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

Appeal(s) Involved:

ST/21558/2015-DB

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-065-15-16 dated 29.06.2015 passed by Commissioner Of Central Excise, Customs and Service Tax, COCHIN (Appeal).]

The Secretary
Okkal Service Co-operative Bank Ltd,
No. 2181, Okkal PO,
ERNAKULAM DIST – 683 550.
KERALA

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax Cochin-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Respondent(s)

Appearance:

Mr. Abraham Joseph Markos, Advocate
JOSEPH & KURIYAN
42/2260, PROVIDENCE ROAD
KOCHIN - 682018
KERALA

For the Appellant

Mr. Madhup Sharan, Asst. Commissioner (AR)

For the Respondent

Date of Hearing: 14/12/2018
Date of Decision: 14/12/2018

CORAM:

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

Final Order No. 21905 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dated 29.6.2015 passed by the Commissioner (A) whereby the appeal filed by the appellant was rejected.

2. Briefly the facts of the present case are that the appellant is a cooperative society registered under Cooperative Societies Act, 1969 and functioning with Head Office at Okkal, Ernakulam District in Kerala. Appellant was asked by the Superintendent of Central Excise to furnish the detail of accounts of the appellant to quantify service tax liability and the appellant replied to the Superintendent saying that they are not liable to pay service tax as the service provided by the bank does not come under the service tax net. The appellant submitted that the High Court of Kerala in its decision dated 5.2.2013 in Writ Petition No.6774/2012 had observed that it is up to the Cooperative Society to file objections, if any, on the notices regarding payment of service tax and it is up to the Department to dispose of the objections and then only they will provide the details for the purpose of assessing service tax. But the Superintendent of Central Excise refused to entertain this objection of the appellant-bank on the ground that appellant-bank was not the petitioner in that appeal No.6774/2012. Thereafter, the appellant-bank filed

writ petition No.28713/2014 before the High Court with a prayer to declare that the Society is not liable to pay service tax and the High Court disposed of the petition vide its order dated 7.11.2014 and directed the competent authority to adjudicate whether the appellant is liable to pay service tax. Thereafter, the Deputy Commissioner vide its order dated 23.1.2015 held that the appellant-bank is liable to pay service tax. Aggrieved by the said order, appellant filed appeal before the Commissioner (A) who vide the impugned order rejected the appeal of the appellant.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the law laid down by the apex court in the case of ***UOI vs. Margadarshi Chit Funds (P) Ltd.: 2017 (3) GSTL 3 (SC)***. He further submitted that the adjudicating authority has not followed the direction of the Hon'ble High Court also and has not considered the issue in its proper prospective. He further submitted that the appellant does not fall in the entities which are defined as "persons liable to pay service tax" for the service under 'Banking and Other Financial Services'. He further submitted that the Hon'ble apex court in the decision cited supra

has held that chit fund business was not covered by sub clause (v) of subsection (12) of Section 65 even after its amendment by Finance Act, 2007. He further submitted that this issue is no more *res integra* and has been settled by the apex court and thereafter, the High Court of Delhi as well as Andhra Pradesh High Court has held that the amount collected by way of chitty shall not be assessed to service tax. The judgment rendered by the Hon'ble High Court of Delhi was appealed by the Revenue by filing SLP No.24998/2013 before the Apex Court and the SLP was also dismissed.

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record and the decision of the apex court in the case of ***UOI vs. Margadarshi Chit Funds (P) Ltd.***, we are of the considered opinion that this issue is no more *res integra* and has been settled by the apex court in the judgment cited supra wherein in para 37-38 the Hon'ble apex court has held as under:

> *"37. Again, it refers to a fund which is normally created by a business or an organisation for a specific purpose and then utilised for the said purpose. A bare look at the aforesaid definitions compels us to hold that chit fund cannot be treated as fund management as*

understood in the sense the term is known in business parlance. We, therefore, hold that the chit fund business was not covered by sub-clause (v) of sub-section (12) of Section 65 even after its amendment by Finance Act, 2007.

38. For our reasons given above, we affirm the conclusion in the impugned judgment of the Andhra Pradesh High Court. We also hold that Kerala High Court has taken erroneous view and its judgment stands overruled. As a result, these appeals are dismissed."

By following the ratio of the apex court, we are of the considered view that the impugned order is not sustainable in law and therefore, set aside the same by allowing the appeal of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced in Open Court on **14/12/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

rv...