

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI**

Appeal Nos. ST/00023/2011 & ST/00118/2011

Sl. No.	Appeal No.	Appellant	Respondent
1.	ST/00023/2011	M/s. Mahasemam Trust	The Commissioner of Central Excise, Central Revenue Buildings, Madurai
2.	ST/00118/2011	The Commissioner of Central Excise, Central Revenue Buildings, Madurai	M/s. Mahasemam Trust
(Arising out of Order-in-Original No. 1/2010 ST dated 23.11.2010 passed by The Commissioner of Central Excise, Central Revenue Buildings, Madurai)			

Appearance:-

Shri. G. Natarajan, Advocate
for the Appellant

Shri. K. Veerabhadra Reddy, JC (AR)
for the Respondent

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **23.07.2018**

Final Order No. **42115-42116 / 2018**

Per Bench,

Brief facts are that on the intelligence gathered by the Officers of Headquarters Preventive Unit, Madurai, it was revealed that the appellants are primarily engaged in micro-financing (small scale lending) to poor women members of self-help groups, and were

charging interest on such loans apart from collecting various other charges like processing charge, application charges Group Maintenance Charges, etc., from the borrowers. It appeared to the Department that the activity would fall under 'Banking and Other Financial Services' and the appellants are liable to pay service tax. After investigations, Show Cause Notice was issued proposing to demand service tax along with interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand of Rs. 98,57,126/- for the period from 01.05.2006 to 30.04.2007, but, however, dropped the demand for the period from 01.10.2004 to 30.04.2006 and 01.05.2007 to 30.11.2009. The penalties proposed under Section 76,77 and 78 were also dropped by invoking Section 80 of the Finance Act, 1994. Aggrieved by the confirmation of demand for the above period from 01.05.2006 to 30.04.2007, the appellant has filed Appeal No. ST/00023/2011. The Department has filed Appeal No. ST/00118/2011 against the dropping of the demand as well as waiving the penalties. The parties are hereafter referred to as 'assessee' and 'Department' for the sake of convenience.

2.1 On behalf of the assessee, the Ld. Counsel Shri. G. Natarajan appeared and argued the matter. He submitted that the assessee

namely, M/s. Mahasemam Trust, is a Public Charitable Trust formed vide Trust Deed dated 07.07.1999. The Trust is established with the broad objective of eradicating poverty and improving the social status and self-esteem of rural women and to reduce problems such as violence and exploitation. In order to carry out the above objectives, the assessee-Trust is enrolling rural women as members and form various groups of such women. It is also functioning as a Federation of Women Groups, working for the benefit of the members. One of the important activities undertaken by the Trust is granting revenue generating (to set up appropriate revenue generating business for the members) as well as non-revenue generating (to meet expenses of festivals, emergency loans, housing loans, destitute loans, etc.) loans to its members. The assessee obtains such loans from various banks and uses these funds to grant loans to their members. The loans are for small amounts to help the eligible women members to enable them to find a livelihood like rearing cattle, setting up petty shops, handicrafts, etc. The loans are sanctioned in periodical meetings of the members as decided between the members and the loans are not sanctioned by the Trust as such. The obligation of repayment of the loan is also cast on the group and if any one member of the group defaults in repayment,

the other members of the group are liable to repay the same and this ensures peer responsibility on the group to ensure repayment. Thus, the loans are not disbursed as in normal banking activities. Weekly meetings of the members are conducted to promote various objectives of the Trust. Loans carry interest which are prescribed by the Trust. At the time of disbursement of loans, certain nominal amounts are collected from the beneficiaries on voluntary basis for various purposes. The appellant also collects small amounts of deposits from their members to inculcate the savings habit and even Rs. 10/- are accepted as deposits. But no facilities like withdrawal through cheque, etc. are offered against such deposits. The savings can be withdrawn only upon cessation of membership and not before. Small amounts are collected for the purpose of group formation and maintenance, training expenses, health care, legal care, educational scholarship, insurance, etc. These amounts are allocated for specific purposes.

2.2 The Ld. Counsel adverted to the definition of “Banking And Financial Services” as given in Section 65(12) and argued that the taxable service as contained in Section 65(105)(zm) states that “any service provided to a customer by a banking company or a financial institution, including a non-banking financial company in relation to

Banking and Other Financial Services". Thus, during the major part of the demand, the taxable service would attract levy of service tax only if it is rendered by a banking company or a financial institution or a non-banking financial company. The assessee does not fall under any of these categories and, therefore, the Commissioner has rightly set aside the demand during the period when the taxable service stood as stated above. For a limited period from 01.05.2006 to 30.05.2007, the said taxable service as given in Section 65(105)(zm) was amended to include the words "any other person". The Commissioner has confirmed the demand for the period 01.05.2006 to 30.04.2007 alleging that the levy of service tax would be attracted for this period since the assessee would come within the ambit of "any other person" for this period.

2.3 He adverted to the Show Cause Notice and submitted that even though the demand has been confirmed for the period 01.05.2006 to 30.04.2007, by relying on the amendment brought in by adding the words "any other person", in the Show Cause Notice, the demand has been raised alleging that the appellant is a non-banking financial company. Further, that the Commissioner has also made a clear finding in the impugned order that the assessee is a non-banking financial institution. In fact, as per Section 45(e) of the

RBI Act, 1934, non-banking financial institution would only mean a company, corporation or cooperative society. The appellants, being a Trust, would not fall within any of these descriptions, and cannot be said to be a non-banking financial institution. Since in the Show Cause Notice, the demand is made alleging that the assessee is a non-banking financial institution, the demand for the limited period from 01.05.2006 to 30.04.2007 alleging that assessee would fall into the category of “any other person” also cannot sustain. The Commissioner has confirmed the payment for this period only on the ground that the appellant would fall under the category of “any other person” although they may not fall under non-banking financial institution.

2.4 The Ld. Counsel relied upon the decision of the Tribunal in the case of *Grama Vidiyal Trust Vs. C.C.E. & S.T. Tiruchirappalli* vide *Final Order No. 40925/2018 dt. 22.03.2018* and argued that the Tribunal on the very same issue has set aside the demand.

3.1 On behalf of the Department, the Ld. AR Shri K. Veerabhadra Reddy, supported the findings in the impugned order for the period 01.05.2006 to 20.04.2007. He argued that during this period, the taxable service of the banking financial service was amended to

include the words “any other person”. Thus, the appellants would fall within this category and, therefore, the Commissioner has rightly confirmed the demand for this period.

3.2 He supported the grounds of appeal stated in the appeal filed by the Department and argued that the appellants being a non-banking financial institution, are liable to pay service tax for the remaining part of the demand for the period 01.10.2004 to 30.04.2006 and also 01.05.2007 to 30.11.2009.

3.3 He also submitted that the Commissioner has erroneously set aside the penalties.

4. Heard both sides.

5.1 For better appreciation the amendment brought forth to the definition of “taxable service” under Section 65(105)(zm) of banking and financial service during the disputed period is noticed as under:

Sl. No.	Period	Category of service providers who are liable to pay service tax
1.	10.09.2004 to 30.04.2006	Banking company or a Financial Institution including a non-banking financial company, or any other body corporate or commercial concern.
2.	01.05.2006 to 30.04.2007	Taxable service means any service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or any other person , in relation to banking and other financial services.
3.	01.05.2007 onwards	Taxable service means any service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services.

5.2 From the above, it can be seen that for the limited period from 01.05.2006 to 30.04.2007, the words “**any other person**” were included in the definition. Prior to that, as well as after 01.05.2007, the services provided by banking company or a financial institution including any other banking financial institution or any other body corporate or commercial concern would only be liable to service tax. In para 8.3 of the Show Cause Notice, it is alleged that the assessee is a non-banking financial institution. Thus, the basic allegation is that the assessee being a non-banking financial institution is engaged in lending activity and, therefore, their services are classifiable under bank and other financial services with effect from 10.09.2004.

5.3 The Ld. Counsel has brought to our notice the definition of “non-banking financial institution” as laid down in the RBI Act. Only a company, corporation or cooperative society would fall within the definition of non-banking financial institution. There is no allegation in the Show Cause Notice that assessee is liable to pay service tax as they are rendering ‘Banking and Other Financial Services’ as they are included in the category “any other person”. In fact, the categorical allegation in para 8.4 and 8.5 of the Show Cause Notice is that assessee is a non-banking financial institution and

therefore is liable to pay service tax for the Banking and Financial Services. This being so, in our view, the Commissioner has traversed beyond the scope of Show Cause Notice to confirm the demand for the period 01.05.2006 to 30.04.2007. From the provisions of law reproduced above, it can be seen that the Commissioner has rightly dropped the demand for the period from 01.10.2004 to 30.04.2006 and for 01.05.2007 to 30.11.2009 when the words “any other person” was not part of the definition under Section 65(105)(zm). The Tribunal had analyzed a similar issue in the case of *Grama Vidiyal Trust (supra)* where the facts are identical and held as under :

“5. There is no dispute, even in the SCN that appellants are a Registered Charitable Trust with registration No.1133/4.4.1997 as a Federation of Women in micro credit. There is also no allegation that they have been approved to function as a bank or even as a non-banking institution by the R.B.I. This being so, they cannot be termed as a “Banking Company” or “Financial Institution”. Counsels have also been able to show that as per the RBI Act a “financial institution” is a “non-banking institution” which carries out its business in specified activities which are not done by the appellants. The definition of “non-banking institution” in Section 45I (e) of the RBI Act, 1934 will also not hit the appellants since that definition would only mean “a company, corporation or cooperative society”, which the appellants are not. In the circumstances, the appellants cannot be termed as a “banking company” or “banking institution including a non-banking financial company” for the purposes of Section 65 (12) of the Finance Act, 1994.

6. From paras 6 to 9 of the SCN, we find that the proposal to demand service tax liability under Section 65 (12) *ibid* is only on the allegation that the appellants are a “financial institution”. It is only this allegation that has been examined and taken forward by the adjudicating authority in the impugned order. For example, in para-25 of the order, the adjudicating authority concludes that “It is therefore evident that a non-banking financial institution like GVT is also covered within the ambit of “Financial Institution” as defined

*in Section 65 (12) read with Section 65 (45) and clause (c) of Section 45-I of the Reserve Bank of India Act, 1934.” As it has already been found that the appellants would not fall within the ambit of “banking company or financial institution” for the purposes of Section 65 (12) *ibid*, that allegation in the SCN and its confirmation in the impugned order cannot then be sustained. Ld. A.R has been at pains to point out that for a considerable part of the period of dispute, the banking financial services provided even by any other person till 1.6.2007 would be very much taxable under the said services. While this may be so, we find that the SCN has clearly proposed the demand of service tax only on the ground that appellants are a financial institution and not on a charge that their services are taxable since they have been done “by any other person”. This being so, this argument of the Ld. A.R is therefore outside the scope of the SCN and hence cannot be raised at this stage.*

7. *In view of above discussions and analysis, we hold that the impugned order confirming the tax liability along with interest and penalty against the appellant on “Banking and Other Financial Services” will require to be set aside, which we hereby do. Taking into account that appellants are only a Charitable Trust and have already paid up remaining demand pertaining to Rent-a-cab service amounting to Rs.1,46,260/-, we also set aside any penalty in respect of that demand.”*

5.4 Following the same as well as appreciating the facts and evidence presented before us, we are of the considered opinion that the demand for the period 01.05.2006 to 30.04.2007 also cannot sustain. The demand for this period along with interest and penalties are set aside.

6. The assessee’s appeal is, therefore, allowed. Consequently, the Department appeal is dismissed.

(Operative part of the order was pronounced in open court)

(Madhu Mohan Damodhar)

Member (Technical)

Sdd

(Sulekha Beevi C.S.)

Member (Judicial)