

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

REGIONAL BENCH - COURT No.-2

Service Tax Appeal No.20708 of 2021

(Arising out of Order-in-Appeal No.COC-EXCUS-000-APP-390-2021 dated 12/03/2021 passed by Commissioner (Appeals) Service Tax, Cochin)

M/s Jewel Rocks Hire Purchase and Kuries Pvt. Ltd.

.....Appellant

Omega Complex, Kuruppam Road,
Marar Road area, Thrissur-680001

VERSUS

**Commissioner (Appeals), Central Tax, Central Excise &
Customs, Kochi**

....Respondent

CR Building, I.S. Press Road, Kochi-682018

APPEARANCE:

Ms. Maya Menon, Advocate for the Appellant

Mr. Rajesh Shastry, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

FINAL ORDER NO.20714/2023

DATE OF HEARING : 27.06.2023

DATE OF DECISION : 27.06.2023

PER: P.A. AUGUSTIAN

The appellant was providing services under the category of 'Banking & other Financial Services'. The appellant was paying service

tax regularly and the issue regarding the taxability of chit fund was under challenge before the Hon'ble Supreme Court in the case of **Union of India versus Margadarshi Chit funds Pvt. Ltd. reported in AIR 2017 SC 3730**. In the meantime and association of such chit funds, Kerala Chitty Formen's Association filed Writ Petition No.32097 of 2007 challenging levy of Service Tax on chit transactions before the Hon'ble high court of Kerala. On disposal of the writ petition, issue was pending before Division of Hon'ble High Court of Kerala including Writ Appeal No.273 of 2013. Considering the judgment of Hon'ble Apex Court in the case of **Union of India versus Margadarshi Chit funds** (supra) the Hon'ble High Court of Kerala vide judgment dated 14th March, 2018 disposed writ appeals as per the law laid down by the Hon'ble Apex Court. As per Para 9 of the judgment, the Hon'ble High Court directed that the assesses has to file claim for refund of the amount already paid on demand made by the Authorities and the refund application will be disposed considering the other issues where tax was collected from individual subscribe or not. The Hon'ble High Court specifically ordered that limitation if any permitted for refund application would arise from the date of order i.e. 14.03.2018.

2. On disposal of the Writ appeal, appellant filed a refund application on 31.01.2019 for Rs. 18,39,643/- towards refund of Service tax paid from June 2007 to June 2013. Based on the documents furnished by appellant, adjudication authority considered the issue regarding unjust enrichment and given a finding that question of unjust enrichment does not arise in appellants case.

However Adjudication Authority rejected the claim of the appellant on the ground that there is no evidence on record to show that appellant was a party to Writ Petition or Writ appeal which was disposed by judgment dated 14.03.2018 and due to that reason, period of limitation shall commence from the date of judgment of Hon'ble Supreme court on 04.07.2017 and not from date of judgment on 14.03.2018. Since the refund application was filed on 31.01.2019, Adjudication authority held that the refund is barred by limitation.

3. Aggrieved by the said order, the appellant approached the Hon'ble High Court of Kerala by filing Writ Petition No.26647 of 2019. However, the Hon'ble High Court disposed the writ petition directing the appellant to file appeal before the Appellate Authority. As per the directions of the Hon'ble High Court of Kerala, the appellant filed appeal before the Appellate Authority and the Appellate Authority vide impugned order dismissed the appellant's claim on the ground that appellant is not the petitioner who filed appeal as member of the association. Thus on the ground of limitation appeal was rejected. Aggrieved by the said order appellant filed appeal before this Tribunal.

4. The matter came up before the Single Bench on 30 March, 2023 and considering the submissions made by the learned counsel for the appellant, this Tribunal directed the appellants to produce necessary documents in support of their claim that they are party to proceedings before the Hon'ble High Court of Kerala directly or as a member in All Kerala Chitty Foreman's Association. Today when matter came up for hearing, learned counsel produced certificate issued by All Kerala

Chitty Foremen's Association and a clarification letter dated 20.04.2023 stating that the appellant is a member of the association w.e.f. 03.11.2011. The learned counsel further submitted that the appellant is the Member of All Kerala Chitty Foremen's Association who is one of the petitioner in Writ Petition No.32097 of 2007 and revenue had filed an appeal against judgment of the Ld. Single bench to clarify as to whether the decision of the Hon'ble Supreme court in the case of Margadarshi Chit Funds (supra) applies to the period post introduction of Negative list in 2012. Thus the entire issue regarding taxability on chit fund attained finality only as per the judgment dated 14.03.2018 and not w.e.f 04.07.2017 as held by adjudication authority. Learned counsel also draw my attention to the judgment of the Hon'ble High Court in Writ Petition No.18700 of 2018 wherein Hon'ble High Court allowed the writ petition vide judgment dated 14th March, 2018 by extending the limitation if any prescribed for filing refund application from the date of the said judgment. The learned counsel also placed reliance on the decision of the Delhi High Court in the case of **Hind Agro Industries Ltd vs. Commissioner of Customs reported in 2008 (221) ELT 336 (Del.)**, judgment of Madras High Court in Writ Petition No. 15357/2009 in the case of **Natraj and Venkat Associates v. Asst. Commissioner of Service Tax, Chennai- II dated 20.10.2009 [2010(17) S.T.R. 3 (Mad)]** to support their contention that the limitation is not applicable where the levy is illegal. With regard to the limitation period for sanction of refund, reliance was also placed on the decision of the Hon'ble Supreme Court in the matter of **Salonah Tea Company limited v. Superintendent of Taxes, Now going 1988 (33 ELT. 249 (SC))**

wherein it was held that "if there is no provision for realization of the money under the Act, the act of payment was ultra vires. It is further submitted that it is a settled principle of law that no person can be allowed to take advantage of its own wrongs. In the present case, it was the issuance of an illegal Circular which led to a payment of tax which was not liable to be paid in the first place. It is the case of the appellant that the department had erred in demanding and collecting service tax on chit fund business pursuant to the CBEC Circular No. 96/7/2007-S.T (Circular No. 034-04) dated 23.08.2007. Hence a rightful claim of refund where no tax was in fact and in law payable cannot be denied since the fault is attributable to the department.

5. The learned D.R. reiterated the finding in the impugned order and further submitted that the benefit of extended period of limitation as per the judgment of Hon'ble High Court of Kerala cannot be extended to appellant.

6. I have gone through the record of the case and find that the issue regarding taxability of Chit Fund is pending before the Hon'ble Supreme Court since 2007 and attained finality only in 2017. As per the documents produced by the appellant, appellant is a Member of All Kerala Chitty Formen's Association who is one of the petitioner in Writ Petition No.32097 of 2007 and revenue had filed an appeal against judgment of the Ld. Single bench to clarify as to whether the decision of the Hon'ble Supreme court in the case of Margadarshi Chit Funds applies to the period post introduction of Negative list in 2012. Thus the entire issue regarding taxability on chit fund attained finality

only as per the judgment dated 14.03.2018 and not w.e.f 04.07.2017 as held by adjudication authority. As per the judgment dated 14 March, 2018, Hon'ble High court specified that the limitation for filing refund application will be extended for one year from 14.03.2018. However, Commissioner (Appeals) has not extended the period of limitation on the ground that the appellant was not party to the proceedings pending before the Hon'ble High Court. Such finding is unsustainable. If benefit can be denied on the ground that appellant is not a party to such a proceeding, Adjudication/appellate authority have no reason to consider even the date of judgment of Hon'ble Supreme Court on 4.07.2017 as date of commencement of the period of limitation since appellant was not party to proceedings before the Hon'ble Supreme Court also.

7. From the records before me, it is evident that Appellant is a Member of All Kerala Chitty Formen's Association who is one of the petitioner in Writ Petition No.32097 of 2007 and revenue had filed an appeal against judgment of the Ld. Single bench to clarify as to whether the decision of the Hon'ble Supreme court in the case of Margadarshi Chit Funds (Supra) applies to the period post introduction of Negative list in 2012. Thus the entire issue regarding taxability on chit fund attained finality only as per the judgment dated 14.03.2018 and not w.e.f 04.07.2017 as held by adjudication authority. Considering the guidelines issued by the Hon'ble High Court vide judgment dated 09.10.2019 in Writ Petition No.26647 of 2019 and the judgment of the Division Bench dated 14.03.2018 in Writ Appeal No.273 of 2013, the appellant are eligible to claim the benefit

of extended period of limitation for one year from 14.03.2018. Since there is no other issue raised by the Adjudication/Appellate Authority, the appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

Nihal