

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 20162 of 2018

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Service Tax Appeal No. 20164 of 2018

(Arising out of Order-in-Original No. TVM-EXCUS-000-COM- 64 & 65-17-18 dated 17/10/2017 passed by Commissioner of GST and Central Excise, Thiruvananthapuram, TRIVANDRUM)

Kerala Co Operative Deposit

....Appellant

Guarantee Fund Board

Tc25/1955(4),manjalikulam

Road,thiruvanthapuram695001,rep By The

Secretary -treasurer

TRIVANDRUM

KERALA

695001

VERSUS

**Commissioner Of Central Tax And
Central Excise, Thiruvanthapuram**

....Respondent

P.B.No.13, I.C.E Bhawan, Press Club Road

Thiruvanthapuram

Kerala

695001

APPEARANCE:

Sh. Ashok M.Chерian & Shri P.S Raghukumar, Advocates for the Appellant

M.M.CHEWRIAN LAW CHAMBERS

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COCHIN

KERALA

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Smt. D.S. Sangeetha, Joint Commissioner, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO. 20109-20110/2020

DATE OF HEARING: 30.10.2019

DATE OF DECISION: 12.02.2020

PER: P. ANJANI KUMAR

Brief facts of the case are that the appellant, Kerala Cooperative Deposit Guarantee Fund Board is constituted, under Kerala Cooperative Deposit Guarantee Scheme, 2012 for administration of Cooperative deposit fund, by Government of Kerala, who notified the scheme vide S.R.O. No. 28/2012 with G.O.(P) No.03/2012/Co-op dated 11-1-2012, vide powers vested in them under Section 57(B) of the Kerala Co-operative Societies Act,1969. The minister in charge of Cooperation would be the chairman of the Board and all other members are nominated by the Government of Kerala. The contribution to the fund is the sum of money payable to the fund by the credit societies at the rate specified; the purpose of the scheme is to provide guarantee for the deposits made in the credit societies and for creating confidence among the depositors and for attracting more details; all Cooperative societies have to follow this; the fund is to be utilized for the settlement of the claims in respect of the deposits which are guaranteed; all the moneys of the fund are to be deposited in the State of District Cooperative Banks or in the treasury; there is no provision that the interest accrued to be added to the corpus fund; if a credit society is unable to make payment to the depositor, the depositor shall be free to approach the Board for assistance. The Department have issued two SCNs dated 31.01.2017 & 12.09.2017 for the periods 2012 to 2016, alleging that their activity must not be charged to Service Tax being 'Services' under Section 65B of Finance Act, 1994 from 01.07.2012 onwards; the SCNs came to be confirmed by a common Order 64&65 dated 17.10.2017. Hence, the present appeals.

2. Sh. Ashok M.Chcrian, Learned Counsel, appearing for the appellants submits that the demand was built upon on a wrong premise that the activity of the appellant is identical to the service rendered by Deposit Insurance And Credit Guarantee Corporation (DICGC); whereas the DICGC came into existence by an Act and none of the Directors shall be an officer of the Government or Reserve Bank of India whereas in their case, Chairman and Members of the Boards are Ministers and Government officials; DICGC is

an Insurance company whereas the Board is constituted for rendering necessary assistance to the depositors of the societies which contributed fund; whereas DICGC indemnifies the Banks and guarantees the deposits made by individual depositors up to Rs.1 Lakh, the Board administers the fund and the guarantee is provided by the Government; the nature of collection of contribution to the fund is to create a corpus and not to levy a fee or provide a service to any business entity. The activity undertaken by the appellant which is under a Kerala Government scheme provided in tune with the Article 43B of the Constitution of India.

2.1 Learned Counsel further submits that in order to constitute a service, four elements must be there, the service provider, the service receive, actual service and consideration for the service; what is chargeable to Service Tax is not the transaction in money itself as it cannot be considered a Service within the meaning of Section 65B(44)(a)(iii). The contribution to the fund is not in the nature of insurance premium or guarantee fee which could be termed as a 'Service' as defined under Section 65B(44) of Finance Act, 1994; a transaction in money can be termed as 'Service' only if it is specifically mentioned in Explanation 2 to Sub-Section 44 of Section 65B; the Explanation carves out an exception to the exclusionary part of the definition by providing that: (i) any activity relating to use of money or its conversion by cash or by any mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged; (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out – (a) by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner; (b) by a Forman of chit fund for conducting or organizing a chit in any manner, shall not be considered as a transaction in money. Therefore, the only activity, for which a separate consideration is charged, and which cannot be considered as a transaction in money is the activity mentioned in the Explanation 2, and Service Tax would accordingly be charged on the consideration received in respect of such an activity, then it follows that all other cases of 'transaction in money' shall be excluded from the charge of

Service Tax. Learned Counsel further submits that the Commissioner has seriously erred in following the Education guide issued by CBEC ignoring the above Explanation.

2.2. Learned Counsel further submits that the finding of the Learned Commissioner that the activity of the appellant is 'service' is on an erroneous application of law in view of the well settled legal position as laid down by the Hon'ble High Court of Delhi in *Delhi Chit Fund Association Vs UOI, 2013 (30) STR347 (Del.)*, which was adopted by the Hon'ble Supreme Court in *UOI and Others Vs M/s Margadarshi Chit Funds Pvt. Ltd., etc* (Civil Appeal No. 5724-5725/2011- decided on 04.07.2017), that the exclusionary part in definition clause (a)(iii) in Sub-Section 44 of Section 65B is construed in the light of or with the aid of Explanation 2 then any activity not being an activity of the nature explained in the said Explanation would be out of the clutches of the definition; applying this principle the activity of the appellant, which is only a transaction in money, would not be a 'service' as defined under Sub-Section 44 of Section 65B of Finance Act, 1994.

3. Learned AR for the Department reiterated the findings of the learned Commissioner and submits that the Board is created under Kerala Cooperative Deposit Guarantee Scheme; the payment is mandatory for the Cooperative societies; upon joining the scheme, the liability of the cooperatives is taken care of; the case of DICGC decided by CESTAT, Mumbai,, 2015-TMI-143-CESTAT; the contributions of the societies is not a transaction in money as it is fixed at a rate of 10 paisa for every 100 rupees of deposit.

4. Heard both sides and perused the records of the case. In terms of Section 65 B (44) of Finance Act, 1994 "Service" is "any activity carried out by a person for another for consideration and includes a declared service ". Some exclusions are provided in the said Section itself like an activity constituting merely a transaction in money or actionable claim etc. The appellant claims that they are not collecting any consideration for any particular service rendered but are only receiving contribution towards building a corpus fund and therefore, no service is involved. The appellants vehemently claimed that the transactions they do with the Co-operative

societies is that of transaction in money and as per Educational Guide to Service Tax issued by CBEC, transactions only in money or actionable claims do not constitute Service Tax. We have gone through the said Guide and we see that at Para 2.8.1 of the Circular referred to by the Advocate for the appellants, it is clarified that:

2.8.1. What kind of activities would come under 'transaction only in money'?

- *The principal amount of deposits in or withdrawals from a bank account.*
- *Advancing or repayment of principal sum on loan to someone.*
- *Conversion of Rs.1,000 currency note into one-rupee coins to the extent amount is received in money form.*

5. Going by the above explanations, we find that the collection of contribution to build a corpus fund to secure the depositors' interest is not a mere transaction in money. The service rendered by the appellants does not find place either in the exclusion or in the Negative List. Therefore, we find that the Learned Commissioner has correctly concluded that the activity undertaken by the appellants is not transaction in money. Further, Learned Commissioner referring to the Indian Contract Act, 1872 shows that the premium collected by the appellants constitutes a consideration as defined under Section 2(d) of the said Act. Consideration for a promise is defined as under:

"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise".

6. We find that the Advocate for the appellants has relied upon the case of *Margadarashi Chit Funds Pvt. Ltd.* (supra). However, we find that the case pertains to chit fund companies who function like a Bank and the activity of the appellants is not comparable to that of the appellants therein. Therefore, the case of *Margadarashi Chit Funds Pvt. Ltd.* (supra) would not be of any help to the appellants. We find that Learned Commissioner has relied upon

the case of Deposit Insurance and Credit Guarantee Corporation. The appellants argued that "it would be pertinent to note that the analogy of the Deposit Insurance and Credit Guarantee Corporation of India (DICGC) does not apply in the instant case. We find that Learned Commissioner has rightly observed that DICGC is also providing guarantee for the deposits made by the public in commercial banks. The only difference between the activity performed by DICGC and the appellants is that whereas the former is extending guarantee to the deposits made by the public in commercial banks, the appellant is extending guarantee in respect of deposits made by the public in Co-operative credit societies. The nature of the service is same. Likewise, the consideration obtained might be accounted under different Heads. However, the fact remains that both are getting a consideration for the activity performed. It was submitted by the Authorized Representative for the Department that contribution is collected at the rate of 10 paise for every 100 rupees of deposit. This fact is not countered by the appellants. Learned Advocate for the appellants submits only to the extent that so far there was no occasion to use the corpus fund for securing the deposits of public in any of the co-operative societies. In view of the above, we find that the case of DICGC is squarely applicable to the case of the appellants. We find that the Tribunal in the case has gone into various aspects and have concluded that "it is clear that deposit insurance undertaken by the appellant falls within ambit of general insurance business defined in Section 65(49) read with Section 65(105)(d) of the Finance Act, 1994". Tribunal has further observed as follows:

5.4.11. If we apply the above legal principles to the facts of the case in hand, there is no scintilla of doubt that deposit insurance like other insurance is a contract of indemnity and is amenable to the provisions of the Indian Contract Act. Merely because it has been made compulsory under the DICGC Act, 1961, it does not cease to be a contract of insurance. Insurance of the kind described in Paras 5.4.9 and 5.4.10 above, which are statutorily prescribed and where there are more than two parties in many cases, the insurer, the insured and the beneficiary, are also considered as coming under the category general insurance business and nothing has been brought before us to show that they are not so considered/understood in law. By the same logic, Deposit Insurance Contract is also a general insurance contract as defined in law and merely because they are statutorily prescribed, they

do not cease to be contract of insurance. The insurer is the Corporation, the insured are the banks and the beneficiary is the depositor(s)".

7. In view of the above, we have no doubt, whatsoever, in our minds that the activity of the appellant is same as that of DICGC and if DICGC is liable to pay Service Tax so is the appellant liable to pay Service Tax. Coming to penalties imposed, we find that the appellants are a body constituted by the Government. There are a number of decisions by the Tribunal and Higher Courts that *mens rea* cannot be attributed to the Public Sector Units. The appellant is a body constituted by Government. Therefore, we find that it is not expedient and necessitated to impose penalties. Therefore, while confirming the duty demand along with interest, we hold that the penalties imposed under Section 77 & 78 are liable to be set aside, by invoking the provisions of Section 80 of the Finance Act, 1994.

8. In the result, Appeal No. ST/20162/2018 & ST/20164/2018 are partly allowed confirming the duty demanded and setting aside the penalties imposed.

(Order pronounced in the open court on **12/02/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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