

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

REGIONAL BENCH - COURT No.-2

Service Tax Appeal No.20707 of 2021

(Arising out of Order-in-Appeal No.COC-EXCUS-000-APP-391-2021 dated 12/03/2021 passed by Commissioner (Appeals) Service Tax, Cochin)

M/s Dharmaposhana Company

.....Appellant

Main Road, Irinjalakuda,
Thrissur, Kerala-680121

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.20715/2023

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 Apex body of appellant All Kerala Association of Chit Funds challenged Service Tax liability of 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 as 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 appeal as per the law laid down by the Hon'ble Apex Court.

2. As per Para 9 of the judgment, the Hon'ble High Court directed that the assessee 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 by individual subscriber. 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. Based on the above judgment, the appellant herein filed refund application dated 22.02.2019 and the refund application was rejected by the Adjudicating

Authority vide order dated 07.08.2019 on the ground that refund claim is subject to of judgment of Hon'ble Supreme court dated 04.07.2017 and since the claim was filed only on 01.03.2019 after the lapse of more than 01 year, it is barred by limitation. Regarding the limitation prescribed by the Hon'ble High Court, the Adjudication Authority held that limitation of 01 year as per the judgment of the Hon'ble High Court with effect from 14.03.2018 is not applicable in the appellant's case since appellant was not a party to proceedings before Hon'ble High court either as an individual or as a member. Aggrieved by the said order, appellant filed appeal before the appellate Authority and the Appellate Authority also dismissed the appeal on the ground of limitation. Aggrieved by the order of the Appellate Authority, present appeal is filed.

3. When the matter came up before the Single Bench on 30 March, 2023, considering the submissions made by the learned counsel for the appellant, this Tribunal directed the appellant to produce necessary documents in support of their claim evidencing their membership in the All Kerala Association of Chit Funds who had approached Hon'ble High Court to find out whether the period of limitation extended by the Hon'ble High Court is applicable in their case. Today when the matter came up for hearing, the learned counsel produced a document showing certificate of live membership issued to the appellant by All Kerala Association of Chit Funds and confirmation letter dated 20.04.2023 issued by All Kerala Association of Chit Funds. 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 of time 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, the money had not been paid under the Act. 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. 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.

4. 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

5. 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, Adjudication/Appellate Authorities have 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. When 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, it is applicable to members of the litigant i.e. All Kerala Association of Chit Funds. On perusal of the documents produced by the appellant, it is evident that they were members of the association since 09.04.2009 and still continues as members as per the communication issued by the All Kerala Association of Chit Fund vide letter dated 20.04.2023. Thus there is no reason of justification to reject the extended period of limitation as per judgment of Hon'ble High Court in appellant's case. As per impugned order, Adjudication authority considered the issue regarding unjust enrichment and given a finding that question of unjust enrichment does not arise in appellants case. Since

there is no other issue raised by the Adjudication or Appellate Authority, the appeal is allowed with consequential relief.

(Dictated and pronounced in open court)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

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