

**Service Tax - Collection of Taxes - State Bank of Patiala is an Agent of RBI, not liable to pay tax - CESTAT Larger Bench**

By TIOL News Service

NEW DELHI, NOV 02, 2016: THE question before the Larger Bench is:

**"Whether qua notification No. 22/2006-ST dated 31.05.2006, the commission received from the Reserve Bank of India by a scheduled bank (entrusted with functions of transaction of Govt. business) for rendition of "Banking or Financial" service is entitled to exemption from service tax on the ground that the banking company providing such taxable service is an agent of the Reserve Bank of India and thus entitled to exemptions specified in clause (i) of Notification No. 22/2006-ST dated 31.3.2006."**

As per Notification No. 22/2006-ST, **taxable services provided or to be provided to any person, by the Reserve Bank of India** were exempted.

State Bank of Patiala is a banking company registered under Companies Act, 1956 and regulated by the Reserve Bank of India as per the provisions of Banking Regulations Act, 1949; The RBI in exercise of its authority conferred by Section 45 of Reserve Bank of India Act, 1934 appointed the respondent-assessee, State Bank of Patiala as an agent to receive remittances of taxes on RBI's behalf to credit the same into consolidated fund; for which a commission was paid by RBI; This is sought to be taxed by Revenue authorities.

It is the claim of the respondent - assessee, State Bank of Patiala that the amount received as commission is not liable to tax in view of **Notification No. 22/06-ST** dated 31.5.2006.

The Tribunal noted that:

1. The issue that falls for consideration of this Larger Bench is whether the respondent herein is eligible for the benefit of exemption **notification No. 22/2006-ST** dated 31.05.2006.
2. The respondent herein is a public sector/nationalized bank established under Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and as defined in the State Bank of India (Subsidiary Banks) Act, 1959 and is authorized to collect the taxes payable by the citizen of India to the Government of India.
3. The respondent herein collects the taxes and remits to RBI, for which action, the RBI extends a percentage of amount collected as commission.
4. It is the case of the Revenue that such commission is taxable in the hands of the respondent under the category of **"Banking and other Financial Services"**.
5. RBI is constituted under RBI Act, 1934, and is banker of the nation. As per Section 20 of the RBI Act, the RBI is mandated to accept the monies for the account of Government of India and to make payment and other activities like foreign exchange remittances and other banking operations including the management of debt of the Govt. of India.

6. Only RBI can transact the Government business in India which is to receive and also remit all the money on behalf of the Government of India. Section 21A of the RBI Act also empowers the RBI to transact Government business of States on agreement. Holistically, reading of Section 20, 21 and 21A of the RBI Act, would mean that RBI is supposed to receive all money on behalf of Govt. of India and remit the same and no one else is authorized to do so. If this be so, various taxes like collection of central excise, customs and service tax and amounts collected by sale of public deposit, RBI bonds, special discount scheme etc., and payment of pension etc , has to be done only by RBI.

7. As per Section 45, it can be noticed that, RBI, under the direction of Central Government of India having regard to public interest, convenience of banking and other factors, can appoint a national bank or the State Bank to transact business as its agent at any place in India. Drawing power from this Section, RBI appoints various national banks/public sector banks for collection of various taxes and making payment of pension etc. This would mean that various national banks are agents of the RBI .

8. The Central Govt. of India by **Notification No. 22/2006-ST**

has given exemption from the payment of service tax of any taxable services provided to or by RBI either in India or under Reverse Charge Mechanism.

And the Tribunal (Larger Bench) held,

1. In our view as the respondent assessee is an agent of RBI, exemption granted by **notification No. 22/2006-ST** , needs to be extended to respondent.

2. In our view the claim of the respondent from exemption of the service tax on the commission received for undertaking the activity of receiving various taxes on behalf of the Govt. of India, seems to be justified inasmuch as that the provisions of Section 45 of RBI Act categorically mandated for appointing national bank or a State Bank by the RBI for specified purposes as directed by Government; and the said Section also mandates that such Banks will be agents of RBI .

3. As whether an agent will be eligible for exemption or otherwise is being contested in the appeal, in our view the question does not arise as Chapter V of the Finance Act, 1994, in Section 65 (7), the term assessee has been defined as:-  
**"Section 65 (7) -"Assessee" means a person liable to pay the service tax and includes his agent"**

4. It can be seen from the definition, the Finance Act itself acknowledges the fact that the person who is liable to pay service tax includes its agent which would mean in the case in hand that in the absence of **Notification 22/2006-ST** , RBI would be liable to pay service tax as also banks which are appointed by RBI as agent under Section 45 of RBI Act. Applying the same analogy, in our view if RBI is exempted from the service tax liability in respect of various services, its agent for doing such services also needs to be extended the same benefit.

5. We may also look at the present controversy from another angle. State Bank of Patiala has been appointed by RBI as its agent under Section 45 of the RBI Act. RBI itself has been entrusted by the Central Government to transact Government business. Hence once State Bank of Patiala has been appointed as agent of RBI , it is transacting Government business which is in the nature of a sovereign function performed on behalf of the Government and hence not liable to Service Tax.

6. The judgement of the Tribunal in the case of **Canara Bank - [2012-TIOL-790-CESTAT-AHM](#)** has correctly interpreted **notification no. 22/2006-ST** and is correct exposition of the law. In our view the said judgement does not require any reconsideration.

The Larger Bench answered the reference in favour of the respondent and held that the law as laid down by the Tribunal in the case of **Canara Bank** is correct exposition of law. Present appeal has no merit and is dismissed.

(See **[2016-TIOL-2849-CESTAT-DEL-LB](#)**)