CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1681 of 2012

[Arising out of Order-in-Original No. 13/2012 dated 30/01/2012 passed by Commissioner of Central Tax, Bangalore North,BANGALORE]

Karnataka Industrial Areas Development Board
No.14/3, 2nd Floor, R.P. Building,
Nrupathunga Road, Bangalore 560 001

Appellant(s)

VERSUS

Commissioner Of Central Tax, Bangalore North
No-59, HMT Bhawan
Ground Floor, Bellary Road
BANGALORE
KARNATAKA
560032

Respondent(s)

Appearance:

Shri V. RAGHURAMAN, Advocate
#466, 9TH CROSS,
1ST BLOCK, JAYANAGAR, NEAR MADHAVAN PARK,
BANGALORE
KARNATAKA
560011

For the Appellant

Shri P.R.V. Ramanan, Special Counsel

For the Respondent

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Date of Hearing: 11/02/2020
Date of Decision:09/06/2020

Final Order No. 20357 / 2020

Per: S.S GARG

The present appeal is directed against the impugned order dt. 31/01/2012 passed by the Commissioner of Service Tax, Bangalore whereby the Commissioner has

(i). confirmed demand of service tax amounting to Rs. 1295,14,21,404/- (Rupees One Thousand Two Hundred and Ninety-Five Crores Fourteen Lakh Twenty-One Thousand Four Hundred and Four only) payable by them, in respect of Seven Taxable Services, provided by them during the period from 1-10-2005 to 31-03-2010, under section 73(2) read with Proviso to Section 73(1) of the Act along with interest under provisions of Section 75 of Finance Act, 1994.

(ii). imposed penalty @ Rs.100/- (Rupees One Hundred Only) per day up to 17.04.2006, Rs.200/- (Rupees Two Hundred Only) per day or @ 2% of the service tax, per month, whichever is higher from 18.04.2006, under section 76; However, this penalty will be applicable for the period till 10.05.2008 in view of the amendment to Section 78 incorporated vide Finance Bill 2008, for their failure to pay service tax in accordance with the provisions of Section 68 of the Act or the rules made there under.

(iii). imposed penalty of Rs. 1000/- (Rupees One Thousand Only) under Section 77 of the Act, for failure to furnish the prescribed return and failure to obtain registration.

(iv). imposed a penalty of Rs.1295,14,21,404/- (Rupees One Thousand Two Hundred and Ninety Five Crores Fourteen Lakh Twenty One Thousand Four Hundred and Four only), under Section 78 of the Finance Act 1994 for suppressing the facts and contravention of the provision of the Act/Rule with intent to

evade payment of Service Tax, which shall be reduced to 25% of the service tax confirmed, provided the entire amount of service tax along with interest and reduced penalty are paid within THIRTY days of the receipt of this order.

Further the break-up of service tax demand is as follows:-

Head	**Period**	**Service Tax (Rs.)**
Renting of immovable property	2007-08 to 2009-10	692,47,57,800
Construction of residential complex	2005-06 to 2009-10	4,27,67,609
Construction of commercial complex	2005-06 to 2009-10	572,70,34,553
Business Support Service	2006-07 to 2009-10	22,94,36,963
Maintenance and Report Service	2005-06 to 2009-10	2,18,80,006
Manpower Supply Services	2005-06 to 2009-10	55,42,009
Works Contract Services	2007-08 to 2009-10	2,464

2.1. Briefly the facts of the present case are that the appellant M/s.Karnataka Industrial Areas Development Board (KIADB, for short) are engaged in providing various taxable Services such as Renting of Immovable Property Services, Construction of Commercial and Residential Complexes, Business Support Services, Management, Maintenance or Repair Services, Manpower Recruitment and Supply Services, Works Contract Services, etc., to various clients. It appeared

that they did not obtain any registration under Service Tax for the said services. On the basis of intelligence gathered and developed by the officers of the Directorate General of Central Excise Intelligence, Bangalore Zonal Unit (BZU for short), it appeared that M/s. KIADB provided the above-mentioned taxable services, but did not pay the appropriate Service Tax on such taxable services provided by them. Though it appeared that Service Tax is leviable on the said taxable services and payable by M/s. KIADB as per provisions of law, M/s. KIADB did not discharge any service Tax liability thereon. Accordingly, the requisite documents/details were recovered from M/s. KIADB. A statement of Shri K Prakash Adiga, Assistant Accounts Officer of KIADB, was recorded. On further investigation and verification of the records recovered, KIADB appeared to have evaded payment of Service Tax amounting to Rs. 1295,14,21,404/- (Rupees One Thousand Two Hundred and Ninety-Five Crore Fourteen Lakh Twenty-One Thousand Four Hundred and Four only), for the period from 1-10-2005 to 31-3-2010.

2.2. The appellant, KIADB, is established by an enactment of the Legislature of Karnataka Act, 18 of 1966 i.e. Karnataka Industrial Areas Development Act, 1966 (KIAD Act, 1966, for short). The Government of Karnataka, for the purpose of establishing industrial areas and for promoting the rapid and orderly development of industries in the State of Karnataka, enacted this KIAD Act, 1966. Appellant was formed and established under the provisions of Section 5 of the said KIAD Act and performs various statutory / sovereign functions assigned to it under provisions of KIAD Act. Revenue entertained the view that the appellants are liable to pay the service tax on various services rendered by them but they have not paid the service tax and not registered under the Finance Act, 1994. On these allegations, a show-cause notice dt. 06/04/2011 was issued to the appellant. Appellant filed elaborate interim reply to the show-cause notice on 24/10/2011 and thereafter filed a further reply dt.

24/11/2011 and all the allegations were rebutted as untenable and the case was contested on merits, limitation, jurisdiction and quantification of demand. In reply to the show-cause notice, the appellant mainly contended that the appellant is a Government undertaking and being a 'State' as defined in Article 12 of the Constitution of India are not liable to pay service tax. Further the appellantsare not undertaking any activities for profit motive. It was also contended that the appellant did not provide any construction related service. On the contrary, they engaged various contractors who provided services to the appellant. It was also contended that the figures adopted by the Department to demand service tax were nothing but cumulative figures of each year appearing in financial statements. The appellant has also raised the issue of errorin quantification and wrong adoption of figures to arrive at the amount of service tax payable. After following the due process, the Commissioner of Service Tax vide the impugned order dt. 30/01/2012 confirmed the demand as per the show-cause notice. Hence the present appeal.

3. Heard both the sides and perused the records. Both the parties have filed written submissions, additional submissions and reply to the additional submissions.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts, statutory provisions of KIAD ACT and the evidence on record furnished by the appellant. He further submitted that no service tax can be imposed on the sovereign activities as also the statutory obligation of the Government. He referred to various activities being undertaken by the appellant as per Section 5 of the KIAD Act which can be summarized as follows: -

a. The main objective of the said statute is to promote the establishment and development of industrial areas within the

State of Karnataka;

b. In terms of the industrial policy of the Government, KIADB in consultation with the State Government, prepares a scheme of development of industrial area in a specified area within the State of Karnataka;

c. Based on the above, the scheme would be notified and the required land would be acquired by the State in terms of the provisions of the KIAD Act, 1966;

d. The lands so acquired would be placed at disposal of the KIADB;

e. KIADB would develop the industrial areas and allot the developed areas to the applicants;

f. KIADB is empowered by the KIAD Act, 1966 to undertake the following:

(i) To make available the building on lease or sale or lease cum sale to industrialists
(ii) To construct buildings for housing of employees of the industries;
(iii) To allot residential tenements in industrial areas
(iv) As part of the Scheme, KIADB has the powers as mandated under the KIAD Act, 1966 to construct and maintain the industrial areas and also provide amenities and common facilities in the industrial area;

In order to support his submission, he relied upon the following decisions: -

i. Narayanappa Vs. State of Karnataka [2006(7) SCC 578]
ii. Shri Ramtanu Housing Co-operative Society Ltd. Vs. State of Maharashtra [1970(3) SCC 323]

4.2. Learned counsel referred to Entry 42 of the Concurrent List which provides power to make laws for the purpose of acquisition or re-acquisition of property. Further Entry 24 of the List II (State List)

provides power to make laws relating to industries. He also submitted that KIAD Act was enacted for the purpose of acquisition of land and forming of industrial areas and the appellant is engaged in the activity of a public purpose viz. development of industrial areas within the State of Karnataka. Learned counsel also took us through various sections of KIAD Act viz. Sections 5, 6, 11, 13, 14, 17, 18, 21, 28(8), 32 and 36 to buttress his argument that the appellant is a Government undertaking engaged in performing the statutory functions and hence are not subject to levy of service tax at all. He further submitted that the issue that no service tax could be levied on the activities of industrial development boards is no longer res integra. He relied upon the decision of the Bombay High Court in the case of CCE, Nashik Vs. Maharashtra Industrial Development Corporation [2018(9) GSTL 372 (Bom.)] wherein the Bombay High Court has held that no service tax could be demanded on the charges collected by Maharashtra Industrial Development Corporation in terms of the Maharastra Industrial Development Act, 1961 towards maintenance of the industrial areas, as the same is in the nature of statutory functions performed in terms of the statute. He further submitted that when the maintenance of industrial area itself is held to be statutory function, the main function of acquisition of land, development of such land in to industrial area and allotment of such land would certainly be a statutory function and does not attract the levy of service tax. He also submitted that all other functions rendered by the appellant being incidental, cannot be brought to tax.

4.3. Learned counsel also submitted that the appellant is a State Government undertaking and a creature of statute to exercise the power of eminent domain. Power of eminent domain is a sovereign function. Appellant consists of nominees of the State Government along with nominees of State Industrial Investment and Development Corporation, Pollution Control Boards, Small Industries Development Corporation etc. For this submission, he mainly relied upon Sections 5

& 6 of the KIAD Act and the following judgments:-

i. Balmer Lawrie & Co. Ltd. Vs. ParthaSarathi Sen Roy [2013(8) SCC 345]
ii. MD, HSIDC Vs. Hari Om Enterprises [AIR 2009 SC 218]
iii. JilubhainanbhaiKhachar Vs. State of Gujarat [1995 Supp (1) SCC 596]

4.4. It is his further submission that even if it is assumed that the function of eminent domain is done by the State, KIAD ACT is enacted for the purpose of orderly development of industries across the State, which includes acquisition of land, development of such land and allotment of such land and the appellant is set up under the said statute, as a limb or agent of the State Government in that behalf and for carrying out the purposes of the KIAD Act, 1966. The sovereign function of the State is performed through the agency of KIADB. For this submission, he relied upon the following decisions:-

i. Shri Ramtanu Housing Co-operative Society Ltd. Vs. State of Maharashtra [1970(3) SCC 323]
ii. City and Industrial Development Corporation Vs. Percival Joseph Pareira [2013 SCC OnLine Bom 408]
iii. Percival Joseph Pareira Vs. Special Land Acquisition Officer [2009 SCC OnLine Bom 1720]
iv. City and Industrial Development Corporation of Maharashtra Ltd. Vs. ACIT [2011 SCC OnLine Bom 1865]

4.5. Learned counsel further argued that apart from being a sovereign authority, the appellant is a statutory authority under the provisions of law. It, inter alia, includes to promote orderly establishment of industries and to develop industrial areas. These are in the nature of mandatory statutory obligations which are to be fulfilled in accordance with law. For this submission, relied upon the following decisions: -

i. Municipal Corporation, Amritsar Vs. Senior Supdt. Of Police [AIR 2004 SC 2912]
ii. Bureau of India Standards Vs. CIT (Exemptions) [2013 358 ITR 78 (Del.)]

iii. ICAI Vs. DGIT (Exemptions) [2013 358 ITR 91 (Delhi)]
iv. Institute of Chartered Accountants in England and Wales Vs. CCE [1999 1 WLR 701]
v. Bureau of Energy Efficiency Vs. CST, Delhi [2019 (22) GSTL 25 (Tri. Del.)]
vi. Employee Provident Fund Organisation Vs. CST, Delhi [2017(4) GSTL 294 (Tri. Del.)] – Civil Appeal against the said decision was dismissed as reported in 2018(18) GSTL J215(SC)]
vii. Electrical Inspectorate, Govt. of Karnataka Vs. CST [2008(9) STR 494 (Tri. Bang.)]
viii. UOI Vs. Kerala State Insurance Department [2016(43) STR 173 (Ker.)]
ix. CC&CE, Bhopal Vs. Smart Chip Ltd. [2015(39) STR 197 (MP) [maintained by Supreme Court reported in 2015(39) STR J243]
x. Deputy Commissioner of Police Vs. CCE&ST [2017(48) STR 275 (Tri. Del.)]

4.6. The next submission of the learned counsel for the appellant is that appellant are not carrying out commercial activities for a consideration and the amount of deposit collected by the appellant is based on principles of rationality and reasonableness. It cannot fix prices arbitrarily. For this submission, he relied upon the decision in the case of KIADB Vs. Prakash Dal Mill [2011(6) SCC 714]. Learned counsel also cited the Circular No.89/7/2006-ST dt. 18/12/2006 issued by CBEC which provides that upon the satisfaction of the following conditions, no service tax would be leviable: -

a) the assessee must be a sovereign / public authority.
b) the assessee must perform duties which are in the nature of statutory and mandatory obligation to be fulfilled in accordance with the law.
c) the fee collected should be levied as per the provision of relevant law.
d) the amount collected is to be deposited into Government treasury.

He further submitted that in spite of the above conditions, the

Bombay High Court did not consider condition (d) to be important at all in Maharashtra Industrial Development Corporation case.

4.7. Learned counsel also submitted that the entire demand is based on the information shown in the financial accounts and notes to accounts without considering the fact whether the said amounts are treated as income or assets in the books of account. For this submission, he relied upon the following decisions: -

i. ALP Management Consultants P. Ltd. Vs. CST, Bangalore [2007(6) STR 161 (Tri. Bang.)]
ii. Tempest Advertising (P) Ltd. Vs. CCE&C, Hyderabad [2007(5) STR 312 (Tri. Bang.)]
iii. Free Look Outdoor Advertising Vs. CC&CE, Guntur [2007(6) STR 153 (Tri. Bang.)]
iv. Synergy Audio visual Workshop P. Ltd. Vs. CST [2008(10) STR 578 (Tri. Bang.)]

4.8. He also submitted that the deposits cannot be considered as consideration for services provided and only the consideration charged towards provision of taxable service could be brought to service tax. For this submission, he relied upon the following decisions: -

i. Murli Realtors Pvt. Ltd. Vs. CCE [2015(37) STR 618 (Tri. Mumbai)]
ii. Samir Rajendra Shah Vs. CCE [2015(37) STR 154 (Tri. Mumbai)
iii. Karad Nagar Parishad Vs. CCE&ST [2019(20) GSTL 288 (Tri. Mum.)]

4.9. He also submitted that the demand in respect of deposits collected for alleged services were dropped in the show-cause notice pertaining to subsequent periods. Learned counsel also contested the legality of demand of services tax under various heads. But he submitted that if the Tribunal comes to the conclusion that appellant being public / state authority engaged in providing statutory function

of the State and are not liable to pay service tax, then in that case, the submissions on various taxable services may not be relevant and the entire demand goes only on that account. In his written submission, which is on record, the learned counsel gave detailed submissions with regard to each taxable service along with case laws.

4.10. As far as renting of immovable property service is concerned, the learned counsel submitted that constitutional validity of levy of service tax on renting of immovable property has already been referred to Nine Judges Bench of Hon'ble Supreme Court in the case of UOI Vs. UTV News Ltd. [2018(13) GSTL 3 (SC)]. He also submitted that service tax has been erroneously demanded on deposits collected by KIADB for the purpose of allotment of land. The said deposits are collected towards allotment of land and the same is adjusted against the sale consideration of the land and is not rent or lease charges. He also referred to the allotment letter dt. 22/03/2010 to show that there are clear demarcation between the amount meant for allotment and amounts meant for rent. He further submitted that the renting of immovable property does not apply to vacant land. Similarly, he submitted that no service tax is leviable on one time upfront amount. As far as construction of complex service is concerned, the learned counsel submitted that the appellant does not provide construction service rather the appellant engages independent contractors to carry out the construction for the appellant. similarly, he has contested the demand of service tax under the head Business Support Service by saying that the appellants have not provided any support services to any person. Further the accounting heads considered for the purpose of computation of demands itself reflects that the said amounts are deposits towards various amenities including water supply etc. as far as demand of service tax under the head 'management, maintenance or repair service', the learned counsel submitted that the said amount is collected from the industrial units for maintenance work like infrastructure, roads, water lines, civil amenities buildings, power lines

etc. and for this purpose, the appellant has engaged independent contractors for carrying out the activities and they did not carry out such activities personally. The entire activity of maintenance is in terms of provisions of Section 14(c) of KIAD ACT and therefore the said function is statutory function and cannot be amenable to service tax as held by the Bombay High Court in the case of Maharashtra Industrial Development Corporation cited supra.

4.11. As far as demand of service tax under the head 'manpower recruitment or supply services', learned counsel submitted that the appellant did not provide any manpower for carrying out acquisition of land. The said activity cannot be subjected to tax under the category of manpower recruitment or supply service.

4.12. Learned counsel also question the quantification and also raised the argument that the appellant being a arm of the State Government, there cannot be any question of having intention to evade payment of taxes and hence extended period cannot be invoked and hence penalty cannot be imposed.

5.1. On the other hand, the learned special counsel appearing for the Revenue reiterated the findings of the impugned order. He also filed written submissions. In the written submissions, he referred to relevant provisions of the KIAD Act relating to the functions and powers of the appellant. He further submitted that a conjoint reading of the provisions of Sections 5, 13, 14, 18 and 19 of the KIAD Act clearly indicates that appellant has its own identity as distinct from the State Government. The receipts of the appellant are credited to its own fund and do not go to the Consolidated Fund of the State. If that be so, the activities undertaken by it cannot be construed as functions of the State. He also submitted that leasing of land by the appellant on its own account to private individuals on commercial consideration

cannot be said to be a sovereign function at all as normally understood. He then referred to the judgment of Apex Court in the case of Chief Conservator of Forests Vs. J.M. Khondare [1996 2 SCC 293] wherein the Supreme Court has observed "one of the tests to determine whether the executive function is sovereign in nature is to find out whether the state is answerable for such action in Courts of law". He then submitted that as per Section 5(2) of KIAD Act, the appellant is a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name. He then also referred to Apex Court's decision in the case of APMC, Karnataka Vs. Ashok Harikuni [2000 8 SCC 61 75-76 para 21) wherein the Apex Court has observed: "what is approved to be 'sovereign is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. Other functions of the state including welfare activity cannot be construed as 'sovereign exercise of power. Hence, every governmental function of state need not be sovereign." He further submitted that in the present case, none of these conditions get satisfied and therefore, the functions undertaken by the appellant are not sovereign functions. In this aspect, he reiterated the findings of the Commissioner in para 88 to 116 of the Order-in-Original.

5.2. Learned special counsel also contested the submission of the appellant that they fall in the definition of 'State' as provided in Article 12 of the Constitution of India and enjoys immunity from taxation of its activity under Article 289(2). He submitted that in the scheme of Constitution and of Article 289 and Article 285 as well as the provisions of 12th Schedule of the Constitution, properties and incomes of instrumentalities of State are not covered within the expression "State" in Article 289 of the Constitution. In the absence of provisions of the Act excluding the income or property of an instrumentality of the State from the liability to service tax, for providing a taxable service, there is no justification for reading down

the provisions of the Act to exclude taxability of activities of instrumentalities of State. He then submitted that in the present case, what is sought to be taxed are the services rendered to industrialists and persons intending to start industrial undertakings. He further submitted that service tax is not a direct tax on property as purported by the appellant rather on the services rendered in relation to the property and undoubtedly an indirect tax. Appellant being an instrumentality of the State is not entitled to claim immunity from payment of service tax.He further submitted that the judgment relied upon by the appellant to show that the appellant is instrumentality of the State and is immune from the payment of service tax is not applicable in the facts and circumstances of the case. Learned special counsel also justified the demand of service tax on individual services provided by the appellant.

5.3. He also filed additional submissions wherein the Revenue has denied that the appellants have the power of eminent domain. He further submitted that simply defined 'eminent domain' is the power of the sovereign to take property for public use without the owner's consent, whereas in the present case, the appellant does not have the power to acquire the land by itself and hence the appellant is not empowered to exercise the power of 'eminent domain' and hence it cannot be regarded as sovereign authority. learned special counsel further submitted that the decision of the Bombay High Court affirmed the decision of the Tribunal in the case of Maharashtra Industrial Development Corporation cited supra is not the law of the land and there is a contrary judgment on the issue of liability of service tax of instrumentalities of State rendered by the Allahabad High Court in the case of Greater Noida Industrial Development Authority Vs. CC,CE [2015(40) STR 95 (All.)] and the copy of the said judgment has also been placed on record. He further submitted that the Hon'ble Bombay High Court and the Hon'ble CESTAT while relying on the Circular No.89/7/2006 dt. 18/12/2006 did not take into account the fact that in

the case of Maharashtra Industrial Development Corporation, the 'maintenance, management and repair charges' were not in the nature of a compulsory levy and the amount collected under that head were not deposited in the Government Treasury of the Government as specified in the Circular. Such sums were credited to Maharashtra Industrial Development Corporation's own account. The learned special counsel also submitted that the decision of the Tribunal in the case of Employees Provident Fund Organisation is not applicable in the present case. He made submissions with regard to the justification of demanding service tax on various services viz. renting of immovable property, construction of commercial and residential complexes, Business Support Services, Management, Maintenance or Repair Services and Manpower Recruitment and Supply Services, Works Contract Service etc. and reiterated the findings of the impugned order.

6. The learned counsel appearing for the appellant filed a reply to the additional submissions by the Department wherein he has replied to all the objections raised by the Revenue and reiterated the decision of the Apex Court in the cases of Balmer Lawrie & Co. Ltd., MD, HSIDC Vs. Hari Om Enterprises and JilubhaiNanbhaiKhachar Vs. State of Gujarat cited supra to submit that there is no doubt that the power of 'eminent domain' to render the appellant as sovereign. He also submitted that the Revenue's reliance upon the judgment of the Hon'ble Allahabad High Court is wrong because the said judgment of the Allahabad High Court has been stayed by the Hon'ble Apex Court as reported in 2015(40) STR J231 (SC) and cannot be relied upon by this Tribunal as binding precedent.

7.1. After considering the submissions of both the parties and perusal of the material on record and written submissions of both the parties and the various decisions relied upon by them, we find that the crucial question in the instant case is whether at all the appellant,

which is a statutory authority (KIADB) constituted under the KIAD Act for carrying out the purposes, is providing any service as defined in the Service Tax legislation (Finance Act, 1994). If, after analyzing the various provisions of the KIAD Act and the submissions of the parties, we come to the conclusion that there is no service being rendered by the appellant as argued by the learned counsel for the appellant, then the question of levy of service tax would not arise. In order to examine the contentions advanced by learned counsel / learned special counsel for the parties, it is necessary to note the provisions of the KIAD Act, 1966 and the preamble of the said Act, which are reproduced below: -

Preamble: -

An Act to make special provisions for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and orderly development of industries therein, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid.

Relevant Sections: -

5. Establishment and incorporation. -

For the purposes of securing the establishment of industrial areas in the State of Karnataka and generally for promoting the rapid and orderly establishment and development of industries and for providing industrial infrastructural facilities and amenity in industrial areas in the State of Karnataka , there shall be established by the State Government by notification a Board by the name of the Karnataka Industrial Areas Development Board.

2) The said Board shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name, and shall subject to the provisions of this Act and the rules made thereunder be competent to acquire, hold and dispose of property, both movable and immovable, and to contract and do all things necessary for the purposes of this Act.

6. Constitution. - The Board shall consist of the following members, namely: -

(a) the Secretary to the Government of Karnataka , Commerce and Industries Department who shall ex-officio be the Chairman of the Board;

(b) the Secretary to the Government of Karnataka , Finance Department;

(c) the Secretary to Government, Housing and Urban Development Department;
(ca) the Commissioner for Industrial Development and Director of Industries and Commerce;
(cb) the Chairman and Managing Director, Karnataka State Industrial Investment and Development Corporation Limited;
(cc) the Chairman, Karnataka State Pollution Control Board;
(cd) the Director of Town Planning;
(ce) the Managing Director, Karnataka State Small Industries Development Corporation Limited;
(cf) the Managing Director, Karnataka State Financial Corporation.

(d) the Executive Member of the Board; and
(e) two nominees of the Industrial Development Bank of India.

7. Term of office and conditions of service of members.-
(1) xxx
(2) The members of the Board shall be entitled to draw such compensatory allowance as may be prescribed, for the purpose of meeting the personal expenditure incurred in attending the meetings of the Board or any Committee thereof or when appointed in connection with the work undertaken by or for the Board.

13. Functions. - The functions of the Board shall be,-
(i) generally, to promote and assist in the rapid and orderly establishment, growth and development of industries and to provide industrial infrastructural facilities and amenity in industrial areas, and
(ii) in particular, and without prejudice to the generality of clause (i), to, -

(a) develop industrial areas declared by the State Government and make them available for undertakings to establish themselves;
(b) establish, maintain, develop, and manage industrial estates within industrial areas;
(c) undertake such schemes or programmes of works, either

jointly with other corporate bodies or institutions, or with the Government or local or statutory authorities, or on an agency basis, as it considers necessary or desirable, for the furtherance of the purposes for which the Board is established and for all purposes connected therewith.

14. General powers of the Board. - Subject to the provisions of the Act, the Board shall have power, -
(a) to acquire and hold such property, both movable and immovable as the Board may deem necessary for the performance of any of its activities and to lease, sell, exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the Board;

(b) to purchase by agreement or take on lease or under any form of tenancy any land, to erect such buildings and to execute such other works as may be necessary for the purpose of carrying out its duties and functions;

(c) to provide or cause to be provided amenities,industrial infrastructural facilities and common facilities in industrial areas and construct and maintain or cause to be maintained works and buildings therefor;

(d) to make available buildings on lease or sale or lease-cum-sale to industrialists or persons intending to start industrial undertakings;

(e) to construct buildings for the housing of the employees of industries;

(f) (i) to allot to suitable persons premises or parts thereof including residential tenements in the industrial areas established or developed by the Board;

(ii) to modify or rescind such allotments, including the right and power to evict the allottees concerned on breach of any of the terms or conditions of their allotment;

(iii) to resume possession of premises or part thereof including residential tenements in the industrial area, or industrial estate in the manner provided in section 34B

(g) to delegate any of its powers generally or specially to the Executive Member;

(h) to enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of its functions; and

(i) to do such other things and perform such acts as it may think necessary or expedient for the proper conduct of its functions, and the carrying into effect the purposes of this Act.

17. Directions by State Government. - The State Government may issue to the Board such directions of a general nature as it may think necessary or expedient for the purpose of carrying out the purposes of this Act, and the Board shall be bound to follow and act upon such directions.

18. Application of Board's assets. - All property, fund and other assets vesting in the Board shall be held and applied by it, subject to provisions and for the purposes of this Act.

19. Board's fund. - The Board shall have and maintain its own fund, to which shall be credited, -

(a) all moneys received by the Board from the State Government by way of grants, loans, advances or otherwise;
(b) all fees, costs, deposits and charges received by the Board under this Act;
(c) all moneys received by the Board from the disposal of lands, buildings and other properties movable and immovable, and from other transactions;
(d) all moneys received by the Board by way of rents or in any other manner or from any other source.

24. Accounts and Audit.- (1) The Board shall maintain books of account and other books in relation to its business and transactions in such form, and in such manner, as may be prescribed.
(2) The accounts of the Board shall be audited by an Auditor appointed by the State Government.
(3) As soon as the accounts of the Board are audited, the Board shall send to the State Government, -
(a) a copy of the audited accounts, and
(b) an annual report of the working of the Board for the financial year concerned giving an account of the activities of the Board and such other particulars as may be prescribed, and
(c) a report of the Auditor on the audited accounts of the Board.
(4) The State Government shall cause the audited accounts of the Board together with the audit report thereon, and the annual report forwarded to it under sub-section (3) to be laid before each House of the State Legislature as soon as may be after their receipt by the State Government.

7.2. The true character / scope and intent of the Act is to be ascertained with reference to the purposes and the provisions of the

Act. The Act is one to make a special provision for securing orderly establishment of industrial areas and industrial estates in the State of Karnataka and for that purpose, to establish the board. A careful reading of the aforesaid provisions of KIADAct and KIADB Regulations would clearly go to show that the appellant is a State undertaking and creature of a statute to exercise the power of 'eminent domain'. The appellant is engaged in discharging statutory functions under an act of Legislature viz. KIAD Act, 1966. It is a statutory body performingstatutory functions and exercising statutory powers. Once carrying out the objectives of the Act, then it cannot be treated as a service provider under the Finance Act, 1994. Further we find that there is no service provider-client relationship so as to warrant the levy of service tax under the provisions of Finance Act, 1994. Appellant has undertaken various activities and functions in the State of Karnataka as per the directions of the State Government given from time to time under the provisions of the Act and hence their activities cannot be considered as taxable service and no service tax can be levied for these activities.

7.3. The issue whether the statutory authority performing statutory functions as provided under a statute is liable to service tax or not has been considered and decided by catena of judgments rendered by various courts. In the case of . Maharashtra Industrial Development Corporation (MIDC) cited supra, the Hon'ble Bombay High Court has categorically held that no service tax could be demanded on the charges collected by the MIDC, in terms of MID Act, 1961 towards maintenance of industrial areas as the same is in the nature of statutory function performed in terms of the statute. It is pertinent to quote the relevant findings of the Bombay High court, in paras 5, 6, 7: -

> ***5.****We havegiven careful consideration to the submissions. Firstly, it will be necessary to note what*

is set out in the circular dated 18th December, 2006 bearing No. 89/7/2006. Clauses 2 and 3 of the said circular read thus :

> *"2.The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government Treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of Taxable Service to a person and, therefore, no Service Tax is leviable on such activities.*
>
> *3.However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy then in such cases, Service Tax would be leviable. if the activity undertaken falls within the ambit of a Taxable Service."*
>
> *(Underlines supplied)*

6.*Thus, the activities performed by sovereign or public authorities under the provisions of law which are in the nature of statutory obligations are covered by clause 2 which provides that the fee collected by such sovereign or public authorities for performing such activities is in the nature of compulsory levy Only if such authority performs service which is not in the nature of statutory activity and the same is undertaken for a consideration which is not in the nature of statutory fee, Service Tax would be leviable if the activity undertaken otherwise falls within the ambit of Taxable Service.*

7.*Going by the show cause notice, the allegation is that the Respondent - MIDC has collected service charges from the plot owners/plot allotters in consideration of having provided them various facilities including maintenance, management and repairs of the facilities in the MIDC area. As stated earlier, reliance is placed on clause (64) of Section 65 of the said Act. As pointed out earlier, MIDC is already registered under the category of "renting of*

immovable property" and for services covered by such category; MIDC is admittedly paying Service Tax.

7.4. Further we note that the functions of MIDC under MID Act, 1961 is more or less identical with the functions of the appellant, KIADB under KIAD Act, 1966. The Bombay High Court in the above case has relied upon the decision of the Apex Court in the case of Ramtanu Co-Operative Housing Ltd. and anr. and quoted paras 15 & 16 from the Apex Court judgement, where the Apex Court held as under: -

> 15. The pith and substance of the Act is establishment, growth and Organisation of Industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the Corporation show in no uncertain terms that these are all in aid of the principal and predominant purpose of establishment, growth and establishment of industries. The Corporation is established for that purpose. When the Government is satisfied that the Corporation has substantially achieved the purpose for which the Corporation is established, the Corporation will be dissolved because the *raison d'etre* is gone. We, therefore, hold that the Act is a valid piece of legislation.
>
> 16. The petitioners contended that the Corporation was a trading one. The reasons given were that the Corporation could sell property, namely, transfer land; that the Corporation had borrowing powers; and that the Corporation was entitled to moneys by way of rents and profits. *Reliance was placed on the report of the Corporation and in particular on the income and expenditure of the Corporation to show that it was making profits. These features of transfer of land or borrowing of moneys or receipt of rents and profits will by themselves neither be the indicia nor the decisive attributes of the trading character of the Corporation.* Ordinarily, a Corporation is established by shareholders with their capital. The shareholders have their Directors for the regulation and management of the Corporation. Such a Corporation set up by the shareholders carries on business and is

intended for making profits. When profits are earned by such a Corporation they are distributed to shareholders by way of dividends or kept in reserve funds. In the present case, these attributes of a trading Corporation are absent. *The Corporation is established by the Act for carrying out the purposes of the Act. The purposes of the Act are development of industries in the State. The Corporation consists of nominees of the State Government, State Electricity Board and the Housing Board. The functions and powers of the Corporation indicate that the Corporation is acting as a wing of the State Government in establishing industrial estates and developing industrial areas, acquiring property for those purposes, constructing buildings, allotting buildings, factory sheds to industrialists or industrial undertakings.* It is obvious that the Corporation will receive moneys for disposal of land, buildings and other properties and also that the Corporation would receive rents and profits in appropriate cases. Receipts of these moneys arise not out of any business or trade but out of sole purpose of establishment, growth and development of industries."

Further the Hon'ble Bombay High Court has held in MIDC case as under: -

11.*The Apex Court categorically held that functions and powers of MIDC indicate that the said Corporation is acting as a wing of the Government. In the case of Managing Director, Haryana State Industrial Development Corporation, the Apex Court was considering the role played by Haryana State Industrial Development Corporation. The Apex Court held that the said Corporation discharges sovereign functions. The Apex Court also held that considering the objects and purport for which the said Corporation of Haryana has been constituted, the function discharged by the Corporation must be held as Governmental function.*

14.*MIDC is a statutory Corporation which is virtually a wing of the State Government. It discharges several sovereign functions. In our view, the Revenue ought not to have compelled MIDC to prefer Appeals before Appellate Tribunal. Not only that MIDC was driven to prefer Appeals before the Appellate Tribunal, these groups of Appeals were preferred by the Revenue. Needless to add that MIDC was required to incur huge expenditure on litigation. All this could have been avoided by the Appellant.*

When the maintenance of industrial area itself is held to be statutory function, then the main function of acquisition of law, development of such land into industrial area and allotment of such land on lease-cum-sale basis by the appellant would certainly be a statutory function and does not attract levy of service tax. On the same analogy, we hold that other functions being incidental cannot be brought into tax net.

7.5. Further we find that in order to counter the decision of the Bombay High Court, the learned special counsel for the Revenue relied upon the decision of the Allahabad High Court in the case of Greater Noida Industrial Development Authority wherein the Allahabad High Court held that if the sovereign / public authority provides a service, which is not in the nature of statutory activity and the same is undertaken for a consideration (not statutory fee), then in such cases, service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined in Finance Act, 1994. This decision of the Allahabad High Court, on which the Revenue has heavily relied upon, has been stayed by the Hon'ble Supreme Court as reported in 2015(40) STR J231 (SC). A copy of the Stay order has been produced by the counsel for the appellant. while issuing notice in the petition, the Supreme Court passed the following order:-

> *"Notice.*
>
> *There shall be interim stay of the impugned judgment and order passed by the High Court of Allahabad in CEA No.54/2015, dated 30-3-2015."*

Hence the said judgment cannot be relied upon by the Revenue to counter the claim of the appellant. Moreover in the present case, the appellant is indeed undertaking statutory activities as set out in Section 13 of KIAD Act viz. ensuring establishment of industrial areas in the State and providing industrial infrastructure facilities and amenities therein. Further in doing so, the appellant also has powers to make available the land and building on lease or sale or lease-cum-

sale to industrialists, construct buildings for usage of employees of the industries etc. as set out in Section 14 of the KIAD Act. Further the amounts collected are for the facilities and amenities rendered and these charges cannot be called as consideration of the service. We find that the Apex Court in the case of KIADB and anr. Vs. Prakash Dal Mill and others [(2011) 6 SCC 714] in paras 19, 23 to 25 observed that the amount of fees and deposits collected by the KIADB is based on principles of rationality and reasonableness. It cannot fix prices arbitrarily. Fixation of price by the Board is always under the authority of law. We also find that the decision of the Bombay High Court in the case of Builders Association of Navi Mumbai [2018(12) GSTL 232 (Bom.)] relied upon the decision of the Allahabad High Court to hold that CIDCO (as established under the Maharashtra Regional and Town Planning Act) is not a statutory function. Since the decision of the Allahabad High Court has been stayed by the Apex Court as cited supra, the decision of the Allahabad High Court is not a binding precedent to decide the present case.

7.6. Learned special counsel placed reliance on the cases of N. Nagendra Rao & Co. Vs. State of AP [AIR 1994 SC 2663 (23 & 24) and Agricultural Produce Market Committee Vs. Ashok Hari Kuni [AIR 2000 SC 3116] (paras 22, 31-33)] to submit that activities carried out by KIADB are not sovereign functions. After going through the said judgments, we are of the view that these judgments are not applicable in the facts and circumstances of the present case as the said judgments were rendered in the context of immunity of the State from being sued for a tort claim. It was held that the state cannot take the defence of carrying out sovereign functions to claim immunity from an action in tort. These cases do not speak of the power of 'eminent domain' being a sovereign power. The submissions of the learned counsel for the appellant that KIADB is a creature of the statute to exercise the power of 'eminent domain' and the eminent domain is a sovereign function has been contested by the learned special counsel

for the Revenue. As per the learned special counsel, the eminent domain so far as the land to be acquired for KIADB purposes remains only with the State Government. We do not agree with the submission of the learned special counsel. It is not correct to say that only State Government has the power of acquisition under KIAD Act. In the case of PeerappaHanmanthaHarijanand others Vs. State of Karnataka and anr. [(2015) 10 SCC 469], it was categorically observed that state government acquires land only at the instance of KIADB for the purpose of formation of industrial estate in industrial area. Moreover, Section 28(8) of the KIAD Act, in express terms, states that where the land has been acquired by the Statement Government for KIADB, the State Government after it has taken possession of the land from either owner or interested person may transfer the land to KIADB for the purpose for which the land has been acquired by it. Therefore, it is not correct to say that KIADB has no power of eminent domain. The ratio of the following decisions of the Apex Court clearly considering the scope of 'eminent domain' and sovereign function are applicable to the facts of the present case: -

i. Balmer Lawrie & Co. Ltd. Vs. ParthaSarathi Sen Roy [2013(8) SCC 345
ii. MD, HSIDC Vs. Hari Om Enterprises [AIR 2009 SC 218]
iii. JilubhainanbhaiKhachar Vs. State of Gujarat [1995 Supp (1) SCC 596]

7.7. The learned counsel for the appellant relied upon the decision in the case of Employee Provident Fund Organisation vs. CST [2017 (4) GSTL 294 (Tri. Del.)] to submit that the statutory authorities performing statutory functions as per the statute are not liable to pay service tax. He also submitted that the Revenue's appeal against the above decision was dismissed by the Hon'ble Supreme Court on grounds of delay as well as on merits. We have gone through the judgment of the Tribunal. The Tribunal in that case, after considering the judgment of the Supreme Court as well as Kerala High Court, has

held that appellants are not liable to pay service tax on their statutory activities performed under the act. In this case, the Tribunal has also considered the argument of the Revenue that the appellant is providing taxable services as a corporate body / trust by managing funds and the activities carried out are not in the statutory functions but are in the nature of services of social nature as per the directive principles of the State Government policy. Here it is pertinent to reproduce the observation of the Tribunal in paras 7, 11, 12, 13, 15, 16, 17, 20: -

> ***7.****It is necessary to examine and understand the legal status and the organizational function of the appellant. The appellant is a statutory body created by an Act of Parliament. They administer three schemes as mentioned hereinabove. The legal status and scope of functions of the appellant are captured in the narrative of the Hon'ble Supreme Court in the judgment dated 18-1-2012 in Civil Appeal No. 655/2012 in the case of Regional Provident Fund Commissioner v. The Hoogly Mills Company Ltd. and Ors., reported in (2012) 2 SCC 489. The Hon'ble Supreme Court examined provisions of EPM & MP Act, 1952 and role of the appellant and observed as below :*
>
> > *"22. From the aforesaid discussion it is clearthat this case calls for interpretation of certain statutory provisions. It is not disputed, and possibly cannot be disputed, that the Act is a social welfare legislation. The Act is one of the earliest Acts after the Constitution came into existence. Prior to its enactment, the requirement of having a suitable legislation for compulsory institutional and contributory provident fund in industrial undertakings was discussed several times at various tripartite meetings in which representatives of the Central and State Governments and employees and workers took part. Initially a non-official Bill on the subject was introduced in the Central Legislature in 1948 and was withdrawn with the assurance that the Government would consider the introduction of a comprehensive Bill. Finally, the proposed legislation was endorsed by the*

conference of Provincial Labour Ministers in January, 1952 and later on the same was introduced in 1952. This Court had occasion to expressly hold that the said Act is a beneficial social welfare legislation to ensure benefits to the employees. In the case of Regional Provident Fund Commissioner v. S.D. College, Hoshiarpur and others reported in (1997) 1 SCC 241, this Court while interpreting Section 14B of the Act held that the Act envisages the imposition of damages for delayed payment (paragraph 10 at page 244 of the report). This Court also held that the Act is a beneficial social legislation to ensure health and other benefits of the employees and the employer under the Act is under a statutory obligation to make the deposit. In paragraph 11, it has also been held that in the event of any default committed in this behalf Section 14B steps in and calls upon the employer to pay damages.

23. If we look at the modern legislative trend, we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.

24. The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender.

25. It is no doubt true that the said Act effectuates the economic message of the Constitution as articulated in the Directive Principles of State Policy.

26. Under the Directive Principles the State has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life. The said Act obviously seeks to promote those goals. Therefore, interpretation of the said Act must not only be liberal but it must be informed by the values of Directive Principles. Therefore, an awareness of the social perspective of the Act must guide the interpretative process of the legislative device.

27. Keeping those broad principles in mind, if we look at the Objects and Reasons in respect of the relevant Section it will be easier for this court to appreciate the statutory intent. The opening words of Section 14B are, "where an employer makes a default in the payment of contribution to the fund".

This was incorporated by way of an amendment, vide Amending Act 37 of 1953. In this connection, the excerpts from the Statement of Objects and Reasons of Act 37 of 1953 are very pertinent. Relevant excerpts are :-

"There are also certain administrative difficulties to be set right. There is no provision for inspection of exempted factories; nor is there any provision for the recovery of dues from such factories. An employer can delay payment of provident fund dues without any additional financial liability. No punishment has been laid down for contravention of some of the provisions of the Act.

This Bill seeks primarily to remedy these defects'. - S.O.R., Gazette of India, 1953, Extra, Pt.II, Sec.2, p.910."

28. Similarly, in respect of Section 17(1A), clause (a) which makes Section 14B applicable to an exempted establishment also came by way of an amendment, namely, by Act 33 of 1988. Here also if we look at the relevant portion of the Statement of Objects and Reasons of Act 33 of 1988 we will find that they are based on certain recommendations of the High level committee to review the working of the Act. Various recommendations were incorporated in the

Objects and Reasons and one of the objects of such amendment is as follows :-

"(viii) the existing legal and penal provisions, as applicable to un-exempted establishments, are being made applicable to exempted establishments, so as to check the defaults on their part;"

……..

58. We hold that in a case of default by the employer by an exempted establishment, in making its contribution to the Provident Fund Section 14B of the Act will be applicable".

11.*Now, we can examine the activities of the appellant to determine whether they are coming under the scope of mandatory, statutory functions discharged by a public authority in terms of law. The term 'public authority' has to be examined and understood. 'Public' includes a section of the public (Shri Venkataraman Devaru v. State of Mysore - 1958 S.C.R. 895). The word 'public' is ordinarily used with reference to a joint body of citizens. The term 'authority' is defined as "a public administrative agency or corporation having quasi governmental powers and authorized to administer a revenue producing public enterprise", (Webseter's Third New International Dictionary); authority is a body having jurisdiction in certain matters of "public nature". Therefore, the "ability" conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations either of himself or of other persons must be present ab extra to make a person "authority". [Som Prakash Rekky v. Union of India - (1981) 1 SCC 449]. When the person is an agent or instrument of function of the State, the power is 'public'. The true test is functional. Not how the legal person is born, but why it is created. There are various factors which will suggest a body could be "a public authority" these are (a) it is linked to the Government or its function could be described as governmental, (b) it provides a public service, (c) the State regulates, supervises and controls us performance, (d) it is subject to judicial review or is publicly accountable for its action, (e) performs charitable objectives, (f) vested with*

statutory powers, with powers to enforce its order by punitive consequences, (g) the legislature specifically intended by an Act to cover its functions and responsibilities. In general, without any possible dispute, it can be stated that a public authority is one which has a legal mandate to govern, or administer a part some aspect of public life.

12.*The Hon'ble Supreme Court in Balmer Lawrie & Co. Ltd. v. ParthaSarathi Sen Roy reported in (2013) 8 SCC 345 examined the scope of terms "State"/ "other authorities" under Article 12 of the Constitution. The observations of the Apex Court are :*

> *"21.A public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of the public, and not for private profit. Article 298 of the Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the Government and the Legislature alone, and it includes within its ambit, various other instrumentalities of State action. The law may bestow upon such organisation the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The "State" being an abstract entity, can only act through an instrumentality or an agency of natural or juridical persons. The concept of an instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company, or to a society. In a given case, the court must decide, whether such a company or society is an instrumentality or agency of the Government, so as to determine whether the same falls within the meaning of the expression "authority", as mentioned in Article 12 of the Constitution, upon consideration of all relevant factors.*
>
> *……..*
>
> *24.When we discuss "pervasive control", the term "control" is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word "regulate", would mean to control or to*

> *adjust by rule, or to subject to governing principles."*

The appellant is concerned with 'Public' - namely the employers who are governed by the EPMF & MP Act. The employers are governed by the said Act for delivery of welfare benefits to the employees (members of the Fund). The appellant is an "authority" having vested with statutory powers to enforce the due contribution of fund, administration charges, penal charges, etc. The appellant has power to impose penal consequence on employers for violation of any provisions of EPMF & MP Act, and also for coercive recovery of dues.

13.*Having examined the scope of 'public authority' and applying the general principles to the functions and responsibilities of the appellant we have no hesitation to hold that the appellant is a public authority performing statutory functions as mandated by an Act of Parliament.*

15.*The Hon'ble Kerala High Court examined a similar dispute regarding service tax liability, in Union of India v. Kerala State Insurance Department reported in 2016 (43) S.T.R. 173 (Ker.). The Hon'ble High Court held as below :*

> *"4. Rule 22A of Part-I KSR provides that anyperson who enters Government service on or after 19th August, 1976 and has not crossed the age of 50 years shall, within a period of one year from the date of such entry in service, subscribe to a policy in the official branch of the State Life Insurance at such rate as may be determined by the Government from time-to-time and shall continue to subscribe till he ceases to be in Government service. The period of one year has now been reduced to one month by G.O(P). 229/12/Fin, dated 19-4-2012. Rule 22B also provides that such employee shall enroll as a member of General Insurance Scheme. Though, at the relevant point of time, taxable service included insurance service as well, the Central Board of Customs and Excise issued Circular No. 89/7/2006-Service Tax, dated 18-12-2006 and the relevant part of this circular reads thus :*

"A number of sovereign/public authorities (i.e., an agency constituted/set up by government) Perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of Service Tax.

2.The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3.However, if such authority performs a service, which is not in the nature of

statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

5.Reading of the above Circular shows that it has been clarified by the C.B.E. & C. that activities performed by sovereign/public authorities under the provisions of law are in the nature of statutory obligations which are fulfilled in accordance with law, as the functions, according to the Board, are mandatory and statutory functions and are not in the nature of service to any particular individual for any consideration. On this basis, it is clarified that such activities performed under the provisions of law do not constitute taxable service and that no Service Tax is leviable on such activities.

6.As we have already seen, the respondent department is providing personal insurance and group insurance in pursuance of the statutory mandate as contained in Rules 22A and 22B of Part-I KSR. In other words, the insurance provided is a mandatory statutory function discharged by a State Government Department. Such an activity is not a taxable service for the purpose of Service Tax in the light of the Circular issued by the Central Board of Customs and Excise referred to above. This, therefore, means that the view taken by the learned single judge does not merit interference".

16.*The Hon'ble Supreme Court in Calcutta Municipal Corporation v. Shrey Mercantile (P) Ltd. reported in (2005) 4 SCC 245 examined the meaning and scope of terms "Fee" and "tax". It was held that :-*

"14. According to Words and Phrases, PermanentEdn., Vol. 41, p. 230, a charge or fee, if levied for the purpose of raising revenue under the taxing power is a "tax". Similarly, imposition of fees for the primary purpose of "regulation and control" may be classified as fees as it is in the exercise of "police power", but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a "tax". A tax is an enforced contribution expected pursuant to a

legislative authority for the purpose of raising revenue to be used for public or governmental purposes and not as payment for a special privilege or service rendered by a public officer, in which case it is a "fee". Generally speaking, "taxes" are burdens of a pecuniary nature imposed for defraying the cost of governmental functions, whereas charges are "fees" where they are imposed upon a person to defray the cost of particular services rendered to his account".

The fee and other charges collected by the appellant from the employers in the present dispute are fixed by the law with no discretion or option vested with appellant or the employers. As such these cannot be considered as amounts received for providing any taxable service of BOFS.

17. *One more aspect can be examined to decide the tax liability of the appellant. For levy of service tax on any transaction, there should be a service provider and a service recipient, apart from identifying a transaction under a specific taxable category. In the present case, the appellant is identified as a service provider. However, the Original Authority did not specifically identify the service recipient. The employers are the only persons who pay the consideration, now sought to be taxed, at the hand of appellants. We have to examine what type of services the employers received from the appellant. On close scrutiny, it is plain and clear that they are not in receipt of any service, least of all BOFS, from the appellant. The Original Authority held that the appellants performed the service of fund management. One crucial aspect, missed by the Original Authority, is fund which is managed by the appellant is to the benefit of employees whose welfare is entrusted to the appellant, by law. The employers do not get any benefit out of such fund management. The administrative charges and other charges paid by the employers, therefore cannot be attributed to any service received by them from the appellant. As already noted, the employers have no choice and are compulsorily mandated by law to contribute to the fund and also pay the administrative*

charges/inspection charges, etc., in terms of the EPMF & MP Act. The employees who ultimately benefit, have not paid any consideration to the appellant. They only contributed their part of fund, through the employer, to the appellant. The contribution to the fund is not the subject matter of disputed tax liability. The other charges like administrative charges, inspection charges paid by the employers, are being subjected to service tax. We find that in the absence of a service provider and service recipient relation between the appellant and the employers, no service tax liability can arise in the transaction.

20.*Having examined the impugned orders, the submissions made by both the parties before us, closely, we find that the appellants are not liable to pay service tax on their statutory activities performed in terms of EPMF & MP Act, 1952. The appellants are not providing any taxable service to the employers covered by the said Act. The relationship and transaction between the employers and the appellant is in discharge of statutory and compulsory obligations, coercively enforceable by the law. The considerations sought to be taxed are statutorily fixed, mandated fees and charges. No option exists with the appellant or contributor to vary such 'Fees' or 'charges'. As such, we find no taxable element in such transaction. This conclusion is supported by Board's clarification dated 18-12-2006 (supra). The impugned orders are without merits and are not legally sustainable. Accordingly, we set aside the same and allow the appeals filed by the appellant.*

Further it is seen that the above said case has been upheld by the Apex Court as reported in 2018(18) GSTL J215 (SC).

8. In view of our discussion above, we are of the considered opinion that the appellant is a statutory body discharging the statutory function as per the statute KIAD Act, 1966 and hence are not liable to pay service tax in view of the ratios of the various decisions cited supra. Since we have held that appellant is not liable to pay the service tax at all, we do not consider it appropriate to discuss the demand of service tax on individual services allegedly rendered by the

appellant on which the learned Commissioner has confirmed the demand. In the result, by following the ratios of the Hon'ble Apex Court in the case of Shri Ramtanu Housing Co-operative Society Ltd., Hon'ble Bombay High Court in the case of MIDC and the Tribunal's decision in the case of Employee Provident Fund Organisation (upheld by Apex Court) cited supra, we set aside the impugned order by allowing the appeal of the appellant.

(Order was pronounced
in Open Court on **09/06/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...