

Securitisation under Service Tax and GST: Risk, Clarity and How GSC Can Help

For many NBFCs and banks, securitisation has been a key funding tool – and a persistent tax headache. Under Service Tax, departments frequently targeted securitisation income; under GST, the same questions are resurfacing in a new form. A recent Tribunal ruling in the case of *Commissioner of GST and Central Excise, Chennai Versus M/s. Sundaram Finance Ltd. 2025 (12) TMI 1311 - CESTAT CHENNAI* matter now provides strong support for the position that the main securitisation profit is not a taxable service – exactly the line GSC has been advocating.

1. What was really in dispute?

In a standard securitisation or direct assignment:

- An originator (often an NBFC) sells a pool of loan receivables to a trust or another financial institution.
- The originator may continue to collect EMIs, pass collections onward, and earn various fees and spreads in the process.

Tax authorities typically focused on four streams of income:



The department's case **was that all of these amounts represented consideration for services** and therefore attracted Service Tax. The industry view—and GSC's view—was that the principal profit on securitisation is part of the sale price of receivables, not a fee for services.

Key question

Is the originator principally selling an asset—namely receivables—or principally rendering a service to the buyer?

2. What did the Tribunal decide?

The *Sundaram Finance* ruling is significant because it separates each income stream and does not mechanically treat them all alike.

2.1 Four buckets of income

Income stream	Economic character	Tribunal's conclusion under Service Tax
Upfront fee / profit on securitisation	Premium / profit on transfer of receivables	Not a service; part of the sale price
Excess spread on sell-down	Profit on interest spread from receivables already sold	Not a service; profit on sale
Collection efficiency fee	Incentive for better collections	Taxable as service (performance based)
Servicing / sell-down servicing fee	Ongoing collection / servicing activity	Taxable as service (explicit mandate)

The Tribunal reasoned that:

- Upfront fee represents a premium over the net present value of receivables and is economically part of what the buyer pays to acquire the pool.
- Excess spread is the profit element on interest from receivables that have already been sold or assigned.
- Only clearly identified servicing fees and performance-linked incentives can be treated as consideration for services.

“While upfront fee is a one-time gain realised at the stage of securitisation or direct assignment, excess spread income is ordinarily the more substantial revenue stream in a securitisation transaction because it accrues periodically over the life of the receivables pool. The significance of the ruling lies in the Tribunal’s recognition that even a recurring securitisation cash flow does not become taxable merely because it arises after transfer; what matters is whether the amount is, in substance, transfer profit or servicing consideration.”

In essence, the Tribunal held that these amounts were not consideration for a service but were generated through the sale or assignment of receivables. **The mere fact that excess spread accrues periodically does not, by itself, convert the amount into taxable service consideration.**

Put differently, securitisation can generate both asset-side income and service-side income, and the law cannot simply label every cash flow as a “service”.

2.2 Time-bar and repeated SCNs

The ruling also deals with limitation. It notes that the department had previously examined the same assessee and the same securitisation model and was already aware of the relevant facts. In that context, repeated invocation of the extended period for later years was held to be unjustified.

Limitation pointer

Where the securitisation model has been openly disclosed and previously examined, later multi-year SCNs may be vulnerable on limitation even before the merits are addressed.

3. How big is the exposure in practice?

There is no official public number that isolates “securitisation SCNs only”. Even so, legacy indirect tax litigation in the financial sector shows that the exposure can be substantial, particularly where large originators and multi-year periods are involved.

- A single SCN may run into tens or even hundreds of crores where multiple years and large portfolios are covered together.
- Securitisation disputes often appear alongside other contested revenue items such as foreclosure charges, prepayment charges, and guarantee-related fees.

Board-level takeaway

The tax characterisation of securitisation income is not merely a compliance issue. In large-ticket portfolios, it can become a material litigation and provisioning issue for finance leadership.

4. GSC’s technical stand and its validation

GSC has consistently taken three core positions which were validated by Madras Tribunal:

1. The transfer of receivables is an asset sale or assignment between principals, not a service.
2. Upfront fees and excess spreads reflect pricing and profit on that transfer, not payment for services.
3. Only clearly identified servicing and performance-linked fees should be treated as taxable services, with contracts and invoices drafted accordingly.

5. How should this be aligned with GST?

Under GST, the statutory vocabulary changes, but the commercial analysis remains similar. Two questions matter most:

- Whether the transfer of receivables / PTCs amounts to a transaction in securities and is therefore outside GST.
- How fees for servicing, credit enhancement, administration, and related support should be classified and taxed. The prevailing analysis in practice generally proceeds on the following basis:
- Receivables and PTC-based structures are commonly analysed as transactions in securities, and pure transactions in securities are outside GST.
- Direct assignments and PTC securitisations are therefore usually treated as non-taxable transfer legs, while linked servicing or administration fees may remain taxable.
- Clear contractual wording and pricing segregation are essential so that the non-taxable transfer leg and the taxable service leg are visibly distinct.

Point	Legacy Service Tax	GST (prevailing view) position
Core transfer	Sale / assignment of receivables	Transfer leg analysed as outside GST where it qualifies as a securities transaction
Core profit (upfront / spread)	Not a service; profit on sale	Consideration on the transfer leg; ordinarily non-taxable where the transfer itself is outside GST
Servicing collection /	Taxable service	Taxable supply of services

The economic idea remains the same in both regimes: **separate asset-side flows from service-side flows and tax only the latter.**

6. Where GSC adds value

What GSC does for you

- Clean-up of legacy Service Tax exposure
- GST-proof securitisation structuring
- Litigation and appeal support
- Training tools for CAs and in-house teams

6.1 Legacy Service Tax work

For NBFCs, banks, and investors, GSC can assist with:

- Reviewing securitisation transactions and mapping each income stream—upfront, spread, incentive, and servicing—to its correct legal character using the Tribunal’s reasoning.
- Reworking the taxable base in SCNs by excluding non-service profit elements and challenging invocation of the extended period where facts were already disclosed.
- Drafting replies, appeals, and written submissions anchored in the reasoning of the Tribunal and allied higher-court principles along with representation before GST Authorities.

6.2 GST-era structuring and compliance

For current and future deals, GSC can assist with:

- Structuring documentation so that the transfer of receivables / PTCs is separately articulated from servicing arrangements and pricing.
- Aligning accounting, invoicing, and tax codes with the intended structure so that the audit trail supports the tax position.
- Reviewing adjacent products—such as co-lending and risk participation—through the same asset-versus-service lens.

6.3 Capacity building

GSC also supports CA firms and in-house teams through:

- Focused training sessions on securitisation under Service Tax and GST.
- Practical checklists, drafting tips, and sample note formats that can be adapted for audits, reviews, and disputes.