Nov-10	JPY	451,250,000
12	OBU IN BC FL / DLF Utilities Limited Rollover 211010	21-Oct-10	JPY	85,356,194
13	OBU IN BC FL / DLF Utilities Limited Rollover 121110	12-Nov-10	JPY	149,232,840
14	OBU IN BC FL / DLF Utilities Limited Rollover 211010	21-Oct-10	JPY	220,400,000
15	OBU IN BC FL / DLF Utilities Limited Rollover 121110	12-Nov-10	JPY	228,320,000
16	OBU IN BC FL / DLF Utilities Limited Rollover 121110	12-Nov-10	JPY	273,438,750
17	OBU IN BC FL / DLF Utilities Limited Rollover 030910	3-Sep-10	JPY	455,050,000
18	OBU IN BC FL / DLF Utilities Limited Rollover	3-Sep-10	JPY	582,554,913

Standard Chartered Bank
275, DLF Building, 3rd Floor
DLF Cyber City, Sector 24, Gurgaon
Gurgaon - 122 002, Haryana, India

Handwritten signature

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The upfront interest @ 1.5% p.a on the above Buyer Credit Transactions was charged as per the stipulated RBI guidelines as applicable then.

For Standard Chartered Bank

Authorised Signatory

For Standard Chartered Bank

Authorised Signatory

On going through the said letter, we hold that the said amount on which the service tax is being demanded and Upfront Fee is nothing but an interest and on interest, no service tax is payable by the respondent, therefore, we hold that the respondent is not liable to pay service tax on the said amount. Accordingly, we do not find any infirmity with the impugned order qua cropping the demand against the respondent. Therefore, we do not find any merit in the appeal filed by the revenue. Accordingly, the same is dismissed.

(Operative part of the order pronounced in the Court)

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asstt. Registrar
सीमा शुल्क उत्पाद शुल्क एवं सेवा कर
अपीलीय अधिकरण / (C.E.S.T.A.T.)
एस.सी.ओ. 147-148, सेक्टर 17-सी, चण्डीगढ़-160017
SCO 147-148, Sector 17-C, Chandigarh-160017

— SD —
(ASHOK JINDAL)
MEMBER (JUDICIAL)

— SD —
(BIJAY KUMAR)
MEMBER (TECHNICAL)

G.Y.