

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

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20751 of 2015

[Arising out of Order-in-Original No. COC-EXCUS-000-COM-42, 43, 44 & 45-2014-15 dated 26/12/2014 passed by Commissioner of Central Excise and Service Tax, COCHIN.]

**M/s. Kosamattam Finance (P)
Limited**

Kosamattam, MKC Building
Market Junction, M L Road,
KOTTAYAM - 686001
KERALA

Appellant(s)

VERSUS

**The Commissioner of Central
Excise & Service Tax,**

C R BUILDING,
I S PRESS ROAD,
COCHIN - 682 018.
KERALA

Respondent(s)

WITH

Service Tax Appeal No. 20752 of 2015

[Arising out of Order-in-Original No. COC-EXCUS-000-COM-42, 43, 44 & 45-2014-15 dated 26/12/2014 passed by Commissioner of Central Excise and Service Tax, COCHIN.]

**M/s. Kosamattam Finance (P)
Limited**

Kosamattam, MKC Building
Market Junction, M L Road,
KOTTAYAM - 686001
KERALA

Appellant(s)

VERSUS

**The Commissioner of Central
Excise & Service Tax,**

C R BUILDING,
I S PRESS ROAD,
COCHIN - 682 018.
KERALA

Respondent(s)

WITH

Service Tax Appeal No. 20753 of 2015

[Arising out of Order-in-Original No. COC-EXCUS-000-COM-42, 43, 44 & 45-2014-15 dated 26/12/2014 passed by Commissioner of Central Excise and Service Tax, COCHIN.]

**M/s. Kosamattam Finance (P)
Limited**

Kosamattam, MKC Building
Market Junction, M L Road,
KOTTAYAM - 686001
KERALA

Appellant(s)

VERSUS

**The Commissioner of Central
Excise & Service Tax,**

C R BUILDING,
I S PRESS ROAD,
COCHIN - 682 018.
KERALA

Respondent(s)

WITH

Service Tax Appeal No. 21248 of 2016

[Arising out of Order-in-Original No. COC-EXCUS-000-COM-93 & 94/2015-16 dated 31/03/2016 passed by Commissioner of Central Excise, Customs and Service Tax, COCHIN.]

**M/s. Kosamattam Finance (P)
Limited**

Kosamattam, MKC Building
Market Junction, M L Road,
KOTTAYAM - 686001
KERALA

Appellant(s)

VERSUS

**The Commissioner of Central
Excise & Service Tax,**

C R BUILDING,
I S PRESS ROAD,
COCHIN - 682 018.
KERALA

Respondent(s)

WITH

Service Tax Appeal No. 21818 of 2016

[Arising out of Order-in-Appeal No. COC-EXCUS-000-APP-255-16-17 dated 09.09.2016 passed by Commissioner of Central Excise, Customs and Service Tax (Appeals), COCHIN.]

**M/s. Kosamattam Finance (P)
Limited**

Kosamattam, MKC Building
Market Junction, M L Road,
KOTTAYAM - 686001
KERALA

Appellant(s)

VERSUS

**The Commissioner of Central
Excise & Service Tax,**

C R BUILDING,
I S PRESS ROAD,
COCHIN - 682 018.
KERALA

Respondent(s)

WITH

Service Tax Appeal No. 21605 of 2018

[Arising out of Order-in-Original No. TVM-EXCUS-000-COM-06-18-19 dated 06.07.2018 passed by Commissioner of Central GST and Central Excise and Service Thiruvananthapuram.]

**M/s. Kosamattam Finance (P)
Limited**

Kosamattam, MKC Building
Market Junction, M L Road,
KOTTAYAM - 686 001.
KERALA

Appellant(s)

VERSUS

**The Commissioner of Central GST
and Central Excise**

GST Bhavan, Press Club Road,
Thiruvananthapuram - 695 001.
KERALA

Respondent(s)

AND

Service Tax Appeal No. 21862 of 2018

[Arising out of Order-in-Original No. TVM-EXCUS-000-COM-06-18-19 dated 06.07.2018 passed by Commissioner of Central GST and Central Excise and Service Thiruvananthapuram.]

**The Commissioner of Central GST
and Central Excise**

GST Bhavan, Press Club Road,
Thiruvananthapuram – 695 001.
KERALA

Appellant(s)

VERSUS

**M/s. Kosamattam Finance (P)
Limited**

Kosamattam, MKC Building
Market Junction, M L Road,
KOTTAYAM - 686001
KERALA

Respondent(s)

Appearance:

Shri M.S. Nagaraja, Advocate for the Appellant.

Shri P. Rama Holla, Superintendent, Authorised Representative for the Respondent

CORAM:

**HON'BLE SHRI P ANJANI KUMAR, TECHNICAL MEMBER
HON'BLE SHRI P DINESHA, JUDICIAL MEMBER**

Final Order Nos. 20012-20018 / 2022

Date of Hearing: 03/01/2022

Date of Decision: 01/02/2022

Per: P ANJANI KUMAR

The appellants, M/s. Kosamattam Finance Pvt. Ltd. are Non-Banking Financial Company (NBFC), are engaged in the business of lending money against security of gold/ornaments; the appellants collect interest on the loans advanced; they collect token charges at the rate of Rs.5/Rs.10 as reimbursement of expenses incurred for issue of identity tokens which are

surrendered back to the appellants by their customers on the closure of the loan account; they also collect postage charges towards the expenditure incurred in issuing notices to their customers. In addition, the appellants also provide the service of air / rail / bus travel agents and render services in booking the tickets. The appellants have discharged service tax on the same. The appellants who are working as representative of M/s. Wall Street Finance Ltd., Bombay for disbursement of money on behalf of M/s. Western Union Financial Services. Revenue alleged that part of the interest collected by the appellants, over and above 18% of interest, at times referred to as incidental charges are leviable to service tax; token charges and postage charges recovered are also chargeable to service tax; the charges recovered for disbursement of money as representative of M/s. Wall Street Financial Ltd., Bombay is also chargeable to service tax. Accordingly, show-cause notices covering various period have been issued and confirmed against the appellants. Hence various appeals have been filed as detailed below:

SL No	Appeal No	OIO/OIA No & Date	Period	Total ST demand
1	ST/21818/2016-SM	COC-EXCUS-000-APP-255-16-17 dated 09.09.2016	Sep-04 to Sep-08	4104117
2	ST/20751/2015-DB	COC-EXCUS-000-COM-43, 44 & 45/2014-15 dated 26.12.2014	Oct-08 to Nov-11	69675984
3	ST/20752/2015-DB	COC-EXCUS-000-COM-43, 44 & 45/2014-15 dated 26.12.2014	Dec-11 to Mar-12	24009123
4	ST/20753/2015-DB	COC-EXCUS-000-COM-43, 44 & 45/2014-15 dated 26.12.2014	Apr-12 to Jun-12	23014879
5	ST/21248/2016-DB	COC-EXCUS-000-COM-93 & 94/2015-16 dated 15.03.2016	Jul-12 to Mar-14	151486415
6	ST/21605/2018-DB	TVM-EXCUS-000-COM-06-18-19 dated 06.07.2018	Apr-15 to Mar-16	128350
7	Department Appeal No ST/21862/2018-DB		Apr-15 to Mar-16	109925337
Total				382344205

Appeal at Sl.No.7 has been filed by the Revenue against dropping of the demand by Commissioner on the risk interest portion.

2. Shri M. S. Nagaraja, learned counsel appearing for the appellant submits that the following issues require consideration in the impugned appeals.

- (i) Whether the Interest charged from the customers above 18% per annum initially recorded in internal records under the head 'Incidental Charges' till September 2008 and as 'Risk Interest' from October 2008

and from 2013-14 the entire amount of interest as 'Interest on Gold Loan' is liable to Service Tax;

- (ii) Whether Token Charges and Postage Charges collected as reimbursement of expenses incurred from the customers are an additional consideration for the loans and advances under the "Banking and other Financial Services" attracting levy of service tax;
- (iii) Whether the activity of the appellants as representative/sub-representative of the MTSOs to the beneficiaries in India constitutes taxable service;
- (iv) Whether Service Tax on the activity of the appellants as agent or sub-representative of the MTSOs to the beneficiaries in India is leviable in view of Notification No.19/2015-ST dated 14.10.2015 issued under Section 11C of the Central Excise Act, 1994 as made applicable to service tax granting exemption to a Bank or any other entity acting as an agent to the MTSOs during the period from 01.07.2012 to 31.10.2014;
- (v) Whether the service tax is payable for the second time since tax was paid on the commission earned on Air Travel/Rail Travel/Travel Agent service;
- (vi) Whether the larger period of limitation under proviso to Section 73(1) is invocable and penalties imposable, in the facts and circumstances of the case.

3. On the issue of demand of service tax on the interest charged on gold loan in excess of 18%, the learned counsel submits that the appellants formulate gold loan schemes from time to time and an advisory is issued to the Branches to collect the penal rate of interest. However, as per the direction of the Government of Kerala no money lender shall charge interest on any loan at the rate exceeding 2% over and above the maximum rate of interest charged by the commercial banks; in this backdrop, Head Office advised the Branches that the interest above 18% is to be accounted as incidental charges. The decision of the State Government has been challenged before the Hon'ble High Court of Kerala which supported the Government of Kerala; a batch of Special Leave Petitions have been filed by the appellants and others before the Hon'ble Supreme Court, which are still pending. Head Office, vide Circular No.19/2007-08 dated 31.3.2008 advised the Branches that entire risk interest was to be shown as 'interest' only and

only the token charges to be shown as incidental charges. The learned counsel for the appellant submits that it is alleged by the department that post-October 2008 incidental charges were disguised as risk interest. He submits that the department has failed to take note of the statements of different officers of the appellant to the effect that interest over and above 18% was only risk interest and incidental charges which were only towards token charges; he submits that in view of the following decisions the purport and object of the transactions have to be examined as a whole and nomenclature of a particular document or activity is not conclusive.

- (i) *Superpoly Fabriks Ltd vs. CCE: 2008 (10) STR 545 (SC)*
- (ii) *State of AP vs. Kone Elevators: 2005 (181) ELT 156 (SC)*
- (iii) *CCE vs. Samarth Sevabhava Trust: 2016 (41) STR 806 (Bom)*

3.1 Learned counsel further submits that RBI has issued prudential norms income recognition, asset classification and provisions pertaining to advances to all commercial banks and NBFC; vide Circular 21.04.048/2006-2007 provides that:

“3.4 Interest Application

There is no objection to the Banks using their own discretion in debiting interest to an NPA account taking the same to Interest Suspense Account or maintaining only a record of such interest in proforma accounts.”

He submits that from the above it is clear that RBI has no objection to the accounting nomenclature used for ‘interest’ collected on the loans in the Books of Accounts. He further submits that RBI vide Circular dated 2.1.2009 has directed the Boards of each NBFCs to adopt an interest rate model taking into account relevant factors such as cost of funds, margin and risk premium etc., and determine the rate of interest to be charged for loans and advances. He also relies on various other circulars and submits that RBI does not prescribe any specific rate of interest and the NBFCs are free to determine the rate of interest based on the cost of funds, working capital, overheads, return on capital, market forces, risk factors, etc.

3.2 Learned counsel further submits that even going by the definition of ‘interest’ in the Finance Act, 1994, it is clear that the interest is payable in any manner and therefore, the nomenclature of ‘interest’ cannot be a mere reason to charge service tax. He submits that the learned Commissioner vide adjudication order dated 6.7.2018 (in respect of appeal No.ST/21605/2018) rejecting the contention of the show-cause notice held that rate of interest

or legality of charging of interest in excess of normal interest does not fall within the purview of the service tax provisions; the functioning of the NBFCs is regulated by RBI; the entire interest charged on the gold loans is not taxable. He further submits that CBEC vide Circular No.80/10/2004-ST dated 17.9.2004 clarified as follows:

“19.2 The ‘interest on loans’ has been specifically excluded by way of amendment to the provisions relating to valuation (S.67). All such interests that are in the nature of interests on loans would thus remain excluded from taxable value. Further, clarifications on these issues would be issued shortly.”

3.3 He further relies upon the ratio of the judgments in *Eicher Motors Ltd Vs CCE, Indore: 2016 (41) STR 721 (Tri.-Del)* and *Jaylaxmi Credit Company Ltd Vs CCE Daman: 2015 (39) S.T.R. 164 (Tri. - Ahmd)*.

4. Coming to the ‘token charges’ collected for the issue of identity card/identification tokens to the customers, learned counsel for the appellant submits that the token is unique to each customer and contains the details of the loan, identity of the customer, details/identification marks of the jewellery, loan amount, etc., and these charges are nothing but reimbursement of the cost of preparation of the same. Similarly, postage charges are incurred towards sending notices by ordinary post or registered post to the customers; such expenses incurred are recovered. It is a settled legal position that Rule 5 of Service Tax Rules, 2006 has been held to be *ultra vires* by the Hon’ble High Court of Delhi and Hon’ble Supreme Court in the case of *UOI vs. Intercontinental Consultants and Technocrats Pvt Limited: 2018 (10) GSTL 401 (SC)* held that reimbursable expenses are not liable to be included for the purposes of calculation of service tax. He relies upon the following cases also:

- (i) *State Bank of India Vs CCE, Nasik: 2015-TIOL-1182-CE-Mumbai*
- (ii) *Link Intime India Private Ltd Vs CCE, Thane I: 2015 (38) STR 705 (T-Mum)*
- (iii) *Plantech Consultants Pvt Ltd Vs CCE, Pune: 2016 (41) STR 850 (T - Mum)*

5. On the issue of money transfer service, learned counsel for the appellant submits that Revenue refers to the agreement dated 7.3.2007 with M/s. Walls Street Finance Ltd., Bombay to act as sub-representative for the purpose of money transfer service provided by M/s. Western Union; the show-cause notice allege that MTSO service falls under clauses (ii) and (vi) of Section 65(19) read with Section 65(105)(zzb) of the Finance Act, 1994. Learned counsel submits that the customers transferring money earned in

foreign exchange outside India to a beneficiary in India approach any of the officers of M/s. Western Union abroad and remit the same. M/s. Western Union through M/s. Wall Street Finance Ltd., Bombay arranges to remit the amount to the representatives in India. M/s. Walls Street Finance Ltd., have in turn appointed appellant as a sub-representative. Recipients of foreign money in India can either approach M/s. Western Union or the appellants by furnishing a 10-digit secret code received from the sender; though money is handed over to the recipient in India, the benefit of service accrues to a client outside India and thus, the service is in the nature of export and thus, not liable to service tax. CBEC vide Circular No. 111/05/2009 dated 24.2.2009 have clarified that even when all the activities take place in India so long as the benefit of these services accrue outside India, the service amounts to export of service. He relies upon the following cases:

- (i) *Wall Street Finance Ltd vs. CST, Mumbai: 2015 (37) STR 642 (T)*
- (ii) *CCE Chandigarh vs. Ashu Forex Pvt. Ltd: 2014 (35) STR 776 (Tri - Del)*
- (iii) *Muthoot Finance Corporation Limited vs. CCE, Visakhapatnam: 2010 (17) STR 303 (Tri Bang)*
- (iv) *Paul Merchant Limited vs. CCE, Chandigarh: 2013 (29) STR 257 (Tri- Delhi)*
- (v) *Kerala State Financial Enterprises Ltd Vs CCE, Calicut: (24) STR 585 (T-Bang)*

5.1 He further submits that Government of India vide Notification No.19/2015-ST dated 14.10.2015 under Section 11C of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 clarified that the service tax payable on the services provided by an Indian Bank or other entity (NBFC) acting as an agent to the MTSO in relation to remittance of foreign currency from outside India to India for the period from 1.7.2012 to 13.10.2014 shall not be required to be paid.

6. Arguing on the issue of limitation and penalties, the learned counsel for the appellant submits that the allegations levelled against the appellant have been under dispute and have since come to be settled by the cases cited above. Learned Commissioner also has dropped the proceedings in respect of a demand which was earlier confirmed. For these reasons, suppression of fact or contravention, if any, with an intent to evade payment of service tax cannot be alleged, therefore, show-cause notice dated 20.7.2009 covering the period September 2004 to September 2008 is barred

by limitation. As no *mala fides* can be attached to the appellants, penalties are also not imposable. He relies upon following case laws:

- (i) *Sanjay Industrial Corporation vs. CCE, Mumbai: 2015 (318) ELT 15 (SC)*
- (ii) *Jaiprakash Industries Ltd vs. CCE, Chandigarh: 2002 (146) ELT 481 (SC)*
- (iii) *Larsen & Toubro Ltd vs. CCE, Pune: 2007 (211) ELT 513 (SC)*
- (iv) *Padmini Products vs. Collector of Central Excise: 1989 (43) ELT 195 (SC)*
- (v) *Nizam Sugar Factory vs. CCE: 2006 (197) ELT 465 (SC)*
- (vi) *ECE Industries Ltd vs. CCE, New Delhi: 2004 (164) ELT 236 (SC)*
- (vii) *L & T Ltd vs. CCE, Pune II: 2007 (211) ELT 513 (SC)*

7. Shri P. R. Holla, Authorised Representative (AR) on behalf of the Revenue submits that the findings in all Order-in-Originals except (departmental appeal No.ST/21862/2018) are well reasoned and are reiterated; in respect of department appeal, he reiterates the grounds of appeal. He submits that only after the department initiated the action, the appellants have changed the nomenclature from 'incidental charges' to 'risk interest' as per Head Office Circular dated 2.9.2006; further vide circular 8.2.2014, the appellants have changed the nomenclature to 'interest on gold loan'. He submits that interest can be accounted under the Head 'Interest' only and therefore, amounts collected over and above 18% attracts service tax.

7.1 In respect of service tax on postage and token charges, learned AR submits that learned Commissioner vide OIO No.06/18-19 d6.7.2018 has distinguished the decision in the case of *Intercontinental Consultants and Technocrats* (supra); in respect of Air Travel Agent / Rail Travel Agent/ Travel Agents and Commission on insurance, though the appellants have contended that they have discharged service tax on the same, no documentary evidence was produced before the adjudicating authority.

7.2 Learned AR, for the department, submits on the issue of commission earned as agent of M/s. Wall Street Finance Ltd. that Western Union network and M/s. Wall Street Finance Ltd. are different companies; the appellant entered into contract with M/s. Wall Street Finance Ltd. for the remittance of money to desired individuals and M/s. Wall Street Finance Ltd. pays commission to the appellant. There is no contractual obligation between M/s. Western Union network and the appellant and they are not party to the contract between M/s. Wall Street Finance Ltd. and M/s. Western Union; the

appellant has never received any remuneration for this service in foreign exchange.

8. Heard both sides and perused the records of the case.

9. Coming to the question as to whether the appellants are required to pay service tax on the risk interest/interest on gold loan/additional interest shown as incidental charges before October 2008, it is not disputed that the appellants are a NBFC and are engaged in collection of deposits and advancing of loans against security *inter alia* in the form of gold. The appellants charge interest on the loans advanced. It is the case of the department that prior to October 2008, appellants have collected some incidental charges which is taxable to service tax and for the period after October 2008, the appellants have collected risk interest / interest on gold loan over and above the prescribed rate of 18% as per RBI. For the period prior to October 2008, it is the contention of the appellant that in view of the restrictions, imposed by the Kerala Government, that no money lender will charge interest over and above 2% than the interest charged by commercial banks, they have shown a portion of the interest as incidental charges. However, after October 2008, the same is referred to and accounted as risk interest / interest on gold loans. The appellant submits a Circular dated 31.3.2008 issued by their Head Office to their Branches. We find that it was clarified in the said Circular that:

“Till recently, we were classifying interest received and receivable on gold loans under two heads, viz., up to 18% under Interest on GLs and the remaining under Incidental Charges on GL. Token charges of Rs.5/- per loan were also collected for all GLs at the time of their closure. This was also accounted under Incidental Charges on GL. But the Central Excise Department is of the view that the interest amount accounted under incidental charges can be treated as charges other than interest and accordingly, service tax @ 12.36% is to be paid on the amount outstanding under incidental charges on GS account. We have categorically explained to the Central Excise Department the actual position that the amount under incidental charges consist of mainly the interest collected above 18% and the remaining small portion token charges, and the token charge portion alone attracts service tax. we have furnished them detailed statement showing the spilt up of interest portion and token charges accounted under incidental charges to claim exemption from service tax. The matter is under their consideration. In the meantime, the officials from Central Excise Department, may perhaps, visit our branches to verify the practice followed by us on this regard. Branches are, therefore, advised to clarify them the actual position i.e, accounting the interest up to 18% under interest on GL and remaining under incidental charges on GL along with token charges, if they visit your branch. Branches can show examples of our GLs closing vouchers in which this is clearly stated. In case of any doubts contact us at HO or your RM over the phone.”

It is this circular on the basis of which department alleges that these are the amounts collected in addition to the interest and therefore, are taxable to service tax. We find that learned counsel for the appellant submits that any contract or any other document for that purpose should be read and understood in a wholesome manner rather than picking up points in favour of one argument or the other. On going through the Circular, it is clear that some amount of interest is shown to be incidental charges. We are of the considered opinion that only because there is change in the nomenclature or in the treatment of the account, certain receipts would not cease to be interest. We find that Revenue could not adduce any documentary evidence to show that these incidentals were not interest. We find that in terms of the Section 65B(30) of the Finance Act, 1994,

“(30) “Interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charges in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has been utilized”.

9.1 We find from the definition that the interest payable can be in any manner. This being so, it would not be legally tenable for the Revenue to say that portion of the interest shown and collected as incidental charges would cease to be interest. We find further that in terms of Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006, the value of any taxable service does not include interest on loans; in terms of Section 66D (n) of the Finance Act, 1994 effective from 01.07.2012, consideration received by way of interest on loans or advances without any condition or limit on the rate of interest is excluded from the levy of service tax. During the period post-October 2008, Revenue seeks to take the plea that interest charged over and above 18% is a consideration towards the service and therefore, exigible to service tax. We find it difficult to buy this argument. We find that fixation of rate of interest is not the work of service tax officers and thus, it is beyond the scope of their activity. It is for the RBI to fix the interest rates and regulate the banking and non-banking financial institutions and to take action required, if any, for violations. Just because the appellants are collecting an interest over and above 18%, the said remuneration does not come under the ambit of service tax. It is demonstrated by the learned counsel for the appellant that RBI has given liberty to the NBFCs to fix the interest rates taking into account the various factors. Therefore, we are of the considered opinion that as long as the consideration received for

advancement of loans is interest in whatever manner it is accounted for and at whatever rate it is collected, the same is not chargeable to service tax in view of the legal position discussed above. We also find that the learned Commissioner vide order dated 6.7.2018 (Revenue appeal No.ST/21862/2018) has rightly concluded that the demand of service tax on interest of gold loans is not sustainable. We uphold the view and set aside the demand on account of interest irrespective of their nomenclature i.e., incidental charges/risk interest/interest on gold loan.

10. Coming to the demand of service tax on token charges, postal charges, etc., we find that these are the incidental expenditure recovered by the appellants from their customers. Hence, they are in the nature of reimbursable expenses. Going by the ratio of the apex court's decision in the case of *Intercontinental Consultants and Technocrats* (supra), we find that these do not get counted for the purpose of charging service tax. Learned Authorized Representative for the department submits that the adjudicating authority has distinguished the above judgment in Order-in-Original dated 6.7.2018. Having gone through the order, we find that the learned Commissioner seeks to distinguish between the recoverable expenses discussed in the above case and the case of the appellant. It would be naïve to come to such a conclusion only because the reimbursable expenses discussed in *Intercontinental Consultants and Technocrats* (supra) relate to travel cost, hotel stay, transportation, etc., and in the instant case, it is about token charges, postal charges, etc. We find that distinguishing is only on the categories of expenses and not on the principle of exclusion of reimbursable expenses and thus, not acceptable. We also find that there have been number of judgments on the excludability of reimbursable expenses. Therefore, we hold that the demand on the token charges, postal charges, etc., would not sustain and the same needs to be set aside.

11. As regards the demand of service tax on the money transfer service, we find that the appellants are in contract with M/s. Wall Street Finance Ltd., Bombay who are in turn with contract with M/s. Western Union. It is the case of the appellant that the ultimate beneficiary of the service is abroad and therefore, the service rendered by them is to be considered as an 'Export of Service'. They have also relied upon *Paul Merchant Ltd.* (supra) and other cases. We find that the ratio of the cases

relied upon by the appellants is not applicable to the instant case inasmuch as the appellants are not the direct agents of M/s. Western Union. The appellants are in contract with M/s. Wall Street Finance Ltd., Bombay. The service rendered by the appellants is towards M/s. Wall Street Finance Ltd. and not to M/s. Western Union. The immediate service beneficiary of the service rendered by the appellants is M/s. Wall Street Finance Ltd. and not the person who sends money from overseas places. It is not disputed that the nature of the service rendered is to be understood from the tenor of the contract. The contract is between two Indian entities. In case of default of transfer of money, the liability rests on M/s. Western Union and not on the Indian entities. It will be a too much long drawn argument to say that the appellants are rendering service to M/s. Wall Street Finance Ltd. Bombay who in turn are rendering service to M/s. Western Union, who render the service to the ultimate customer who sends money from abroad and therefore, the beneficiary of the service rendered by the appellants is abroad. We are of the considered opinion that such stretching of the argument is not acceptable. In the course of transboundary transactions, there would be a chain of activities and understanding so many service providers in-between. For that reason, in the light of the principles of taxation, all the players at one end cannot be treated as exporters and all the players at the other end cannot be treated as importers. If the appellants are rendering service to an Indian entity who is in turn engaged in export of services, law requires that the appellant pay service tax and their client is eligible to avail credit of the same and refund if applicable. There is no short-cut of the procedures. Since because the ultimate beneficiary is abroad, it cannot be claimed that the appellants are exporting services. Neither the place of rendering of the activity nor the type of service rendered by the appellants nor the recipient of such service are stationed abroad. Therefore, we are not inclined to consider such service as an export of service. The facts of the cases of *Paul Merchants Ltd.* and other cases are different from the instant case. In fact, the ratio of these cases would apply to M/s. Wall Street Finance Ltd., Bombay. For this reason, we also hold that the Notification No.19/2015-ST dated 14.10.2015 also is not applicable to the appellants.

11.1 Therefore, we conclude that the demand of service tax on the money transfer service rendered by the appellants requires to be upheld and we do so.

12. Coming to the claim of the appellants that they have discharged the liability of service tax in respect of air travel agent / rail travel agent / travel agent services and in respect of commission on insurance, we find that the Revenue pleads that no documentary evidence whatsoever has been given by the appellants to the adjudicating authority. The appellants, on the contrary, submit that they have placed relevant challans on record. We find that the only way to resolve the issue is to send it back for the purpose of verification. Therefore, we would remand the case to the adjudicating authority for the limited purpose of verifying the claim of the appellant that they have discharged the liability of service tax in respect of air travel agent / rail travel agent / travel agent services and in respect of commission on insurance.

13. In the result,

- (i) We set aside the demands, in respect of all the appeals filed by M/s. Kosamattam Finance Ltd. (Appeal Nos. ST/21818/2016; ST/20751/2015; ST/20752/2015; ST/20753/2015; ST/21248/2016; ST/21605/2015) in respect of incidental charges/ risk interest/interest on gold loans.
- (ii) We also set aside the demands in respect of token charges/postage charges.
- (iii) The demands in respect of service tax on money transfer service is upheld along with interest.
- (iv) Demand in respect of commission earned on air travel agency / rail travel agency / travel agency for bus and commission on insurance, we remand the matter to the adjudicating authority for the limited purpose of verifying the claim of the appellants with the documentary proof that may be submitted by the appellants.

- (v) We set aside all the penalties imposed.
- (vi) Departmental appeal No.ST/21862/2018 is set aside.

(Order pronounced in the Open Court on **01.02.2022**)

Sd/-
(P. ANJANI KUMAR)
TECHNICAL MEMBER

Sd/-
(P. DINESHA)
JUDICIAL MEMBER