IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

APO 10 of 2023
With
WPO 547 of 2019

Ramesh Kumar Patodia
Vs.
City Bank N.A. and Ors.

For the appellant	**:-**	**Mr. Ramesh Kumar Patodia, Appearing in person.**
For the respondent No.1	**:-**	**Mr. Prabhat Kr. Srivastava, Ms. Ankita Singh, Advs.**
For the respondent No.4	**:-**	**Mr. K. K. Maiti, Mr. Tapan Bwanja, Advs.**
For the Union of India	**:-**	**Mr. Rajesh Kr. Shah, Adv.**
Judgment on	**:-**	**25.07.2023.**

I. P. Mukerji, J.:-

This case is not of the ordinary kind. Most interesting points are involved in it.

The appellant writ petitioner (the appellant) has argued this case remarkably well in person.

The facts are these.

At the material time, the appellant had a credit card provided by Citi Bank (the respondent bank). On 21st February and 28th February, 2019 the respondent bank offered a loan of Rs.6,50,000/- being "increased pay lite loan" to him for 12 months with interest @ 13% per annum payable in 12 equated monthly instalments. The loan amount was disbursed by the bank by an account payee cheque. The date of advancement of loan was 2nd

March, 2019. The equated monthly instalment (EMI) amount was Rs.58,050/-. From the statement enclosed by the appellant at Pg. 68A of the paper book, it appears that with the payment of EMIs, the interest amount in each EMI gradually reduced. At the start, the interest amount in the first EMI was Rs.7,041.44/-. In the last EMI, the interest amount was Rs.621.98/-. The principal amount was adjusted accordingly so that in the last EMI the principal amount was shown as Rs.57,434.02/-, interest Rs.621.98/- resulting in the last EMI of Rs.58,056/-. In respect of the appellant's credit card, monthly statements were issued where this loan and the EMI payable thereon were indicated. On 16th May, 2019 the bank received a letter dated 13th May, 2019 from the appellant challenging the deduction of the said amount on account of IGST.

The entire amount of loan has been repaid to the bank by him together with interest and IGST.

By this writ application, the appellant has sought a declaration that the transaction between him and the bank was exempted from the levy of IGST and that no amount on that account should have been charged and if charged refunded.

What calls for interpretation and adjudication in this writ application is Notification No. 9/2017- Integrated Tax (Rate) issued by the Department of Revenue, Ministry of Finance, Government of India dated 28th June, 2017 in exercise of its powers conferred by sub-section 1 of Section 6 of the Integrated Goods and Services Tax Act, 2017. It exempted certain categories of service from tax. In Sl. No. 28 of the said notification, against heading 9971, except tax levied on interest in credit card services, the services specified in Column-III were exempt from the said tax.

Now, the question which arises is whether the tax charged by the bank on each instalment of interest together with the loan amount paid by the appellant was exigible to the said tax?

Mr. Patodia, appearing in person very strongly argued that it may be true that possession of the bank's credit card by him entitled him to be offered the loan. But that was all. The advancement of loan by the bank had nothing to do with the credit card or the service which the bank was rendering in relation to it. The bank and he entered into an independent agreement under which the former advanced Rs.6,50,000/- to him by cheque to be repaid along with 13% interest in 12 equated monthly instalments. Hence, the interest charged on the loan was not interest which is usually charged by the bank on account of loan advanced by use of the credit card. Therefore, the interest charged by the bank and paid by the appellant could not be subject to IGST.

Mr. Patodia added that only for the purpose of payment of equated monthly instalments, each instalment amount was reflected in the credit card statement. There was reference to the loan as Loan Ref. No. 479832. On this basis, the bank treated the interest as credit card service charge exigible to Integrated Service Tax, he argued. He showed us the Finance Act, 1994. In Section 65(12) which defined banking and other financial services, credit card service was not specifically included within those services. However, by the Finance Act of 2006, the credit card services were separately defined in Section 65(33A) of the Finance Act, 1994 as follows:-

> *"1. Sec 65(33a)- "credit card, debit card, charge card or other payment service card" includes a service provided -*
> *(i) by a banking company, financial institution including non-banking financial company or any other person (hereinafter referred to as the issuing bank), issuing such card to a card holder;*
> *(ii) by any person to an issuing bank in relation to such card business, including receipts and processing of application, transfer of embossing data to issuing banks personalisation agency, automated teller machine personal identification number generation, renewal or replacement of card, change of address, enhancement of credit limit, payment updation and statement generation;*

(iii) by any person, including an issuing bank and an acquiring bank, to any other person in relation to settlement of any amount transacted through such card.

Explanation- For the purpose of this sub-clause, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card

(iv) in relation to joint promotional cards or affinity cards or co-branded cards

(v) in relation to promotion and marketing of goods and services through such card: (vi) by any person, to an issuing bank or the holder of such card, for making use of automated teller machines of such person; and

(vii) by the owner of trade mark or brand name to the issuing bank under an agreement, for use of the trade mark or brand name and other services in relation to such card, whether or not such owner is a club or association and the issuing bank is a member of such club or association.

Explanation- For the purpose of this sub clause, an issuing bank and the owner of trade marks or brand names shall be treated as separate persons."

He submitted that by credit card services a particular type of service was indicated. The card had to be used at the place of business of the merchant either by swiping it through a machine or by contacting the card with it. The value or consideration for the transaction which is entered in the machine, is charged on the card. This charge is transmitted to the issuer of the card which has an independent contract with the merchant. The transaction is honoured by the bank by making payment of the charged sum to the merchant. The issuer having a separate contract with the holder of the card, then charges that amount to the holder of the card who is obliged to make payment thereof. Usually, a time period is fixed for payment of the charged sum by the holder of the card, failing which, he has to pay interest thereon. Normally, the merchant pays some commission to the issuer of the card for facilitating the transaction between the card holder and the merchant. There is another type of transaction which is

online where when authorized by the card issuer merchandise or service can be bought by use of the card by an online method, by making a transaction with a merchant or service provider indicating the card number, the CVV number and so on.

The issuer of the card could also advance loan to the card holder by use of the credit card in the above manner.

Mr. Patodia contended that for this type of service the bank or the issuer of the card charges an annual fee or interest in case of deferred payment by the holder of the card. This kind of service rendered can be called card services. Only on this kind of service could IGST be charged, levied and paid.

On the basis that the appellant was the holder of the bank's card the subject loan was advanced by the bank to Mr. Patodia which had nothing to do with card service. The loan was advanced by cheque, without the use of the card. Only payment had to be made on the basis of bills raised in the card statements of account.

The following contentions were made by the respondent bank:

The bank had entered into a contract with the appellant where it was provided that there would be levy of Integrated Goods and Service Tax on the interest charged. This condition regarding levy of the said tax was accepted by the appellant. He had accepted the equated monthly instalments, the number of instalments and the amount in each instalment, monthly interest and the said tax thereon. The appellant was granted loan because he was a credit card holder. Granting of this loan was part of the credit card services being rendered by the bank to the appellant.

The respondent No. 4, the Central Government made the following submissions:-

Integrated Goods and Services Tax (IGST) is payable on rendering of inter State goods and service. The particular service of grant of loan was made

by the respondent bank from Tamil Nadu to the appellant in Kolkata for which IGST is leviable. Thereafter, learned counsel placed the IGST Act, 2017 in the greatest detail to show how this kind of service of providing loan was exigible to service tax. He referred to the notification dated 28th June, 2017 which exempted service except credit card services from tax. An illustration was drawn from Section 65(105)(*zzz*w) of the Finance Act, 1994 which stipulated that service in relation to inter alia card service was taxable. Therefore, the exemption notification of 28th June, 2017 did not exempt card service. The loan granted by the bank to the petitioner constituted card service and was exigible to IGST calculated on the interest charged.

DISCUSSION

Section 65(105)(zzzw) of the Finance Act, 1994 defined taxable service as one by one person to any other person in relation to inter alia credit card or card service.

The Integrated Goods and Services Tax Act, 2017 received the assent of the President on 12th April, 2017 and was published in the gazette of India on the same day.

The preamble to the Act makes a provision for the levy and collection of tax on inter state supply of goods or service or both by the Central government and for matters connected thereto and incidental therewith. Section 2(12) defines “integrated tax” as the integrated goods and services tax levied under the Act.

Section 5 is the charging section which provides for levy of this tax on an interstate supply of goods or service or both on the value of goods or service under Section 15 of the Central Goods and Services Tax Act, 2017.

In Section 15(d) value would include interest or late fee or penalty.

Section 2(102) defines service as “anything” other than goods, money and securities but including activities “relating to the use of money” and at

rates not exceeding 40% to be notified by the government to be paid by a taxable person.

Section 6 grants power to the Central government to exempt generally or absolutely or subject to such conditions the levy of this tax.

By Sections 73 and 74 of the Central Goods and Services Tax Act, 2017, inter alia Chapter 5 of the Finance Act, 1994 dealing with service tax was omitted.

Grant of loan and charging interest on it by a lender situated in one state to a borrower situated in another state is an inter state transaction. It is recognized as service for the purpose of imposition of the Integrated Goods and Service Tax. The respondent bank is situated in Tamil Nadu and the appellant in West Bengal. The latter availed of loan from the bank which was repayable with interest. This was considered as service rendered by the bank. The interest charged by the bank was viewed as a kind of service charge for advancing loan to the appellant. Hence, the said tax was payable thereon.

Now, by the 28th June, 2017 notification this kind of service with one exception “Interest involved in credit card services” was exempted from imposition of this tax.

The terms and conditions on which the loan was granted to the appellant inter alia stated that it was only available to holders of Citi bank credit cards issued in India. Further, it was exigible to IGST. Mr. Patodia applied for this loan according to those terms and conditions.

The question is whether this transaction was a credit card service? Whether the IGST charged by the bank was rightly done? If not, is the appellant entitled to refund?

Credit card service has not been defined in the IGST Act, 2017.

A good way to proceed would be to apply the definition of "credit card services" in the Finance Act, 2006 amending Section 65(33A) of the Finance Act, 1994.

It was conceived of a service provided by a banking company or a financial institution or a non-banking financial company or institution issuing a card to a card holder. It also extended to such institutions settling any amount "transacted through such card".

It is quite plain that to constitute credit card service, the service should be between the issuer of the card and the holder of the card and that the service should have some relationship or nexus with the holding, operation or use of such card including transactions made with it. Otherwise, a bank may be an issuer of a card to a card holder. The same card holder may be an ordinary savings account holder with the bank. The service rendered by the bank in relation to such ordinary account holding does not have any relationship with the service rendered by the bank to the same customer as a card holder in transactions concerning the card.

If the loan was advanced to the appellant through use of the card, then one could have understood that the service was related to the card. In this case, the bank declared the appellant card holder to be eligible to receive loan. His loan amount was advanced by a cheque or draft issued by the bank. That is to say, the loan amount was not generated by charging the appellant's card. It appears in the monthly statement issued in relation to use of the card, that the loan amount was shown and the equated monthly instalment payable indicated. In my opinion, it was only a statement of account. The loan transaction had to be taken as an altogether separate transaction. It had no relationship with the relationship between the appellant and the bank arising out of issue, holding or operation of the credit card.

Hence, the appellant's above transaction with the bank was a service which could not be termed as a credit card service and was not exigible to the

Integrated Goods and Service Tax under the notification dated 28th June, 2017.

The appeal succeeds. It is allowed. The impugned judgment and order dated 24th June, 2022 of the learned single judge is set aside. The respondent Nos. 2, 3 and 4 are directed to immediately refund the IGST paid by the respondent bank on account of the above loan transaction of the appellant to the respondent bank which in turn will refund the amount on furnishing proper accounts to the appellant. The entire exercise is to be completed within three months of communication of this order.

(I. P. MUKERJI, J.)

Biswaroop Chowdhury, J.

I have perused the judgment of my learned brother and accept the grounds assigned therein. However I add the following grounds.

The base of the present dispute is whether the loan granted to credit card holder is loan simpliciter or an additional facility provided with the credit card. It is the contention of the Appellant that loan granted has no relation with credit card services. It is further contended by the Appellant that he did not utilize the loan but while making the payment of loan he did the same through credit card. It is contended by the respondent City Bank that the Appellant had accepted the condition of payment of Goods and Service Tax at the time of accepting the Loan, thus he cannot retreat from such acceptance.

It is a well settled principle of law that mere acceptance of a condition prohibited by law does not make the said condition, enforceable in law.

Thus at the very outset it is necessary to decide as to whether loan granted to a holder of credit card is a facility annexed to the credit card or a loan simpliciter.

Upon reading of the definition of Credit Card Services as provided in Section 65 (33A) of the Finance Act 1994 no where it will appear that credit card services include loan given to a Credit Card holder. Further upon perusal, of the Notification No. 9/2017. Integrated Tax (Rate) issued by the Department of Revenue, Ministry of Finance, Government of India dated 28th June, 2017 in exercise of its powers conferred by sub-section 1 of Section 6 of the Integrated Goods and Service Tax Act, 2017, it is clear that loan transactions are excluded from Integrated Goods and Service Tax Act 2017, without any exception that loan given to credit card holder is outside the purview. Although credit card Services fall outside the purview of exemptions but there is no mention of loan given to Credit Card holder. Lending of money by banks to people existed from the date of formation of banks in ancient India. Thus granting of Loan by Banking Institutions is a welfare Scheme formulated by banks as per guidelines of Central Government and Reserve Bank of India. Banking Institutions lent money against personal as well as other securities such as ornaments goods and immovable property.

Loans are granted for different purposes, namely house building Education, Medical treatment Agriculture e.t.c. similarly personal loans are also given. Hence to fulfil certain objectives in society and pave the way for development in different fields loans are advanced. At times policy decisions are taken to waive loans or to give relaxation in payments when there is exigency and borrowers suffer hardship. Thus loan is a matter of necessity and not luxury. As granting of loan is a welfare scheme rigid view causing hardship to borrower should not be taken unless it is expressly provided by statute. When two views are available in case of loan dispute the one which favours the borrower should be accepted. When goods and

service Tax are exempted in case of loan transaction it is applicable to all transactions coming under the category of loan. Any exceptions made with regard to category of loan namely credit card holder or other borrowers will go against the letter and spirit for which loan schemes are made and it will be violative of Article 14 and 21 of the Constitution of India. A Banking Institution has a discretion whether to give loan to a Credit Card holder but once it chooses to grant loan to a Credit Card holder it has to treat the loan similar to other types of loan, and cannot treat the same as Credit Card facility and charge goods and service tax on it.

As respondent City Bank granted Loan to the appellant repayable with interest it is to be treated as loan simpliciter and cannot be equated with Credit Card. The basic difference between loan and credit Card is that the former is granted as a necessity and is a welfare scheme and the later is a facility granted to customers to get goods and services on credit from 3rd parties by availing the Credit Card Services of the Bank regarding payment. Thus loan and Credit Card Services cannot be equated. Thus loan to a Credit Card holder is to be treated as a loan and nothing else. Hence this Appeal stands allowed and the order passed by the learned trial judge is set aside.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAROOP CHOWDHURY, J.)