

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

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

**ST/21702/2018-SM**

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-  
685-18 dated 27/07/2018 passed by Commissioner of  
Central Tax , COCHIN( Appeal) ]

**Kosamattam Finance Ltd**

M L Road  
KOTTAYAM - 686001  
KERALA

Appellant(s)

*VERSUS*

**Commissioner Of Central Tax &  
Central Excise, Cochin**

C.R. Buildings, I.S Press Road  
Cochin - 682018  
Kerala

Respondent(s)

**Appearance:**

**Shri M.S. NAGARAJA , Advocate  
T. RAJESWARA SASTRY &  
ASSOCIATAES.**

NO.1010, 2ND FLOOR,  
ABOVE CORP.BANK, 26TH MAIN, 4TH T  
BLOCK, JAYANAGAR  
BANGALORE - 560 041  
KARNATAKA

For the Appellant

Shri Gopakumar, Jt. Commissioner(AR)

For the Respondent

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

**Final Order No. 20458 / 2019**

Date of Hearing: 04/06/2019

Date of Decision: 04/06/2019

**Per : S.S GARG**

The present appeal is directed against the impugned order dt. 27/07/2018 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are NBFC registered under Section 45(IA) of the RBI Act, 1934 and are engaged in lending loans against gold / gold jewellery. In addition, they are also engaged in Money Transfer Service to the clients of M/s. Western Union, USA under agreement with M/s. Wall Street Finance Ltd., Mumbai and other MTSOs. The issue of payment of service tax in respect of services rendered to MTSOs has been subject matter of dispute. On the basis of judgments of the Tribunal and clarification by CBEC vide Circular No.163/14/2012-ST dt. 10/07/2012 that the money transfer to the beneficiaries in India is not liable to service tax as the place of provision of such service is outside India. The appellant had not paid service tax on the service provided as agent / sub-agent for delivery of money to the beneficiaries in India from 01/07/2012. The Department however initiated proceedings to demand service tax on the services provided to MTSOs and issued various show-cause notices for the period from October 2008 to March 2014 and the appellant is contesting the demand and the matter is pending before CESTAT, Bangalore. In the meantime, the CBEC vide Circular No.180/06/2014-ST dt. 14/10/2014 once again clarified the issue of levy of service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through MTSOs stating that the value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee. In view of this circular, the appellant started discharging the service tax on the commission received from MTSO from October 2014 onwards. Further in order to avoid litigation, appellant remitted the service tax of Rs.9,47,374/- for the period from April 2014 to March 2015 vide

GAR-7 Challan No.6481 dt. 31/03/2015 towards the commission received for service rendered to MTSO. Thereafter, the Government issued Notification No.19/2015-ST 14/10/2015 under Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 granting exemption to the services provided to the MTSOs by an India bank or other entity acting as an agent to the MTSO in relation to remittance of foreign currency from outside India to India during the period from 01/07/2012 to 13/10/2014. Thereafter, the appellant filed application dt. 23/12/2015 for refund of service tax of Rs.4,94,865/- paid vide challan No.6481 dt. 31/03/2015 in respect of Money Transfer Service provided during the period from April 2014 to September 2014. The original authority after following the due process vide order dt. 31/03/2016 rejected the refund claim on the ground that there was no evidence of payment of service tax on the commission received on MTSO service for the period April 2014 to September 2014. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) and the Commissioner(Appeals) vide the impugned order rejected the appeal on the basis of the finding that the intent of the Notification No.19/2015-ST dt. 14/10/2015 is not to provide exemption to the service provided by a sub-agent. Aggrieved by the said order, appellant filed the present appeal.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that in the show-cause noticed dt. 19/02/2016, there is no dispute regarding the eligibility of the appellant for the exemption under Notification No.19/2015-ST dt. 14/10/2015 and the adjudicating authority has not disputed the same in the Order-in-Original. The Commissioner(Appeals) in the impugned order has gone beyond the

show-cause notice as well as beyond the adjudication order and decided that the appellant is not eligible to the benefit of the exemption notification. The learned counsel submitted that the impugned order is evidently beyond the scope of show-cause notice and contrary to the settled legal position that the order cannot traverse beyond the scope or case made out in the show-cause notice and hence not sustainable. For this submission, he relied upon the following decisions:-

- i. Caprihans India Ltd. Vs. CCE [2015(325) ELT 632 (SC)]
- ii. CC Vs. Toyo Engineering India Ltd. [2006(201) ELT 513 (SC)]
- iii. CCE&C, Surat Vs. Sun Pharmaceuticals Industries Ltd. [2015(326) ELT 3 (SC)]
- iv. Madras Cements Ltd. Vs. CCE, Trichy [2015(325) ELT 239 (SC)]
- v. Hindustan Polymers Co. Ltd. Vs. CCE [1996(106) ELT 12 (SC)]

4.2. He further submitted that on merit also, the impugned order is contrary to the settled law that the service provided by the agent / sub-agent has to be treated as export of service under Rule 3(1)(iii) read with Rule 3(2) of Export of Services Rules, 2005 and not liable to service tax. For this submission, he relied upon the decision of the Tribunal in the case of CCE, Chandigarh Vs. Rambel Consumer Services [2017(49) STR 415 (Tri. Del.)]. He also submitted that as per the Indian Contract Act, 1872, the principal is bound by and responsible for the acts of the sub-agent, as if he were an agent originally appointed by the principal. He further submitted that there is no distinction between the agent and sub-agent, duly appointed, as to their role and responsibility vis-à-vis the principal. He further submitted that the services provided by both the agent and sub-agent to the MTSO are identical and constitute export of service as per the settled law and therefore the impugned order denying the benefit of the exemption is contrary to law. He further submitted that all the details of payment of service tax on the service to MTSO were submitted before the adjudicating authority as well as the Commissioner(Appeals) but they have not considered the same and

rather the original authority has held that the appellant has not proved the payment of service tax on the commission received from MTSO for the period April 2014 to September 2014. The learned counsel also submitted that unjust enrichment is not applicable in the present case because it is a settled law that when the service constitutes export of service and service tax was not payable, the amount paid will be in the nature of deposits and its refund does not attract the bar of unjust enrichment in terms of Section 11B of the Central Excise Act, 1944. For this submission, he relied upon the following decisions:-

- i. Jain Irrigation Systems Vs. CCE, Nashik [2016(42) STR 377 (T)]
- ii. CST, Mumbai-II Vs. Pulcra Chemicals (India) Pvt. Ltd. [2015(39) STR 700 (T)]
- iii. CST, Bangalore Vs. Wienerberger Brick Industries Pvt. Ltd. [2014(34) STR 860 (T)]

4.3. He also submitted that the appellant has not collected any amount over and above the price of goods / service and there is no passing on the burden of tax paid and unjust enrichment is not attracted. For this submission, he relied upon the following decisions:-

- i. CCE, Mangalore vs. Manjunatha Food & Packaging Ltd. [2006(199) ELT 166 (T)] – Affirmed by High Court of Karnataka [2009(239) ELT A22 (Kar.)]
- ii. CCE, Bhavanagar Vs. Modest Infrastructure Ltd. [2011(24) STR 369 (T)]
- iii. Santosh Patil Vs. CCE, Raigarh [2016(46) STR 257 (T)]
- iv. CCE Vs. TATA Tele Services Ltd. [2014(34) STR 43 (T)]

5. On the other hand, the learned AR defended the impugned order and further submitted that the Larger Bench decision of the Tribunal in the case of Paul Merchants Ltd. Vs. CCE, Chandigarh [2013(29) STR 257 (Tri. LB)] has been challenged before the Hon'ble High court of P&H and is pending there. He further submitted that the

same Larger Bench decision is pending before the Hon'ble Apex Court in the case of Commissioner Vs. Transcorp International Ltd. [2017(49) STR J138 (SC)] but there is no stay of the Larger Bench decision of the Tribunal.

6.1. After considering the submissions of both sides and perusal of the material on record, I find that the impugned order examining the eligibility of the appellant to the benefit of Notification No.19/2015 dt. 14/10/2015 is beyond the show-cause notice because in the show-cause notice, eligibility of the appellant to the benefit of the said Notification is not assailable. Further I find in the Order-in-Original also, the adjudicating authority has not disputed the eligibility of the appellant. The Order-in-Original has denied the refund only on the ground that the appellant has not produced any evidence regarding the payment of service tax on the said commission during that period. Further I find that the impugned order is not sustainable on the ground that it has clearly gone beyond the case set out in show-cause notice and the Order-in-Original, in view of the ratios of the decisions in various cases cited supra. Further I find that on merits also, the issue is no more res integra and has been settled by the Larger Bench of this Tribunal in the case of Paul Merchants cited supra. Further I find that the Division Bench of this Tribunal in the case of CCE Vs. Rambel Consumer Services cited supra, this Tribunal has held as under:-

*8. There is no dispute before us, that as a consequence of the ratio discernible from the judgment of the Larger Bench in Paul Merchant Ltd. principal agents and sub-agents of M/s. Western Union Ltd. and similarly circumstanced foreign Money Transfer entities are not liable to service tax under provisions of the Act; since the services provided by these agents amounts to export of services and these are exempted from the levy of Service Tax under the Export of Service Rules, 2005. As on date the decision of the Larger Bench in Paul Merchant Ltd. is extant and operative and has not suffered any appellate eclipse. In the circumstances these appeals are required to be allowed and are accordingly allowed. There shall however be no order as to costs.*

6.2. Further I find that as per the submission of the appellant that they have given sufficient proof of payment of service tax but both the authorities below have not considered the same. Further I find that the appellant has also given the Chartered Accountant certificate certifying that the appellants have only collected commission from MTSO and not collected service tax thereon but the factum of unjust enrichment has also not been considered by both the authorities.

7. In view of the above, I hold that the appellant is entitled to the benefit of the exemption Notification No.19/2015 dt. 14/10/2015 but for quantification / verification of proof of payment of service tax and also to examine the unjust enrichment, the matter is remanded back to the original authority. Appeal is accordingly disposed of in above terms.

(Operative portion of the Order was pronounced  
in Open Court on **04/06/2019**)

**S.S GARG**  
**JUDICIAL MEMBER**