



2024 INSC 808

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 8228 OF 2019

COMMISSIONER OF GST AND CENTRAL EXCISE . . . . . APPELLANT

VERSUS

M/S CITIBANK N.A. . . . . RESPONDENT

WITH

CIVIL APPEAL NO. 89 OF 2021

**J U D G M E N T**

SANJIV KHANNA, J.

We have heard the learned counsel appearing for the parties at some length.

2. The contention of the Revenue is that the acquiring bank should have paid service tax on the Merchant Discount Rate<sup>1</sup> minus the interchange fee, and the issuing bank should have paid service tax on the interchange fee.
3. We are of the view that the judgment and reasoning given by S. Ravindra Bhat, J. is acceptable and it is in accordance with the provisions of Clause (iii) of Section 65 (33a) of

<sup>1</sup> For short, "MDR".

the Finance Act, 1994<sup>2</sup>.

4. S. Ravindra Bhat, J. rightly observes that as per Section 65(33a) of the Act, seven distinct heads of credit card services were sought to be taxed, the idea being to broaden the coverage of the species of services into taxation net. Clause (iii) thereof applies to service by any person, which includes service by the issuing bank and the acquiring bank. The use of the word 'and' in conjuncture is indicative of the legislative intent. MDR is charged/levied by the acquiring bank at the first point in time and subsumes both the acquiring bank fee and the interchange fee of the issuing bank, as well as the platform fee. It is the sum total of the three. The aforesaid charge occurs first in point of time and deduction and payment of service tax at this stage is beneficial to the Revenue. It is not the case of the Revenue that payment by the acquiring bank to the issuing bank, known as interchange fee, is separately chargeable, in addition to the service tax on the MDR.
5. To support the conclusion, S. Ravindra Bhat, J. has said that, in reality, there is one unified service which is rendered to the consumer, that is, the credit card holder, and the merchant. The subsequent bifurcation in the context and the nature of the transaction, read with Sections 66 and 68 of the Act and Rule 5(1) of the Service Tax (Determination

<sup>2</sup> For short, "The Act."

of Value) Rules, 2006, is immaterial as MDR is taxable and service fee is to be taxed. MDR, as a service, has been taxed and also paid.

6. We wonder whether the Revenue would have accepted the bifurcation as argued by them in case the acquiring bank and the issuing bank had taken the stand which is now taken by them. While interpreting a tax provision, one must keep in mind that the legislature ennobles the ease of collection of tax and payment of tax. These principles, especially when there is no loss of revenue, can be taken into consideration for interpreting a provision in case of doubt or debate.
7. It is pertinent to note that even the opinion expressed by K.M. Joseph, J., while adopting a different interpretation of Section 65 (33a) of the Act, goes on to hold, *vide* paragraphs 86 onwards of the judgment, that there should not be double taxation. However, it has been observed thereafter that the onus to show that payment of service tax on the entire MDR was made by the acquiring bank will be on the issuing bank, that is, the respondent, M/s. Citibank N.A.
8. We would, on the last aspect, observe that the entire data and details are available with the Service Tax Department and could have been easily ascertained before issuance of the show cause notice. Interestingly, the show cause notice proceeds on the basis that, regardless of the service tax

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paid by the acquiring bank on the full MDR, the issuing bank would be liable to pay service tax on the proportion of its share in the MDR, which is the interchange fee.

9. We find that the entire amount of the service tax payable on the MDR has been paid to the Government and there is no loss of revenue.
10. Recording the aforesaid, the Reference and appeals are disposed of, holding that service tax is not separately payable on the interchange fee, as service tax has been paid on the MDR.
11. Pending application(s), if any, shall stand disposed of.

.....J.  
(SANJIV KHANNA)

.....J.  
(SANJAY KUMAR)

.....J.  
(R. MAHADEVAN)

NEW DELHI;  
OCTOBER 16, 2024.