CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87076 OF 2016

[Arising out of Order-in-Original No: 22/STC-V/SKD/2015-16 dated 26th May 2016 passed by the Commissioner of Service Tax – V, Mumbai.]

Axis Bank Ltd
6th Floor, Finance & Accounts, Axis House
C-2 Wadia International Centre, P B Marg, Worli
Mumbai - 400025 … ***Appellant***

versus

Commissioner of Service Tax - V
4th Floor, Utpad Shulk Bhawan, Plot No. C-24
Sector-E, Bandra Kurla Complex, Bandra (East)
Mumbai - 400051 ***…Respondent***

APPEARANCE:

Shri Jay Chedha and Shri Aniket Barve, Advocates for the appellant

Shri Priyesh Bheda, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85063/2025

DATE OF HEARING:	06/08/2024
DATE OF DECISION:	22/01/2025

PER: C J MATHEW

M/s Axis Bank Ltd is in appeal against denial of CENVAT credit of ₹ 59,68,88,683, availed by them between June 2012 and

December 2013, on tax arising on premium charged by Deposit Insurance and Credit Guarantee Corporation (DICGC), that was sought to be recovered under section 73 of Finance Act, 1974, attended upon with appropriate interest under section 75 of Finance Act, 1994, while imposing penalty of like amount under rule 14 of CENVAT Credit Rules, 2004 in order[1] of Commissioner of Service Tax-V, Mumbai.

2. Following the resolution of dispute on taxability of the premium so paid by all banks under the mandate of Reserve Bank of India (RBI) on insurance cover of small deposit in the event of bank failure, the tax leviable thereon under Finance Act, 1994 charged on such premium was being availed by the beneficiary banks which, in several dispute, came before the Tribunal. In the light of conflicting decisions, the matter came to be referred to Hon'ble President for constitution of Larger Bench to rule on the proper interpretation.

3. Learned Counsel for the appellant submitted that the issue is no longer *res integra* in view of the decision of the Larger Bench in *South Indian Bank v. Commissioner of Customs, Central Excise and Service Tax, Calicut [2020 (6) TMI 278 – CESTAT BANGALORE – LB]*. It was also pointed out that the decision of the Larger Bench came to be challenged before the Hon'ble High Court of Kerala in *The*

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[1] [order-in-original no. 22/STC-V/SKD/2015-16 dated 26th May 2016]

Principal Commissioner of Central Tax & Central Excise, Cochin v. South Indian Bank [2022 (12) TMI 1479 – KERALA HIGH COURT] which held as follows

> *'12. We have examined the view from the perspective of questions raised before us. To conclude precisely, the larger bench has taken each one of the circumstances at both the ends i.e. while availing the services and providing services, the practice/procedure and the provisions of law had rendered the view on the entitlement of assessee for availing the credit. We are in full agreement with the view of the larger bench in all fours.'*

4. It was further contended that decision of the Tribunal disposing off two other appeals in accordance with the resolution by the Larger Bench was, upon challenge by jurisdictional Commissioner of Service Tax, upheld by the Hon'ble High Court of Bombay in *Commissioner of CGST & Central Excise, Mumbai Central v. Yes Bank Ltd and Indusind Bank Ltd [2023 (9) TMIS – 1378 – BOMBAY HIGH COURT]*.

5. Learned Authorised Representative submitted that some benches of the Tribunal had, owing to disinclination to accept the correctness of the decision of the Larger Bench *supra,* had sought reference to bench of higher numerical strength. In addition, Learned Authorised Representative placed reliance upon the decision of the Tribunal in *ICICI Bank Ltd v. Commissioner of Service Tax, Mumbai-*

I [2019-TIOL-589-CESTAT-MUM].

6. The limited issue in this appeal is eligibility for availment of CENVAT credit of tax paid on premium mandatorily required for functioning as banks under the supervision of Reserve Bank of India. The decision of the Larger Bench of the Tribunal in *re South Indian Bank* had settled the issue of eligibility by holding that

> *'59. In Commissioner of Central Excise, Bangalore v. PNB Metlife India Insurance Co. Ltd. [2015 (39) STR 561 (Kar)], 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 re-insurance 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 101A 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 of 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.*
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> *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 re-insurance 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 9-4-2015 in the case of M/s. PNB Metiife India Insurance Company Ltd. Bangalore [2015 (39) STR 561 (Ka.)]*
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> *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 re-insurance is a statutory obligation and the same is co-terminus with the insurance policy. Issuance of insurance policy by insurer, and then taking of re-insurance by it, is a continuous process. Re-insurance 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. v. Commissioner of Customs, Central Excise and Service Tax, Hyderabad [2019-TIOL-1087-CESTAT-

HYD] 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'."*

7. Thereafter, the reference to the Hon'ble President to have the matter considered by a Larger Bench was taken by a Larger Bench of the Tribunal in *Bank of America, National Association v. Principal Commissioner of CGST & Central Excise, Mumbai East* and by interim order no 14-18/2024 dated 30th April 2024, disposing off reference in appeal[2] against order[3] of Commissioner of CGST & Central Excise, Mumbai East, it was held that

> *'54. It would be seen from the aforesaid judgment of the Kerala High Court that the contentions of the department against the decision of the Larger Bench of the Tribunal were not accepted and the appeal was dismissed holding that the High Court was in full agreement with the views expressed by the Larger Bench of the Tribunal. The Kerala High Court further held that the Larger Bench of the Tribunal, for valid and correct reasons, held that 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.*
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> *55. The correctness of the view expressed by the Larger Bench of the Tribunal in South Indian Bank also came up for consideration before the Bombay High Court in Yes Bank and Indusind Bank.*

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[2] [service tax appeal no. 88202 of 2019 and others]
[3] [order-in-original no. 44/MVSC/PR.COMMR/MR/2019-20 dated 04th September 2019]

The order dated 15.09.2020 passed by the Division Bench of the Tribunal in the Appeal filed by Yes Bank as also the order dated 29.09.2020 passed by the Division Bench of the Tribunal in the appeal filed by Indusind Bank were challenged before the Bombay High Court. In the impugned orders before the Bombay High Court, the Division Bench of the Tribunal had relied upon the decision of the Larger Bench of the Tribunal in South Indian Bank. The Bombay High Court dismissed the appeals filed by the department holding that the High Court was in agreement with the views expressed by the Kerala High Court and the relevant paragraphs of the judgment are as follows:

> *"9. We have heard learned counsel for the parties. We have also perused the record, the decision of the Larger Bench of CESTAT as cited before us, as also the decision of the Kerala High Court, and the impugned orders. We may at the outset observe that the issue in the present proceedings is certainly not different which fell for consideration of the Larger Bench in the case of South Indian Bank (supra). We find that the Larger Bench has taken into consideration the statutory scheme of DICGC as also the mandatory requirement under the Reserve Bank of India directives to be complied by the bank like the assessee and the compliances of which were mandatory. It is in the course of availing such insurance service for the benefit of the depositors, the petitioner was required to pay the premium on which service tax was paid, and of which, input tax credit was sought to be availed. In our opinion, the CESTAT has rightly observed that the issue stands squarely covered by the decision of the Larger Bench.*
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> *10. We are also in agreement with the view taken by the Division Bench of the Kerala High Court in approving the decision of the Larger Bench. We may note hereunder the relevant observations of the Division Bench of the Kerala High Court in the case of "The Principal Commissioner of Central Tax/Central Excise vs. M/s. South Indian Bank (supra), to which we subscribe:- ******
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> *11. In the above context, we do not find ourselves persuaded to accept the case of the appellant/revenue that the questions of law as framed would at all arise. The revenue is also not before us to contend that there is some issue which has not been addressed by the Division Bench of the Kerala High Court or has missed its attention on issue of law and which would be relevant in the context of the present proceedings. The revenue also is unable to urge any contention as to why the decision of the Kerala High Court accepting the decision of the Larger Bench of CESTAT*

ought not to be accepted.

12. In view of the above discussion, we are of the clear opinion that no substantial question of law arises in the present appeals. Both the appeals are accordingly dismissed. No costs." (emphasis supplied)

56. It is seen that the Bombay High Court not only agreed with the view taken by the Kerala High Court in approving the decision of the Larger Bench of the Tribunal in South Indian Bank, but the Bombay High Court also observed that the Revenue could not contend before the High Court that there were still some issues which had not been addressed by the Division Bench of the Kerala High Court and which would be relevant. The Bombay High Court also observed that the Revenue was also not able to urge any contention to substantiate why the decision of the Kerala High Court in accepting the decision of the Larger Bench of the Tribunal should not be accepted.

57. The two judgments of the Kerala High Court and the Bombay High Court also reveal that the department had not raised any issue before the Kerala High Court and the Bombay High Court while assailing the decision of the Larger Bench of the Tribunal in South Indian Bank that the Tribunal committed an error in not considering the Constitution Bench judgment of the Supreme Court in Dilip Kumar, even though they were decided after the reference was made on 02.11.2020 and rightly so as the said decision, as noticed above, is not relevant for the purpose of deciding the controversy involved in these appeals. 58. The Bombay High Court in Principal Commissioner of CGST and Central Excise, Mumbai East vs. ICICI Bank Ltd (2023 (79) GSTL 387 (Bom)], Bank of Maharashtra vs. Commissioner of CGST & C. Ex., Pune-II [2020 (42) GSTL 491 (Bom)] and ICIC Bank Limited vs. Commissioner, GST & CX., Bhiwandi [appeal no. E/183/2019 decided on 26th November 2020], while examining the same issue as to whether banks can avail CENVAT credit on the insurance services provided by the Deposit

Insurance Corporation to the banks, set aside the order passed by the department and remanded the matter to the Tribunal for a fresh consideration and passing of an order „in confirmity with the order of the Larger Bench in South Indian Bank.

CONCLUSION

59. In view of the aforesaid discussion, it has to be held that the Division Bench of the Tribunal was not justified in itself framing three questions to be referred to a Larger Bench of five Members of the Tribunal after disagreeing with the views expressed by the Larger Bench of the Tribunal of three Members in South Indian Bank. The Larger Bench decision of the Tribunal of three Members in South Indian Bank does not require re-consideration by a Bench of five Members of the Tribunal. In any view of the matter, there is no requirement of referring the matter to a Larger Bench of five Members of the Tribunal as the decision of the Larger Bench of the Tribunal in South Indian Bank has been upheld by the Kerala High Court and the Bombay High Court.'

8. Accordingly, the eligibility for CENVAT credit of tax paid on such premium is beyond any controversy.

9. In view of settled law as set out *supra,* the impugned order is set aside and appeal is allowed with consequential relief.

(Order pronounced in the open court on 22/01/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*