

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 20747 of 2015

(Arising out of Order-in-Original No. CAL-EXCUS-000-COM-0022-14-15 dated 31/12/2014
passed by the Commissioner of Central Excise, Customs & Service Tax, Calicut)

M/s. South Indian Bank

South Indian Bank House
T.B. Road, Mission Quarters
Thrissur - 680 001

....Appellant

VERSUS

C.C., C.E. & S.T-Calicut

Central Revenue Building,
Mananchira,
Kozhikode,
Calicut - 673 001
Kerala

....Respondent

WITH

- (ii) Service Tax Appeal No. 22214 of 2015 (Bank of Baroda)**
- (iii) Service Tax Appeal No. 21027 of 2015 (CC, CE, & ST, Calicut)
with ST Cross Appeal No.20845 of 2015.**
- (iv) Service Tax Appeal No. 20548 of 2017 (C.C., C.E. & S.T-Calicut)
with ST Cross Appeal No.20295 of 2017**
- (v) Service Tax Appeal No.20635 of 2017 (South Indian Bank Ltd.)**
- (vi) Service Tax Appeal No. 20198 of 2017 (Bank of Baroda)**
- (vii) Service Tax Appeal No. 22135 of 2015 (Canara Bank)**
- (viii) Service Tax Appeal No. 21795 of 2016 (Canara Bank)**
- (ix) Service Tax Appeal No. 21030 of 2019 (Canara Bank)**
- (x) Service Tax Appeal No. 21031/2019 (Canara Bank)**
- (xi) Service Tax Appeal No. 20152 of 2017 (Corporation Bank)**
- (xii) Service Tax Appeal No. 20423 of 2017 (C.C.E & ST, Mangalore)**
- (xiii) Service Tax Appeal No. 20151 of 2017 (Karnataka Bank)**
- (xiv) Service Tax Appeal No. 20415 of 2017 (C.C.E. & ST, Mangalore)**
- (xv) Service Tax Appeal No. 20263 of 2017 (Syndicate Bank)**
- (xvi) Service Tax Appeal No. 21342 of 2016 (C.C. CE & S.T,
Trivandrum) with ST Cross Appeal No.20884 of 2016**
- (xvii) Service Tax Appeal No. 20417 of 2016 (Catholic Syrian Bank
Ltd.)**
- (xviii) Service Tax Appeal No. 20252 of 2017 (State Bank of Mysore)**

[Arising out of Order-in-Original No. BLR-LTUNT-000-COM-033-2015 dated 27/07/2015 passed by the Commissioner of Central Excise & Service Tax, LTU, Bangalore]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-0022-14-15 dated 31/12/2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Calicut]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-018-16-17 dated 30/01/2017 passed by the Commissioner of Central Excise, Customs & Service Tax, Calicut]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-018-16-17 dated 30/01/2017 passed by the Commissioner of Central Excise, Customs & Service Tax, Calicut]

[Arising out of Order-in-Original No. BLR-LTUNT-000-COM-28-2016-ST dated 29/11/2016 passed by the Principal Commissioner of Central Excise, Service Tax & LTU, Bangalore LTU]

[Arising out of Order-in-Original No. BLR-LTUNT-000-COM-032-2015 dated 24/07/2015 passed by the Principal Commissioner of Central Excise & Service Tax, Bangalore LTU]

[Arising out of Order-in-Original No. BLR-LTUNT-000-COM-019-2016-ST (Pr. Commr.) dated 29/09/2016 passed by the Chief Commissioner of Central Excise & Service Tax, Bangalore LTU]

[Arising out Order-in-Original No. 27/ST-COMMR/2019 dated 17/06/2019 passed by the Commissioner of Central Tax, South Commissionerate, Bangalore-I]

[Arising out of Order-in-Original No. 26 & 27/ST-COMMR/2019 dated 17/06/2019 passed by the Commissioner of Central Tax, South Commissionerate, Bangalore-I]

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-008-2016-17 dated 07/11/2016 passed by the Commissioner of Central Excise and Service Tax, Mangalore]

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-008-16-17 dated 07/11/2016 passed by the Commissioner of Central Excise & Service Tax, Mangalore]

[Arising out of Order-in-Original No. MLR-EXUS-000-COM-MS-009-16-17 dated 08/11/2016 passed by the Commissioner of Central Excise and Service Tax, Mangalore]

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-009-16-17 dated 08/11/2016 passed by the Commissioner of Central Excise & Service Tax, Mangalore]

[Arising out of Order-in-Original No. MLR-EXCUS-000-COM-MS-010-16-17 dated 09/11/2016 passed by the Commissioner of Central Excise and Service Tax, Mangalore]

[Arising out of Order-in-Original No. TVM-EXCUS-000-COM-04-16-17 dated 09/06/2016 passed by the Commissioner of Central Excise, Customs & Service Tax, Thiruvananthapuram]

[Arising out of Order-in-Original No. CAL-EXCUS-000-COM-057-15-16 dated 29/12/2015 passed by the Commissioner of Central Excise, Customs and Service Tax, Calicut]

[Arising out of Order-in-Original No. BLR-LTUNT-000-COM-27-2016-ST dated 29/11/2016 passed by the Chief Commissioner of Central Tax, Bangalore North]

APPEARANCE:

Mr. S. Ananthan & Mrs. R. Lalitha, CA
for Sl. Nos.(i) (ii) (iii) (iv) (vii) (viii) (ix)
(x) (xii to xviii)

For the assesseees

Mr. G. Thangaraj,
Authorised Representative
for Sl. No. (v)

Mr. Sanjay Khemani, CA
for Sl. Nos. (vi) (xi)

Mr. P.R.V. Ramanan, Special Counsel (AR) for
Sl. Nos. (i to xvi)

For the Revenue

Mr. P. Gopa Kumar, Joint Commissioner (AR) for
Sl. Nos. (i) (ii) (vi)(xv) (xvii) & (xviii)

CORAM:

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

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NOS. 20691 to 20708/2020

DATE OF HEARING: 23/09/2020

DATE OF DECISION: 23/09/2020

PER: BENCH

Appellant banks as well as the Department have filed these appeals directed against various impugned orders passed by the Commissioner of Service Tax. The issue involved in all these appeals is identical and hence all these appeals are taken up together for the purpose of discussion and disposal. The details of appeals are as under:-

Sl. No.	Appeal No.	Party Name	OIA / OIO	Service Tax (Rs.)	Penalty (Rs.)
1.	ST 20747 of 2015	M/s. South Indian Bank v/s. CC, CE, & ST, Calicut	OIO No. CAL-EXCUS-000-COM-0022-14-15 dated 31/12/2014	10,42,22,371/- 73,19,138/-	1,00,000/- 73,19,138/-
2.	ST 22214 of 2015	Bank of Baroda v/s. CCT, Bangalore North	OIO No. BLR-LTUNT-000-COM-033-2015 dated 27/07/2015	4,83,21,881/- /-	1,00,00,000/-
3.	ST 21027 of 2015	CC, CE, & ST, Calicut V/s. M/s. South Indian Bank	OIO No. CAL-EXCUS-000-COM-0022-14-15 dated 31/12/2014	10,42,22,371	9,69,03,233/-
4.	ST 20548 of 2017	C.C., C.E. & S.T- Calicut v/s. M/s. South Indian Bank	OIO No. CAL-EXCUS-000-COM-018-16-17 dated 30/01/2017	-	-

5.	ST 20635 of 2017	South Indian Bank Ltd v/s. CC, CE, & ST, Calicut	OIO No. CAL-EXCUS-000-COM-018-16-17 dated 30/01/2017	5,55,96,022/- 2,77,98,011/-	55,59,602/-
6.	ST 20198 of 2017	Bank of Baroda v/s. CCE, CST, Bangalore LTU	OIO No. BLR-LTUNT-000-COM-28-2016-ST dated 29/11/2016	10,43,73,445/-	--
7.	ST 22135 of 2015	Canara Bank v/s. CCE, CST, Bangalore LTU	OIO No. BLR-LTUNT-000-COM-032-2015 dated 24/07/2015	27,19,59,545/-	5,00,00,000/-
8.	ST 21795 of 2016	Canara Bank v/s. CCE, CST, Bangalore LTU	OIO No. BLR-LTUNT-000-COM-019-2016-ST (Pr. Commr.) dated 29/09/2016	34,79,37,446/-	-
9.	ST 21030 of 2019	Canara Bank V/s. CCT, Bangalore South	OIO No. 27/ST-COMMR/2019 dated 17/06/2019	119,39,67,678 /-	--
10.	ST 21031 of 2019	Canara Bank V/s. CCT, Bangalore South	OIO No. 26 & 27/ST/COMMR/2019 dated 17/06/2019	31,66,60,930/- /-	-
11.	ST 20152 of 2017	Corporation Bank v/s. CCE & ST, Mangalore	OIO No. MLR-EXCUS-000-COM-MS-008-2016-17 dated 07/11/2016	56,93,45,334/-	4,52,37,278/- & 1,90,00,000/-
12.	ST 20423 of 2017	C.C.E & ST, Mangalore v/s. Corporation Bank	OIO No. MLR-EXCUS-000-COM-MS-008-16-17 dated 07/11/2016	-	1,90,00,000/ 4,52,37,278/
13.	ST 20151 of 2017	Karnataka Bank v/s. CCE & ST, Mangalore	OIO No. MLR-EXUS-000-COM-MS-009-16-17 dated 08/11/2016	14,84,80,809/-	2,39,22,335/- & 25,00,000/-
14.	ST 20415 of 2017	C.C.E. & ST, Mangalore v/s. Karnataka Bank	OIO No. MLR-EXCUS-000-COM-MS-009-16-17 dated 08/11/2016	-	2,39,22,335/- & 25,00,000/-
15.	ST 20263 of 2017	Syndicate Bank v/s. C.C.E. & ST, Mangalore	OIO No. MLR-EXCUS-000-COM-MS-010-16-17 dated 09/11/2016	29,27,57,588/-	1,40,00,000/- 7,38,29,135/-
16.	ST 21342 of 2016	C.C. CE & S.T, Trivandrum v/s. State Bank of Travancore	OIO No. TVM-EXCUS-000-COM-04-16-17 dated 09/06/2016	Dropped 26,66,07,929/-	-
17.	ST 20417 of 2016	Catholic Syrian Bank Ltd. v/s. CCE, CST, Calicut	OIO No. CAL-EXCUS-000-COM-057-15-16 dated 29/12/2015	2,40,39,522/-	2,40,39,522/-
18.	ST 20252 of 2017	State Bank of Mysore v/s. CCT, Bangalore North	OIO No. BLR-LTUNT-000-COM-27-2016-ST dated 29/11/2016	9,75,52,447/-	-

2. The only issue involved in all these appeals is whether the assessee banks are eligible for cenvat credit of service tax availed on insurance service received by the banks from the Deposit Insurance and Credit Guarantee Corporation. Initially there was a Difference of Opinion between two Benches of the Tribunal regarding to the fact as to whether the insurance service rendered by the Deposit Insurance and Credit Guarantee Corporation is covered by the definition of "Input Service" or not. To resolve

the said issue, a reference was made to the Larger Bench of the Tribunal and the Hon'ble Larger Bench, after considering the submissions of both the parties and after examining the statutory provisions of Cenvat Credit Rules, 2004 and also various decisions relied upon by both the parties, vide its Interim Order Nos.13-31/2020 dt. 20/03/2020 answered the said reference by holding that insurance service provided by Deposit Insurance and Credit Guarantee Corporation to the banks is an "input service" and cenvat credit of service tax paid for this service received by the banks from the Deposit Insurance and Credit Guarantee Corporation can be availed by the banks for rendering output service.

3. After the decision of the Larger Bench, these appeals have been listed before this Bench for final disposal. It is pertinent to note that where the cenvat credit on insurance service is denied to the banks, the banks are in appeal and where the Department has dropped the demand of service tax, interest or penalty, the Department is in appeal as shown in the table above.

4. We have heard the learned counsel for the parties and perused the records as well as the Larger Bench decision of the Tribunal dt. 20/03/2020 in the assessee-banks own case. All the learned counsel/consultants appearing for the banks submitted that the only issue involved in all the appeals is whether the banks are eligible to avail cenvat credit of service tax received by them from Deposit Insurance and Credit Guarantee Corporation being input service availed by them for rendering output service. They further submitted that this issue has been answered by the Larger Bench in favour of the banks and the said decision of the Larger Bench is binding on this Bench. They further prayed that in the light of the Larger Bench decision, all the appeals of the banks should be allowed and consequently all the appeals filed by the Department should be dismissed.

5. After considering the submissions of learned counsel/consultants appearing for the banks and learned Special counsel Shri PRV Ramanan appearing for the Department, we find that the only issue involved in all the cases is whether the banks can avail cenvat credit of service tax paid by

them on the premium amount paid to Deposit Insurance and Credit Guarantee Corporation or the insurance service rendered by them to the banks. We also find that this issue has been answered in favour of the banks by the Larger Bench decision of the Tribunal in the assessee-banks' own case vide order dt. 20/03/2020. Here it is pertinent to reproduce the relevant findings of the Hon'ble Larger Bench.

43. The contention advanced on behalf of the banks is that the insurance service rendered by the Deposit Insurance Corporation to the banks is covered under the main part of the definition of "input service" and, therefore, the banks are justified in availing CENVAT credit on this "input service" for the "output service" rendered by the banks in relation to "banking and other financial services". The contention of the Department is that since insurance is paid on the deposits and the activity of acceptance of deposits is a transaction in money which would be outside the purview of service tax, the insurance service rendered by the Insurance Corporation to the banks cannot be considered as an "input service".

44. The basic activity of a banking company, as contemplated under the definition of "banking", either under the Deposit Insurance Act or the Banking Regulation Act, is to accept deposits from the public, which deposits are used for the purpose of lending or investment by the banks. Thus, the main activity of a banking company is to mobilise the resources received by the banks in the form of deposits from the public for the purpose of lending or investment. These deposits, thus generate returns for the banks. A part of the returns is given by the banks to the depositors as a consideration, which consideration is normally in the form of interest. 45. What also needs to be noticed is that the lending and investment portfolio of banks are required to be funded by deposits and the funds of the shareholders. The Credit Deposit ratio is the percentage of how much the banks lend out of the deposits they have mobilised and also indicates how much of the core funds of the banks are being utilised for lending. A higher ratio indicates more reliance on deposits for lending. In such circumstances, the raising of deposits is an important function of the banks. In other words, the acceptance of deposits is not only a pre-requisite for lending but is also necessary for the banks since the entire

activity undertaken by the bank begins with the acceptance of deposits, without which the subsequent activities of lending or investment cannot be undertaken by the banks.

46. All banks have also to obtain a licence from the Reserve Bank of India under section 22 of the Banking Regulation Act. It also needs to be noticed that it is a compulsory for all banks who have obtained a licence from the Reserve Bank of India under section 22 of the Banking Regulation Act to register themselves with the Deposit Insurance Corporation. The registration of the banks with the Deposit Insurance Corporation is not optional for the banks. The payment of premium, therefore, to the Deposit Insurance Corporation is a statutory obligation of the banks. The banks this way, protect the interest of the depositors because nonpayment of premium and subsequent withdrawal of the protection provided by the Deposit Insurance Corporation may lead to loss of confidence of the public in the banks and ultimately loss of deposits.

47. A licence is issued to the banks by the Reserve Bank of India under section 22 of the Banking Regulation Act subject to such conditions as the Reserve Bank of India may think fit to impose. Sub-section (3) of section 22 provides that before granting any licence, the Reserve Bank of India may require certain conditions to be fulfilled to ensure that the carrying of banking business by such banks will not be prejudicial to the public interest or the interest of the depositors. Section 22 (4) enumerates the circumstances under which the licence granted to a banking company can be cancelled by the Reserve Bank of India and they are as follows:

(i) if the company ceases to carry on banking business in India;

or

(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1);

or

(iii) if at any time, any of the conditions referred to in subsection (3) and sub-section (3A) is not fulfilled:

48. Thus, the first condition under which the Reserve Bank of India can cancel the licence granted to a banking

company is when the bank ceases to carry on banking business in India. This implies that banks must accept deposits for the purpose of lending and for the purpose of accepting deposits, the banks have to obtain registration with the Deposit Insurance Corporation and, therefore, pay premium for the insurance. It, therefore, follows that if a banking company fails to pay the premium amount to the Deposit Insurance Corporation, it would not be able to retain its registration with the Deposit Insurance Corporation, which may ultimately also lead to the cancellation of the licence granted to the banking company by the Reserve Bank of India under section 22 of the Banking Regulation Act.

49. The third condition under which the Reserve Bank of India can cancel the licence of the banking company is when the Reserve Bank of India comes to a conclusion that the interest of the depositors is being prejudiced by a banking company. The interest of depositors is protected by the Deposit Insurance Corporation and in case premium is not paid by the banks for insuring the deposits, the registration with the Deposit Insurance Corporation can be cancelled and so would the interest of the depositors as their deposits will not have the cover of insurance. Thus, if the interest of the depositors is not sufficiently protected then under the third requirement the licence of the bank can also be cancelled by the Reserve Bank of India.

50. It cannot, therefore, be doubted that the insurance service received by the banks from the Deposit Insurance Corporation is not only mandatory but is also commercially expedient. In fact, without this service the banks may not be able to function at all.

51. Premium is paid by the banks to the Deposit Insurance Corporation for providing the insurance service for which the banks pay service tax. It is this service tax paid by the banks on the insurance service received by the banks from the Deposit Insurance Corporation that is the bone of contention between the parties.

52. It is not in dispute that after accepting the deposits there are number of services on which the banks have to pay service tax under "banking and other financial services". These services are in connection with both the "accepting" of deposits and "lending" activity of the banks. Banks would be able to lend only if they accept deposits. It has been seen that without payment of insurance premium

on the outstanding deposits, banks will not be able to function or render any output service of "banking and other financial services" and the licence granted to the banks by the Reserve Bank of India can be cancelled.

53. Thus, the service rendered by the Deposit Insurance Corporation to the banks would fall in the main part of the definition of "input service", which is any service used by a provider of output service for providing an output service. Once this service falls in the main part of the definition of "input service", it would not be necessary to examine whether the service would be covered by the inclusive part of the definition. It has also been noted that the service is not excluded from the definition of "input service".

54. The contention of the Department is that "accepting" of deposits is covered under section 66 D(n) of the Finance Act which contains the negative list. As noticed above, the negative list comprises, under sub-clause (n) of section 66D, services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. The issue is whether extending deposits would mean the activity of accepting deposits. The activity of accepting deposits would be an activity where the banks receive deposits from the customers in the form of savings account, recurring deposits, for which the banks pay interest to the customers. On the other hand, the extending of deposits would be an activity of a bank giving its surplus money in the form of deposit to another person, where the consideration received would be in the form of interest. This would be a case where in the course of banking activities, one bank makes a deposit with another bank for which it receives consideration in the form of interest. It is this consideration received by the banks in the form of interest which has been specified under section 66D (n) of the Finance Act in the negative list of services. Thus, in case of accepting deposits, the banks have to pay interest to the customers, whereas while extending deposits, the banks receive interest from other banks. It is for this reason that inter-bank deposits are not included in the returns filed by the banks with the Deposit Insurance Corporation for calculating the premium payable. The banks cannot avail credit of service tax on any amount of interest earned on extending of deposits. It is, therefore, not possible to accept the contention of the Department that "accepting" of deposits is covered under section 66D(n) of the Finance Act.

55. *The Assessable deposits, on which the premium is calculated, not only includes deposits such as savings, fixed, current, recurring, etc., but also certain balances appearing in the account of the banks such as credit balances in cash credit accounts, margin held against letters of credit, guarantees, bills purchased, etc., unrepresented drafts and payment orders, provident fund balances relating to staff held by bank before they are transferred to Provident Fund Commissioner, amount representing pay orders/ bankers cheques/ demand drafts issued by closing deposit accounts with or without reference to depositors, but remaining unpaid etc. Thus, the contention of the Department that insurance premium is paid only on the deposits of the customers cannot also be accepted.*

56. *It has also been submitted by learned Counsel appearing for the banks that even if it is assumed that some part of the deposit is not used for providing "output service", then too the banks are still entitled for the credit availed on the insurance service provided by the Deposit Insurance Corporation as the banks have reversed 50% of the total CENVAT credit taken in terms of rule 6(3B) of the 2004 Rules. This rule 6(3B) provides that notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month. The Circular dated 28 February, 2011 issued by the Central Board of Excise and Customs explains the reason behind the abovementioned amendment. It has been stated that since substantial part of the income of a bank is from investments or by way of interest in which a number of inputs and input services are used and as there have been difficulties in ascertaining the amount of credit flowing into earning these amount, a banking company providing banking and financial services is obligated to pay an amount equal to 50% of the credit availed in terms of rule 6(3B). This sub-rule (3B) has, therefore, been introduced with a view to disallow the credit of input and input services attributable to interest/investment income earned by banking companies. Having regard to the fact that it is difficult to ascertain the actual amount of input and input services used in earning interest income, sub-rule (3B) provides for reversal of 50% of input and input services.*

57. Thus, the reversal has been made, banks are entitled for credit of the entire amount of service tax paid on input service having nexus with the provisions of output service and it is irrelevant as to which part of the input service is used for provision of taxable output service and which part has been used for provisions of exempted service. Having made reversal under rule 6(3B), the banks have duly complied with the 2004 Rules and hence they are entitled to avail CENVAT credit on the insurance service received from the Deposit Insurance Corporation.

58. It would now be useful to examine decisions on this issue.

59. In *Commissioner of Central Excise, Bangalore vs. PNB Metlife India Insurance Co. Ltd*¹⁶, the issue that came up for consideration before the Karnataka High Court was whether an assessee can avail CENVAT credit of service tax paid on reinsurance services by treating the said service as an "input service". PNB Metlife India Insurance Company was carrying on life insurance business and on the insurance policy issued by it, service tax was charged from the customers. It also procured re-insurance service from overseas insurance companies and availed CENVAT credit of service tax paid on such services received by it. This CENVAT credit was denied by the Department for the reason that re-insurance service cannot be considered as an "input service" since it takes place after the insurance policy is issued. The Karnataka High Court examined whether CENVAT credit availed and utilized by the insurance company on service tax paid for re-insurance service is an "input service" for the output service of insurance that the company was providing and held that the process of issuance of the policy by the insurer and subsequent procurement of re-insurance policy from another company, which is a statutory requirement, is an integral part of the entire process and the insurance process does not come to end merely on the issuance of the insurance policy since it continues till the existence of the term of the policy. The High Court noted that since re-insurance has to be taken under section 101 A of the Insurance Act, it is a statutory obligation and, therefore, has to be considered as having nexus with the "output service" and, therefore, would be an "input service", for which CENVAT credit can be availed. The portion of the judgment of the High Court pertaining to this aspect is reproduced below:

"6. Having heard the learned counsel for the parties and in the fact of this case, we are of the opinion that the order of the Tribunal does not require any interference. Rule 2(l) of the Cenvat Credit Rules 2004 provides that „Input Service“ means service used by a provider of taxable service for providing an „Output Service“. The submission of the learned counsel for the appellant that once the Insurance Policy is issued by the Insurer, the transaction comes to an end (and would not depend on the reinsurance policy) and as such the service provided would not come within the ambit of input service, is not worthy of acceptance. The process of issuance of an Insurance Policy by the Insurer and subsequent procurement of reinsurance policy from another company (which is a statutory requirement) is an integral part of the total process. The process of insurance does not come to an end merely on the issuance of the Insurance Policy by the Insurer. In fact, it continues till the existence of the term of the policy. The re-insurance is taken by the Insurer immediately after the insurance policy is issued, as is required under Section 101A of the Insurance Act, 1938. Since re-insurance is a statutory obligation, and the same is coterminus with the Insurance policy issued by the respondent, we are of the opinion that the stand taken by the Tribunal is correct that the transfer of a portion of the risk or the re-insurance has to be considered as having nexus with the output service, since the re-insurance is a statutory obligation and the same is coterminus with the Insurance Policy. We only reiterate that the issuance of insurance policy by insurer, and then taking of reinsurance by it, is a continuous process, and in the facts of the present case, it cannot be said that the same would not be an „input service“ eligible for Cenvat credit within the meaning of Rule 2(l) of the Cenvat Credit Rules, 2004.

7. We may further add that the Service Tax is levied for certain service rendered and the provision of giving the Cenvat credit is so that there may not be double taxation. If a person has collected service tax, no doubt the same has to be deposited, but if in the process of the same transaction he has paid some service tax, which is necessary for its business, then he is entitled to the Cenvat credit to the extent

of service tax which has been paid by it. In the present case, if the entire Service Tax which is collected by the Insurer, while selling its insurance policies, has to be deposited without being given the credit of the tax which is paid by it while procuring a policy of reinsurance as (mandatorily required in law), the same would be against the ethos of Cenvat credit policy, as the same would amount to double taxation, which is not permissible in law."

60. It needs to be noted that the aforesaid decision of the Karnataka High Court in PNB Metlife India has been accepted by the Central Board of Excise and Customs in the Circular dated 16 February, 2018. The relevant paragraphs 8 and 8.1 are reproduced below:

"8. Decision of the Hon"ble High Court of Karnataka at Bangalore dated 09.04.2015 in the case of M/s PNB Metlife India Insurance Company Ltd. Bangalore [2015 (39) STR 561 (Kar.)]

8.1. Department has accepted the aforementioned order of the Hon"ble High Court of Karnataka. The issue examined in the order was, whether Reinsurance is an input service which is used for providing output service, namely, insurance and whether CENVAT Credit taken on re-insurance service is admissible. Hon"ble High Court held that reinsurance is a statutory obligation and the same is co-terminus with the insurance policy. Issuance of insurance policy by insurer, and then taking of reinsurance by it, is a continuous process. Reinsurance is, therefore, an input service."

61. In the present appeals also, in order to render any output service under the category of "banking and other financial services", it is necessary for a bank to register itself with the Deposit Insurance Corporation and pay premium after registration. A bank, without obtaining registration and without payment of insurance premium on the deposits outstanding, cannot render any "output service" of "banking and other financial service".

62. The decision of the Tribunal in *Shriram Life Insurance Company Ltd. vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad*¹⁷ also needs to be referred to. The appellant provided life insurance services for which it had to statutorily invest the premiums collected in approved securities. The issue that arose before the Tribunal was whether such investments in securities can be considered as an exempted service as a result of which CENVAT credit was required to be reversed under rule 6 of the 2004 Rules. The Tribunal found that the activity undertaken by the Appellant of issuing unit linked policy or any instrument was covered under life insurance business and the Insurance Act made it obligatory for an insurance company to make investments. Any insurance company which did not comply with this requirement could be disqualified from undertaking insurance business. Thus, the investment activity undertaken by the Appellant was held to be an integral part of life insurance service. The Tribunal also found that since the service rendered by the Appellant was a taxable service, it could not be said that the Appellant was rendering an exempted service. The Appellant was, therefore, held entitled to avail CENVAT credit.

63. It, therefore, follows from the discussion made above and the aforesaid decisions that banks can avail CENVAT credit of the service tax paid by the banks on the premium amount paid to Deposit Insurance Corporation for the insurance service rendered by the Deposit Insurance Corporation to the banks.

64. This view has been taken by the Tribunal in *State Bank of Bikaner*. However, in *ICICI Bank* a contrary view was taken. For all the reasons stated above, it is not possible to accept the view taken by the Division Bench of the Tribunal in *ICICI Bank*.

65. The reference is, accordingly, answered in the following terms:

"The insurance service provided by the Deposit Insurance Corporation to the banks is an "input service" and CENVAT credit of service tax paid for this service received by the banks from the Deposit Insurance Corporation can be availed by the banks for rendering „output services“."

6. By respectfully following the ratio of the Larger Bench decision of this Tribunal, we allow the appeals of the banks and dismiss the appeals filed by the Department. Cross-objections filed by the banks in the appeals of the Department are also accordingly disposed of.

(Operative portion of the order was pronounced
in Open Court on 23/09/2020)

(S.S. GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

Raja...