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

Appeal(s) Involved:

ST/1192/2012-DB, ST/1193/2012-DB, ST/1194/2012-DB, ST/1195/2012-DB, ST/1196/2012-DB, ST/1197/2012-DB, ST/1198/2012-DB, ST/1199/2012-DB, ST/1200/2012-DB, ST/1201/2012-DB, ST/1202/2012-DB, ST/1203/2012-DB, ST/1204/2012-DB, ST/1205/2012-DB, ST/1206/2012-DB, ST/1207/2012-DB, ST/1208/2012-DB, ST/1209/2012-DB, ST/1210/2012-DB, ST/1211/2012-DB, ST/1212/2012-DB, ST/1213/2012-DB, ST/1240/2012-DB, ST/1241/2012-DB, ST/1242/2012-DB, ST/1246/2012-DB, ST/1247/2012-DB

[Arising out of Order-in-Appeal No. 74/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 64/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 61/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 99/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 75/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 98/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 73/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 67/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 65/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 66/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 96/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 102/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 104/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 103/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 63/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 69/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 68/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 62/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 93/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 95/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 70/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 94/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 72/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 101/2012 dated 23/05/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 97/2012 dated 23/05/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 100/2012 dated 23/02/2012 passed by the Commissioner of Central Excise, Mangalore]

[Arising out of Order-in-Appeal No. 71/2012 dated 13/02/2012 passed by the Commissioner of Central Excise, Mangalore]

Hassan District Central Credit Co-Operative Bank Ltd. Kenkere Branch, Kenkere, Hassan Dist.	**Appellant(s)**
Hassan District Central Credit Co-Operative Bank Ltd. Alur Branch Alur, Hassan Dist.	**Appellant(s)**
Hassan District Central Credit Co-Operative Bank Ltd. Kuvempunagar Branch, Kuvempunagar, Hassan Dist., Karnataka	**Appellant(s)**
Hassan District Central Credit Co - Operative Bank Ltd.	**Appellant(s)**
Hassan District Central Credit Co-Operative Bank Ltd. Hassan Town, Hassan District	**Appellant(s)**

Versus

Commissioner of Central Excise, Customs and Service Tax, Mysore S1-S2, Vinaya Marga, Siddhartha Nagar, Mysore – 570 011 Karnataka	**Respondent(s)**

Appearance:

Shri Bhanumurthy J.S, Advocate #466, 9th Cross, 1st Block, Jayanagar, Near Madhavan Park, Bangalore – 560 011 Karnataka	For the Appellant
Shri Madhupsharan, Assistant Commissioner (AR)	For the Respondent

Date of Hearing: 16/02/2018
Date of Decision: 16/02/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order Nos. 20488 - 20491 / 2018

Final Order Nos. 20899 - 20921 / 2018

Per: V. PADMANABHAN

The present sets of appeals have been filed challenging various Orders-in-Appeal. The appellant is a District Co-operative Bank engaged in providing Banking Services and have been registered under the category of 'Banking and other Financial Services' separately in respect of each of the branches. The present set of appeals cover the period April 2005 to March 2010, in respect of all the branches in the District of Hassan. The following table gives the details of the various appeals which are being disposed off through this common order.

Sl. No.	Appeal No.	Name of the Branch of HDCC Bank	OIA No.	Amount Demanded	Tax paid in respective tax periods	Amounts paid subsequently	Total tax paid
1	ST/1192/2012	Kenkere	74/2012	7,428	6,974	454	7,428
2	ST/1193/2012	Nugge Hally	64/2012	53,277	31,702	39,048	70,750
3	ST/1194/2012	Srinivasapura	61/2012	1,08,246	25,093	1,06,884	1,31,977
4	ST/1195/2012	Belur	99/2012	1,46,501	1,13,492	58,001	1,71,493
5	ST/1196/2012	Alur	75/2012	1,04,056	34,498	87,321	1,21,819
6	ST/1197/2012	Arsikere	98/2012	2,77,525	2,48,471	91,364	3,39,835
7	ST/1198/2012	Halebeed	73/2012	26,844	17,352	17,814	35,166
8	ST/1199/2012	Javagal	67/2012	56,131	31,656	33,008	64,664
9	ST/1200/2012	Hanbal	65/2012	29,736	16,052	23,128	39,180
10	ST/1201/2012	Vidyanagar	66/2012	88,640	70,741	32,652	1,03,393

11	ST/1202/2012	Kuvempunagar	96/2012	21,679	16,532	5,147	21,679
12	ST/1203/2012	Sakaleshpura	102/2012	87,779	42,577	85,823	1,28,400
13	ST/1204/2012	City	104/2012	1,70,205	64,325	1,31,302	1,95,627
14	ST/1205/2012	Hemavathi	103/2012	12,844	10,246	2,598	12,844
15	ST/1206/2012	Shravanabelgula	63/2012	90,982	39,802	60,535	1,00,337
16	ST/1207/2012	Konanur	69/2012	1,31,594	15,345	1,33,002	1,48,347
17	ST/1208/2012	Hagaranahally	68/2012	22,346	13,703	12,148	25,851
18	ST/1209/2012	Channarayapatha	62/2012	4,32,751	1,57,713	3,27,671	4,85,384
19	ST/1210/2012	Hole Narasipura	93/2012	1,63,466	83,175	1,06,036	1,89,211
20	ST/1211/2012	Silver Jubli	95/2012	1,64,517	62,091	1,27,578	1,89,669
21	ST/1212/2012	Arkalgud		1,68,816	61,646	1,16,689	1,78,335
22	ST/1213/2012	Banavara	94/2012	1,34,344	1,11,900	44,122	1,56,022
23	ST/1240/2012	Kembalu	72/2012	3,064	3,509	445	3,954
24	ST/1241/2012	Ladies	101/2012	1,29,799	10,407	1,34,562	1,44,969
25	ST/1242/2012	Gandasi	97/2012	75,968	90,423	1,342	91,765
26	ST/1246/2012	Dudda	100/2012	65,276	36,793	49,399	86,192
27	ST/1247/2012	Hetthur	71/2012	17,984	1,991	19,726	21,717

2. In connection with above appeals, we heard Shri Bhanumurthy J.S., learned advocate on behalf of the appellants as well as Shri Madhupsharan, learned DR on behalf of the Revenue. The main arguments advanced by the counsel are summarized below:

(i) The appellant is a Co-operative Society and the Banking service is rendered only to its members. Such service provided to members amounts to service to self and the concept of mutuality is applicable. In relation to service tax liability of the Club in, and Association Service respect of services rendered to its members, various Courts have held that service tax is not payable and the issue is pending before the Larger Bench of the Hon’ble Supreme Court of India. On the same lines, no service tax can be charged on the commission collected by the Co-operative banks from its members.

ii) Service tax has been charged on various commissions recovered by the appellant from its members. He disputes the following charges:

a. Closure of inoperative accounts and the Co-operative society has treated inoperative account as income in the books. This cannot be treated as rendering taxable service.
b. Recovery of expenses towards recovery of loans and such charges are recovered from operators towards cost incurred by the bank on account of recovery of loan as there is no service involved.
c. Pigmy commission recovered due to early closure of pigmy account and these amounts represent final charges levied on pre-closure of accounts and not towards any service provided.

iii) Learned counsel further submitted that the show-cause notices have been issued on the basis of information collected by the Department from various branches. He referred to copies of some of the letters written by the branches to the Department intimating payment of service tax as well as giving clarifications to the queries raised by the Department. These are pertaining to the year 2008-2009. He argued that the show-cause notices have been issued only in October 2010 and hence the demands are time-barred.

(iv) He further submitted that during the course of pendency of the appeal before the lower authority, the appellant has already paid full service tax which has been demanded even though they were contesting the same. Hence he argued that there is no justification for imposition of penalty.

v) In respect of Appeal No. ST/1211/2012 in respect of Silver Jublee Branch, the appellant has indicated in their books of accounts, the total amount of commission received along with the service tax recovered thereon. He submitted that the total amount was indicated in the books of account and the Revenue has proposed levy of service tax on the entire amount including the amount of service tax recovered. He submitted that the service tax is required to be calculated only on the commission amount after excluding the service tax amount recovered.

3. Learned DR justified the impugned orders. He argued that the appellant had already taken registration for all its branches separately as early as 2007-2009. Since the appellant was aware of the service tax liability, they were required to discharge such liability in full which they have failed to do. Even ST-3 returns, which are mandatory, have not been filed on time. Accordingly he justified the invocation of the extended period of limitation.

4. We heard both sides and perused the records. The basic argument advanced by the appellant is that the Co-operative bank has rendered Banking and Financial Services only to its members. It has been argued that Co-operative bank registered under the Co-operative Societies Act is not liable to pay service tax under the category of 'Banking and other Financial Services' but we note that the issue stands decided by the Hon'ble High Court of Calcutta in the case of *Contai Co-Operative Bank Ltd. Vs. Union Of India- 2017 (49) S.T.R. 133 (Cal.).* The Hon'ble Calcutta High Court has observed as follows:

> *"45. I have gone through the above referred decisions and on marshalling the facts as depicted from the petition, affidavit-in-objection and affidavit-in-reply thereto, this Court holds that the petitioner/Contai Co-operative Bank Limited is running banking and other financial services as per its object and has expressed itself in its bye-laws that wherever the word 'society' appears that be read as 'Bank'. Therefore, by its own acts and deeds as depicted from the petition and reflected from the documents annexed to the writ application and also the documents annexed to the affidavit-in-opposition, this Court has no alternative but to hold that the petitioner is rendering services to its customers within the meaning of expression 'taxable services" as defined under Section 65(105)(zm) and is liable to pay the service tax under Finance Act notwithstanding the petitioner being registered under West Bengal Co-operative Societies Act, 1983."*

By following the decision of the Hon'ble Calcutta High Court, we are of the view that the appellant is liable to pay service tax on the commissions recovered from the account holders under the Banking and Financial Services. Hence we uphold the demands.

4.1. Appellant has challenged the liability of service tax in respect of certain commissions recovered. Service tax has been charged in respect of closure of inoperative account, the appellant has treated inoperative account as income in their books. Since this does not amount to rendering any taxable service, we are of the view that no service tax can be levied on such amounts transferred to the books of the amounts of the bank and we set aside the demand of service tax on such amounts.

4.2 Next we turn to the issue of recovery expenses towards loan recovery. Such charges have been recovered from operators towards the cost incurred by bank on account of recovery of loan. It has been submitted that lending itself is not taxable and hence such charges cannot be levied to service tax. But after considering nature of the amounts recovered, we are of the view that these are in the nature of Banking and Financial services and hence service tax will be liable to be paid on such amounts.

4.3. The appellant has recovered 'pigmy commission' due to early closure of pigmy accounts. These commissions represent penal charges levied on pre-closure of accounts and cannot be considered as commission towards any services provided. Consequently, we set aside the service tax levied on such commission.

4.4. It has been argued that the entire demand is barred by limitation and that the demand of service tax cannot be for a period beyond the normal period of limitation. From the record, we find that the various branches of the appellant have taken registration as early as 2007. Some of the branches have also registered themselves from 2010 onwards. But the levy of service tax under the Banking and Financial Services came into the statute book from 10.09.2004. It was the responsibility of the appellant to take registration and pay service tax on the various amounts recovered towards the provision of Banking and Financial services. The investigation undertaken by the Department has found that the appellant has failed to pay such service tax and even ST-3 returns which are mandatory have not been filed on time. Consequently, we are of the view that the Revenue was justified in invoking the extended time limit for demand of service tax.

4.5 We find that the entire service tax demanded has already been paid by the appellant. Keeping in view of the fact that Co-operative Banks are situated in rural areas and availability of legal advice regarding payment of service tax was difficult to get, we are of the view that a lenient view needs to be taken as far as levy of penalty is concerned. Hence, we consider it a fit case to invoke provision of Section 80 of the Finance Act 1994 and set aside the penalties imposed on the appellant.

4.6. In respect of Appeal No. ST/1211/2012, the amount of service tax liability has to be recalculated after excluding the total amount of service tax collected. The appellant is required to provide the required details before the original authority for verification.

5. In view of the above discussion, the impugned orders are modified as discussed above and the matter is remanded to the adjudicating authority for re-quantifying the demand in the light of observations above. But we make it clear that levy of penalty is set aside.

(Order was pronounced and dictated
in Open Court on **16/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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