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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 06.10.2026**

CNR No. DLHC010349612007

+ **W.P.(C) 4217/2007**

BAJAJ CAPITAL LTD.

.....Petitioner

Through: Dr. J.K. Mittal, Sr. Adv. with
Ms. Vandana Mittal & Ms.
Aastha Kaushal, Advs.

versus

UOI & ANR

.....Respondents

Through: Mr. Shubham Tyagi, SSC with
Ms. Namuti Ojha, Adv.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. The writ petition is filed seeking quashing of the letter bearing C.No. IV (16) HQRS./TECH/225/S.T/07/7299 dated 07.05.2007 (for short 'the impugned letter') issued by the Commissioner of Service Tax, Delhi (hereinafter 'respondent no. 2'). Further, a declaration is sought that the mobilization of funds for various fixed deposit schemes, IPOs and bonds does not amount to service and the petitioner was not liable to pay service tax. The service tax deposited from September, 2004 to March, 2006 is prayed to be refunded.

2. The brief facts are that Bajaj Capital Ltd. (for short 'the petitioner'), a limited company registered under the Companies Act, 1956 is engaged in business activities of mobilization of public savings



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into various schemes such as company deposits, Government of India (GOI) bonds, Public Sector Undertaking (PSU) bonds, Capital Gain bonds and Rural Electrification Corporation (REC) bonds, etc. The petitioner is also acting as principal broker to fixed deposit schemes of PSUs, finance companies and private companies and mobilizes funds for banks including Reserve Bank of India (RBI) and receives commission in lieu thereof.

2.1 The petitioner was registered dealer and was depositing service tax. On 29.03.2004, the petitioner made a representation before the Chief Commissioner of Central Excise, Delhi Zone as to whether the business activities of the petitioner were covered under the service tax. A reminder was given on 19.03.2007 by the petitioner.

2.2 The respondent no. 2 vide the impugned letter responded to the representation and stated that the service tax on the business activities of the petitioner as commission agent is payable under the head Business Auxiliary Services (for short 'BAS'). Hence, the present petition.

3. Learned senior counsel for the petitioner sought time on 05.10.2026 to have instructions whereupon the following order was passed: -

“1.Learned counsel for the respondent upon instructions contends that the order dated 07.05.2007 was a reply to the representation and is neither a circular nor is binding for the purpose of the legal issue.

2. He further contends that the prayer for refund would be decided independently in accordance with law.

3. Learned counsel for the petitioner seeks time to assist the court.



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4. Put up on 06.10.2026 in the supplementary list.”

4. Learned senior counsel for the petitioner submits that the petitioner is a broker/facilitator and not an agent and its activities cannot be presumed to be covered under BAS as commission agent. The contention is that the impugned letter dated 07.05.2007 treats the activities of the petitioner as taxable services without authority of law. Reliance is on the decision of the Supreme Court in **CST v. Modi Sugar Mills Ltd.**, (1961) 2 SCR 189, **Union of India v. Margadarshi Chit Funds (P) Ltd.**, 2017 (3) GSTL 3 (SC) and **Commr. of Customs v. Dilip Kumar and Co.**, (2018) 9 SCC 1.

4.1 The submission is that prior to the amendment dated 16.06.2005, the business activities of the petitioner were not covered under Section 65(105)(zzb) read with Section 65(19) of the Finance Act, 1994 (for short ‘the Act’). It is contended that fixed deposits and bonds constitute actionable claims and are excluded from the definition of “goods” under Section 65(50) of the Act read with Section 2(7) of the Sale of Goods Act, 1930 and service tax could not be levied on the activities of the petitioner prior to 01.03.2006. Reliance is on the decisions in **Sunrise Associates v. Govt. of NCT of Delhi**, (2006) 5 SCC 603 and **K. Anantaraman v. Official Liquidators, Travancore National & Quilon Bank Ltd.**, (1939) 9 Comp Cas 285.

4.2 It is contended that the impugned letter is contrary to the statutory provisions and was issued in violation of the principles of natural justice. The contention is that respondent no. 2 has issued a clarification and no effective statutory remedy is available.



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5. Learned counsel for the respondent on instructions contends that the impugned letter was not a clarification but a reply to the representation and is not binding on the authorities under the Act or on the petitioner. Further the submission is that the prayer of the petitioner for refund of the tax deposited from September, 2004 to March, 2006 shall be considered in accordance with law without being influenced by the contents of the impugned letter. It is argued that the petitioner has statutory remedies and the merits of the controversy be not gone into in the present writ petition.

6. In view of the statement made by learned counsel for the respondent, prayer no. 1 no longer survives. However, it would be apposite at this stage to note that despite a pin-pointed query no provision in the Act has been brought to the notice of this Court by either of the parties wherein it is provided that the petitioner can move representation or authorizing the respondent no. 2 to issue clarifications.

7. Chapter VA of the Act deals with advance rulings. Under Section 96A of the Act, an applicant, on an application can seek determination of a question of law or fact regarding liability to pay service tax in relation to a service proposed to be provided. The term “applicant” is defined under clause 96A(b) of the Act. The petitioner admittedly does not fall within the definition of “applicant”, in other words the petitioner could not have sought an advance ruling. There is no provision for making a representation for seeking clarification, by adopting this methodology an issue raised is dealt with without there being statutory authorization to do so, full factual aspect before the authority and



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without providing an opportunity of hearing to the affected parties. This Court in the case of *Mahanagar Telephone Nigam Ltd. (MTNL) v. UOI*, 2023 SCC OnLine Del 1967 considered that there was no provision under the Act contemplating a procedure for seeking clarification from the jurisdictional service tax authority. The relevant paragraph is reproduced below: -

“32. As noted above, the impugned show-cause notice discloses that the respondents had faulted MTNL for not approaching the service tax authorities for clarification. The respondents have surmised that this would have been the normal course for any person acting with common prudence. However, it is apparent from the statements of various employees of MTNL that MTNL did not believe that the amount of compensation was chargeable to service tax and therefore, there was no requirement for seeking clarifications. **Further, there is no provision in the Act which contemplates any procedure for seeking clarification from jurisdictional service tax authority. Clearly, the reasoning that MTNL ought to have approached the service tax authority for clarification, is fallacious.**”

(Emphasis supplied)

8. The practice of issuing clarifications being adopted to bypass the mechanism of advance rulings provided under the statute cannot be appreciated. The statutory authorities are bestowed powers by the statutory provisions. Respondent No. 2 was bestowed with no power to issue clarifications.

9. Another aspect is that whether service tax is leviable to a service or an assessee is required to be registered needs adjudication and



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discharge of quasi-judicial functions. The issuance of clarification interferes with the quasi-judicial discharge of functions.

10. The declaration sought that the activities of the petitioner are not exigible to service tax cannot be gone into in the writ petition. It would be relevant to note that the petitioner got itself registered under the Act and was paying service tax since 2004. In March, 2004 the petitioner gave a representation regarding the applicability of service tax on the services rendered by the petitioner and this was responded to by the Additional Commissioner. The relevant part of the impugned letter dated 07.05.2007 is quoted below: -

**“OFFICE OF THE COMMISSIONER OF SERVICE TAX DELHI
17-B, IAEA HOUSE, MAHATMA GANDHI MARG, I.P
ESTATE,
NEW DELHI-110002.**

C.No. IV(16)Hqrs/Tech/225/S.T/07/ 7299

Dated: 7/5/2007

To

M/s Bajaj Capital,
5th Floor, Bajaj House,
97, Nehru Place,
New Delhi-110019

Sir,

**Sub:- Seeking clarification about the applicability of
service tax on the services rendered by your company–
reg.**

Please refer to your office letter dt.19.3.2007 on the above subject wherein you have informed that you are acting as a principal broker to fixed deposit schemes of private and public sector companies and receiving commission for the same and that there



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being confusion over the applicability of service tax, you have stopped payment of service tax.

In this regard it is to state that the commission being received by you as principal broker to fixed deposit schemes of private and public sector companies is an activity which tantamount to rendering of taxable service as a commission agent under the category of Business Auxiliary Service and subject to levy of service tax.

Service Tax is an indirect tax and it is the responsibility of the service provider to collect the same from service receiver and deposit it with the Government. However if for some reason, the service provider is unable to collect the service tax from the recipient of service, the gross amount received from the service receiver shall be treated as being inclusive of service tax.

Thus you are advised to discharge your service tax liability conscientiously and avoid attracting the penal provisions for non payment of service tax as provided under the law.

Yours sincerely,

Addl. Commissioner (Tech)''

11. From reading of the representation dated 29.03.2004 and the impugned letter, it is forthcoming that the petitioner after initially paying the service tax claimed to have stopped paying the tax whereas during the arguments it is revealed that the service tax was paid and the petitioner is not disputing the exigibility of the service tax from March, 2006 onwards.

12. For deciding the issue whether the service tax was exigible on the services rendered by the petitioner from September, 2004 to March, 2006 the factual aspects including the agency agreements, the contracts between the petitioner and the banks, companies, etc., needs to be gone



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into. The effect of amendments in the service tax regime on 20.06.2003, 09.07.2004, 10.09.2004 and 16.06.2005 *vis-à-vis* the relationship between the petitioner and the service recipient would have to be gone into.

13. The refund claimed by the petitioner is consequential to the outcome of the liability of the petitioner to pay service tax. Even if the petitioner succeeds, the issue of undue enrichment would be another aspect requiring consideration.

14. In view of the above discussion this petition is disposed of directing respondent no. 2 to consider the writ petition as an application for refund of the deposited tax amount and to consider it in accordance with law, without being influenced by the contents of the impugned letter, the counter filed to the writ petition and the observations of this Court.

15. Needless to say that the petitioner, if aggrieved, shall be at liberty to avail of the remedies in accordance with law.

AVNEESH JHINGAN, J

SHAIL JAIN, J

OCTOBER 6, 2026

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Reportable: Yes