CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH COURT NO. 2

Service Tax Appeal No. 20613 of 2017

(Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-13 to 15-2017 dated 20.01.2017 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin.)

The Perumatty Service Co Operative Bank Ltd
Vandithavalam P O, Palakkad,
Kerala – 678534 **……….Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Calicut
C. R. Building, Mananchira,
Calicut, Kerala – 673001 **……….Respondent**

Appearance:

Shri M. Sarvanan, Chartered Accountant (CA) for the Appellant

Shri Rajashekar.B.N.N, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20001/2026

Date of Hearing: 20.11.2025

Date of Decision: 06.01.2026

PER: P. A. AUGUSTIAN

The issue in the present appeal is whether by following the doctrine of mutuality, demand of service tax under the category of banking and other financial services against appellant is sustainable and whether Appellant is liable to pay service tax considering the threshold limit.

2. Appellant is a cooperative society providing various services to its members. Since the activities of the appellant was not subject to service tax, service tax registration is not obtained. However, registered with the Department under the category of GTA services. Alleging that the activities carried out by the Appellant is falling under the category of Banking and Other Financial Services provided by a banking company or financial institutions, proceedings were initiated and show cause notice dated

20.04.2013 was issued for the period from 01.04.2012 to 31.03.2013 demanding service tax under the category of Banking and Other Financial Services and under Goods Transport Agency Services. First show cause notice was issued on 23.04.2013 for demanding service tax for the period from 01.04.2008 to 31.03.2012. Thereafter Adjudication authority as per the Order-in-Original No.14/2014-15/ST dated 12.02.2015 confirmed the demand. Aggrieved by said order, appellant filed appeal and respondent filed Order-in-Review before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 20.01.2017 partially allowed the appeal and aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned CA for the Appellant submits that the demand for the previous period was covered by ST/20612/2007 and it is settled under SVLDRS. Since the part of the demand is dropped by the Adjudication authority, the dispute in the present appeal is regarding the following activities:-

Sl.No	**Head of Account**	**2011-12**	**2012-13**
1	Rent of Safe Deposit Locker	51,600	60,500
2	Incidental Charges	1,83,274	1,96,121
3	Bank Commission	36,775	32,065
4	Entrance Fees	1,292	798
5	Inspection charges	20,775	23,250
6	Miscellaneous receipt	7,90,519	5,43,950
7	Folio Charges	67,697	1,36,102
8	Misc. charges Gold	0	2,43,179
9	Misc. Charges loan	0	77,475
	Total	**11,51,932**	**13,13,440**

4. The Learned CA further submits that the demand is prima facie unsustainable following the ratio of the judgment of the Hon'ble Supreme Court in the matter of **State of West Bengal Vs. Kolkata Club Ltd – 2019 (29) GSTL 545 (SC),** where doctrine of mutuality was considered and it is categorically held that if the services are provided to members, applying the ratio of doctrine of mutuality, no service tax can be demanded. Relevant paragraphs are reproduced below:-

> "73. It is, thus, clear that companies and cooperative societies which are registered under the respective Acts, can certainly be said to be constituted under those Acts. This being the case, we accept the argument on behalf of

the respondent that incorporated clubs or associations or prior to 1st July, 2012 were not included in the Service Tax net.

74. The next question that arises is - was any difference made to this position post-1st July, 2012?

75. It can be seen that the definition of "service" contained in Section 65B(44) is very wide, as meaning any activity carried out by a person for another for consideration. "Person" is defined in Section 65B(37) as including, inter alia, a company a society and every artificial juridical person not falling in any of the preceding sub-clauses, as also any association of persons or body of individuals whether incorporated or not.

76. What has been stated in the present judgment so far as Sales Tax is concerned applies on all fours to Service Tax as, if the doctrine of agency, trust and mutuality is to be applied qua members' clubs, there has to be an activity carried out by one person for another for consideration. We have seen how in the judgment relating to Sales Tax, the fact is that in members clubs there is no sale by one person to another for consideration, as one cannot sell something to oneself. This would apply on all fours when we are to construe the definition of "service" under Section 65B(44) as well.

77. However, Explanation 3 has now been incorporated, under sub-clause (a) of which unincorporated associations or body of persons and their members are statutorily to be treated as distinct persons.

78. The Explanation to Section 65, which was inserted by the Finance Act of 2006, reads as follows:

> "Explanation. - For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration."

79. It will be noticed that the aforesaid explanation is in substantially the same terms as Article 366(29A)(e) of the Constitution of India. Earlier in this judgment qua Sales Tax, we have already held that the expression "body of persons" will not include an incorporated company, nor will it include any other form of incorporation including an incorporated cooperative society.

80. It will be noticed that "club or association" was earlier defined under Sections 65(25a) and 65(25aa) to mean any person" or "body of persons" providing service. In these definitions, the expression "body of persons" cannot possibly Include persons who are incorporated entities, as such entities have been expressly excluded under Sections 65(25a)(i) and 65 (25aa)(i) as "anybody established or constituted by or under any law for the time being in

force", Body of persons", therefore, would not, within these definitions, include a body constituted under any law for the time being in force.

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85. The appeals of the Revenue are, therefore dismissed. Writ Petition (Civil) No. 321 of 2017 is allowed in terms of prayer (i) therein. Consequently, show cause notices, demand notices and other action taken to levy and collect Service Tax from incorporated members' clubs are declared to be void and of no effect in law."

5. As regarding the liability on the cooperative society providing service to its own members by taking interest paying deposit from them and lending to needy members after charging some clerical charges, the issue was also considered by the Tribunal in the matter of **Chiplun Nagari Sahakari Patsanstha Ltd Vs. CCE Kolhapur, - 2015 (40) STR 957 (Tri.-Mumbai),** where it is observed that the appellant is functioning as a co-operative Society for their members and welfare of their members only. They do not extend any loan or accept any deposits from public at large. The services rendered by the appellant, if any, is to their own members is undisputed. In placing reliance on the judgment of the Hon'ble High Court of Gujarat in the case of **Green Environment Services Co-op. Soc. Ltd. (supra),** which lays down a ratio in respect of the tax liability on the members of the Society, demand was set aside. The Learned Chartered Accountant (CA) also draw our attention to the decision of the Tribunal in the matter of **Rajasthan Co-operative Dairy Federation Ltd Vs. CCE, Jaipur (2022 (65) GSTL 350 (Tri. Del)** which was upheld by the Hon'ble Supreme Court in **(2022 (65) GSTL 257 (SC).** Thus, the entire demand against appellant under Banking and Financial Services is unsustainable.

6. As regarding demand under RCM, Learned Chartered Accountant (CA) submits that service tax liability on legal services under RCM amounting to Rs.1,359/- and Rs.21,232/- on Sales Officer Cost was confirmed. In this regard, learned Chartered Accountant (CA) submits that as per Notification No.30/12 ST dated 20.06.2012, in case of service provided by an advocates by way of legal services to any business entities located in the taxable territory, the recipient of service is liable to pay service tax, under reverse charge mechanism. In the instant case appellants is a Co-operative Society and not a business entity carrying on any business. Hence appellants are not liable to pay service tax on service provided by an advocate. As against the demand on sale officers cost, the impugned order demands service tax

on the sales officer cost paid by appellants to sales office appointed by the Co-operative Department, the Apex body for conducting auction of defaulted members property pledged with the bank. Such auction can be conducted only by him and not by other, as it is a mandatory under the Co-operative Society Act. Thus, it is not a service provided in the ordinary course of appellant's activity to allege that it is support service done by Government. As per Notification No.30/2012 ST dated 20.06.2012 as amended, only in case of service provided by Government or local authority by way of support service, the recipient of service is liable to pay service tax. Therefore one has to see whether the service is a support service and also rendered by the Government or local authority. Only if both the conditions are satisfied, then the recipient of the service is liable to pay service tax on the expenses incurred by him. The "support service" is defined in Section 65B(49) as under:

> (49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;"

7. In the instant case, the impugned service is statutory requirement carried out by the sales officer, which is mandatory under the Co-operative Societies Act and appellant is not liable to pay service tax on such activity. Learned CA further submits that as per the finding in the impugned order, the taxable income for the period from 2011-12 is Rs.12,35,048/- and threshold exemption was Rs.10,00,000/-. Further the taxable income for the period from 2012-13 is Rs.16,43,484/- and if the activities are not considered as non-taxable under the category of Banking and Other Financial Services, the demand against other activities are below threshold limit and appellant is not liable to pay service tax.

8. Learned Authorized Representative (AR) reiterated the findings in the impugned order.

9. Heard both sides and perused the records. As regarding demand under the category of Banking and Other Financial Services, we find that appellant was providing services to the members of the cooperative society and in

the absence of any evidence regarding service provided by the appellant to any non-members, following the ratio of the judgment of the Hon'ble Supreme Court in the matter **Kolkata Club Ltd (supra),** no service tax can be demanded. As regarding other demand, we find that the demand against other activities are also unsustainable since it is below threshold limit during the relevant period.

10. Accordingly, appeal is allowed with consequential relief, if any, in accordance with law.

(Order was pronounced on 06.01.2026.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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