CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/20106/2016-DB, ST/20107/2016-DB, ST/20108/2016-DB, ST/20174/2016-DB, ST/20321/2016-DB

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-016-15- dated 27/10/2015 passed by Commissioner Of Central Excise,Customs and Service Tax , CALICUT]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-017-15-16 dated 27/10/2015 passed by Commissioner Of Central Excise,Customs and Service Tax , CALICUT]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-015-15- dated 27/10/2015 passed by Commissioner Of Central Excise,Customs and Service Tax , CALICUT]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-018-15-16 dated 27/10/2015 passed by Commissioner Of Central Excise,Customs and Service Tax , CALICUT]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-041-15 dated 05/01/2015 passed by Commissioner Of Central Excise,Customs and Service Tax , CALICUT]

Mudappilavu Kuries Private Limited
Door No X111/53a,guruchaithanya Shooping Complex,p.o Chiyyaram,thrissur
THRISSUR - 0
KERALA
Appellant(s)

Hi Lane Kuries Private Limited
1 St Floor,a & Y Complex,pallikulam Road Thrissur
THRISSUR - 680001
KERALA
Appellant(s)

Janananma Kuries Private Limited
Door No 12/344/9,poovathingal Arcade, Ollur,thrissur
THRISSUR - 680306
KERALA
Appellant(s)

Kuttanellur Asha Kuries Rivate Limited
Door No 10/1942/1,post Office Road,thrissur
THRISSUR - 680001
KERALA
Appellant(s)

Ampuchiya Chitties And Finance Private Limited
16/60,61 Edapully Complex Tana Main Road Irinjalakuda Thrissur
THRISSUR - 68121
KERALA
Appellant(s)

Versus

Commissioner of Central Excise,Customs and Service Tax Calicut
CENTRAL REVENUE BUILDING,
MANANCHIRA, CALICUT,
KOZHIKODE, - 673001
KERALA

Respondent(s)

<u>Appearance:</u>

Shri RAJITH DAVIS ATTATHARA, Advocate
M/S JIMSON ASSOCITES
ADVOCATES & LEGAL CONSULTANTS NEAR
MALAYALA MANORAMA THRISSUR
THRISSUR -
KERALA

For the Appellant

Shri Madhupsharan, Asst. Commissioner(AR) — For the Respondent

Date of Hearing: 06/07/2018
Date of Decision: 06/07/2018

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

<u>Final Order No. 20956-20960 / 2018</u>

Per : S.S GARG

Appellants have filed these 5 appeals against different impugned orders passed by the Commissioner whereby the Commissioner confirmed the demand of service tax on the services rendered by the appellants in relation to chit funds during different period. The issue involved in all the 5 appeals is identical. Therefore all the 5 appeals are being disposed of by this common order. The details of appeals are under:-

Appeal No.	Impugned order	Period	Tax demand	Penalty
ST/20174/2016	CAL-EXCUS-000-COM-018-15-16	April 2012 – December 2012	Rs.86,518/-	Rs.10,000/- Rs.86,518/-

	DT. 27/10/2015			
ST/20321/2016	CAL-EXCUS-000-COM-041-15-16 DT. 30-11-2015	October 2007 to December 2012	Rs.7,14,737/-	Rs.10,000/- Rs.7,14,737/-
ST/20106/2016	CAL-EXCUS-000-COM-016-15-16 dt. 27/10/2015	April 2012 to December 2012	Rs.86,520/-	Rs.10,000/- Rs.86,520/-
ST/20107/2016	CAL-EXCUS-000-COM-017-15-16 dt. 27/10/2015	April 2012 to December 2012	Rs.86,519/-	Rs.10,000/- Rs.86,519/-
ST/20108/2016	CAL-EXCUS-000-COM-015-15-16 dt. 27/10/2015	April 2012 to December 2012	Rs.88,818/-	Rs.10,000/- Rs.88,818/-

2. For the sake of convenience, the facts of appeal No.ST/20174/2016 are taken.

3. Briefly the facts of the case are that the appellant is engaged in chit business and has voluntarily filed return under VCES-1 dt. 04/12/2013 and had declared service tax dues of Rs.1,24,583/- under sub-section (1) of Section 107 of the VCES Act for the period April 2012 to December 2012, availing the threshold exemption provided under Notification No.6/2005 as amended. However, as the foreman commission received for the preceding year 2011-12, exceeded Rs.10 lakhs, it appeared that they were not eligible for the small service provider exemption of Rs.10

lakhs under Notification No.6/2005 dt. 01/03/2005 as amended for the succeeding financial year of 2012-13. Therefore, it appeared that the assessee had mis-declared his tax liability for a gross amount of Rs.14,50,313/- as against the actual gross value of Rs.24,50,313/- for the period declared under the VCES scheme, i.e. April 2012 to December 2012 by availing the ineligible exemption under Notification No.6/2005-ST dt. 01/03/2005. Therefore, it appeared that the declaration filed by the declarant was substantially false. Whereas it appeared that the appellant had contravened Section 106(1)of Finance Act, 1994 (VCES Act), Section 66 / 66B, 67 & 68 of the Finance Act, 2013 of the Finance Act, 1994 and Rule 4, 6, & 7 of the Service Tax Rules, 1994 inasmuch as they had failed to declare their tax dues under VCES, to levy & pay service tax, show-cause notice No.158/2014-ST dt. 03/12/2014 was issued asking them to show cause as to why an amount of Rs.2,12,001/- should not be demanded from them under Section 111 of the VCES Act read with proviso to Section 73(1) of the Finance Act along with interest at the appropriate rate for the delayed payment, under Section 75 ibid and with proposals to impose penalties under Section 76, 77 and 78 of the Finance Act, 1994. The appellant contested the show-cause notice by filing the reply. The appellant submitted in their reply that up to 31/03/2012 only declared services were taxable and in view of the decision of the Hon’ble High Court of Andhra Pradesh dt. 14/07/2008 in WPC No.27706 of 2007 and No.6028 of 2008 and No.6114 of 2008 filed by the Andhra Pradesh Federation of Chit Funds Vs. UOI services [2008 17 VST 128(ST) = 2009 13 STR 350] in relation to chit funds were not taxable. The Commissioner after following the due process, confirmed the demand and hence the present appeals.

4. Heard both sides and perused records.

5. Learned counsel for the appellants submitted that the impugned orders are not sustainable as the same are contrary to the binding judicial precedents. He submitted that the issue involved in the present appeals is no more rest integra and has been settled by the apex court in the case of UOI and other Vs. Margadarshi Chit Funds (P) Ltd. etc. [Judgment dt. 04/07/2017 in Civil appeal No9s).5724-5725/2011. He further submitted that the Hon'ble apex court in the judgment cited supra has held that the chit funds business was not covered by sub-clause (v) of sub-section 12 of Section 65 even after its amendment by Finance Act, 2007. He further submitted that the Hon'ble High Court of Kerala in the case of the Mukkattukara Catholic Co. Ltd. + others [judgment dt. 14/03/2018 in WA No.785 of 2013] relied upon the decision of the apex court cited supra and disposed of the pending appeals before them.

6. Learned AR reiterated the findings of the impugned orders.

7. After considering the submissions of both the parties, we are of the view that the decision of the Hon'ble Apex Court cited supra is squarely applicable in the present cases. Further we find that the apex court has affirmed the judgment of the Andhra Pradesh High Court which was relied upon by the appellant in their reply to the show-cause notice. Further we

also find that the contrary judgement of the Kerala High Court was held to be erroneous and stands overruled by the apex court in the decision cited supra. Therefore, by following the ratio of the decision of apex court cited supra, we are of the considered view that the impugned orders are not sustainable in law. Consequently, we set aside the impugned orders by allowing all the appeals of the appellants with consequential reliefs, if any.

(Operative portion of the Order was pronounced
in Open Court on **06/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...