CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 85100 of 2017

(Arising out of Order-in-Original No. 71-72/ COMMR(RS)/ LTU-M/ CX/ 2016 dated 30.09.2016 passed by the Commissioner of Central Excise & Service Tax, LTU, Mumbai).

IDBI Bank Limited **.... Appellants**
IDBI Towers, WTC Complex
Cuffe Parade
Mumbai – 400 005.

Versus

Commissioner of C. Excise & Service Tax **....Respondent**
Large Tax Payer Unit (LTU), Mumbai
29th Floor, World Trade Centre
Cuffe Parade
Mumbai – 400 005.

with

Service Tax Appeal No. 85101 of 2017

(Arising out of Order-in-Original No. 02/STC-IV/SKS/14-15 dated 18.02.2015 passed by the Principal Commissioner of Service Tax-I, Mumbai).

IDBI Bank Limited **.... Appellants**
IDBI Towers, WTC Complex
Cuffe Parade
Mumbai – 400 005.

Versus

Commissioner of C. Excise & Service Tax **....Respondent**
Large Tax Payer Unit (LTU), Mumbai
29th Floor, World Trade Centre
Cuffe Parade
Mumbai – 400 005.

APPEARANCE:

Shri Vinod Awtani, Chartered Accountant for the Appellants
Shri Badhe Piyush Barasu, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87584-87585/2024

Date of Hearing: 09.09.2024

Date of Decision: 09.09.2024

Per: M.M. PARTHIBAN

These appeals have been filed by M/s IDBI Bank Limited, Mumbai (herein after, referred to as "the appellants", for short), assailing the Order-in-Original No. 71-72/COMMR(RS)/LTU-M/CX/2016 dated 30.09.2016 (herein after, referred to as "the impugned orders") passed by the Commissioner of Central Excise & Service Tax, Large Tax Payer Unit (LTU), Mumbai.

2.1 The brief facts of the case are that the appellants herein are engaged in providing taxable services under the category 'Banking and Other Financial Services' enumerated under Section 65 (105)(zm) of the Finance Act, 1994 and is registered with the jurisdictional service tax authorities under service tax registration No. AABC18842GST001. The appellants have joined the Large Tax Payer Unit (LTU), Mumbai jurisdiction on 29.09.2008, being the single interface offered by the government for both direct and indirect tax matters. Directorate General of Central Excise Intelligence, Kochi Regional Unit (DGCEI) have developed an intelligence that the appellants had wrongly availed CENVAT credit in respect of service tax paid on Deposit Insurance service provided by Deposit Insurance and Credit Guarantee Corporation (DI&CGC) which did not qualify as 'input service' as defined under Rule 2(l) of the CENVAT Credit Rules, 2004. Various details/ documents were called for from the appellants under summons proceedings and statements were recorded from various persons concerned.

2.2 On completion of investigation, DGCEI had issued Show Cause Notice (SCN) vide No. 35/2014-15 dated 27.05.2014 to the appellants proposing to disallow the CENVAT credit covering the disputed period September, 2011 to March, 2013. Since the appellants continued to take CENVAT credit on the disputed service, the SCN No. 03/COMMR/GLT-5/IDBI/STD/Non-Cera/2015 dated 20.04.2015 was issued proposing for recovery of inadmissible CENVAT credit for the period March, 2013 to September, 2014, for an amount of Rs. 35,38,12,621/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994 along with interest and for imposition of penalty on the appellants under Rule 15(1) ibid. Further, one another periodical SCN was also issued for the subsequent period vide SCN 42/ COMMR/GLT-5/IDBI/STD/Non-Cera/2015 dated 10.12.2015 by proposing for recovery of inadmissible CENVAT credit of Rs.26,11,44,379/- for the period October, 2014 to September, 2015, under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 73(1) of the Finance Act, 1994 along with interest and for imposition of penalty on the appellants under Rule 15(1) ibid read with Section 78 ibid.

2.3 The said two SCNs were adjudicated by the learned Commissioner of Central Excise & Service Tax, LTU, Mumbai by confirming all the proposals made in the SCNs vide Order-in-Original dated 30.09.2016. In the said order, which is impugned herein, the adjudicating authority in respect of the appellants, has confirmed the demand of CENVAT credit of Rs.61,49,57,000/- along with interest on the amount of Rs. 30,74,78,500/- being wrongly utilized CENVAT credit, after adjusting the amount reversed by the appellants; and imposed penalty for an amount of Rs. 1.25 crores under Rule 15(1) ibid on the appellants. Feeling aggrieved with the impugned orders, the appellants have filed these appeals before the Tribunal.

3.1 Learned Chartered Accountant submitted that the issue under dispute has been decided in favour of the appellants in a number of cases by various Benches of the Tribunal; Hon'ble High Court of Bombay and by the Larger Bench of the Tribunal in favour of the appellants in the case of *South Indian Bank Vs. Commissioner of Customs, Central Excise & Service Tax, Calicut* vide Order dated 20.03.2020 in Appeal No. ST/20747 of 2015 reported in 2020-TIOL-861-CESTAT-BANG-LB. In view of the above, he submitted that their appeals may be allowed in favour of the appellants.

3.2 Learned Chartered Accountant had relied upon the follows case laws:

(i) *DCB Bank Limited Vs. Commissioner of Service Tax-I, Mumbai* – 2017 (6) G.S.T.L. 479 (Tri.-Bom.)

(ii) *State Bank of Bikaner & Jaipur, Narayana Swamy* Vs. *Commissioner of Central Excise & Service Tax, Jaipur-I* in Final Order No. 50058-50059/2019 dated 11.01.2019

(iii) *The Commissioner of CGST & Central Excise, Mumbai Central Commissionerate Vs. Indusind Bank Ltd.* – High Court of Bombay judgement dated 12.09.2023 in CEA No. 20 of 2021

(iv) *The Commissioner of CGST & Central Excise, Mumbai Central Commissionerate Vs. Yes Bank Ltd.* – High Court of Bombay judgement dated 12.09.2023 in CEA No. 21 of 2021

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned orders.

5. Heard both sides and carefully examined the case records.

6. The short issue for determination before the Tribunal in this case is:-

(i) whether the insurance premium paid by the appellants to DI&CGC for insuring 'deposits' can be considered as an 'input service' under Rule 2(l) of the CENVAT Credit Rules, 2004 for providing the taxable 'output services' provided by the appellants? and

(ii) whether the appellants are eligible to avail the CENVAT credit of service tax paid by them on such insurance premium paid to DI&CGC for insuring 'deposits'?

7. We find that on the aforesaid issue of insurance premium paid to DI&CGC, whether it can be considered as eligible 'input service' and the issue of availment of CENVAT Credit of service tax paid thereon, have been examined in detail by the Larger Bench of this Tribunal in the case of *South Indian Bank* (supra), wherein it was held that the insurance service provided by DI&CGC is an eligible input service for the banks, and the service tax paid thereon can be taken as CENVAT Credit by banks for rendering taxable output services. The relevant paragraphs of the said Order is extracted and given below:

"1. The service provided by the Deposit Insurance and Credit Guarantee Corporation to the banks for insuring the deposits of public with the banks has been considered by the banks to be an "input service" and CENVAT credit of service tax paid by the banks for this service has been availed by the banks for rendering "output services". The issue involved in all these appeals is whether the banks can avail credit of this service tax paid by the banks for the service provided by the Deposit Insurance Corporation. This Larger Bench has been constituted as divergent views have been expressed by Division Benches of the Tribunal on this issue.

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59. In Commissioner of Central Excise, Bangalore vs. 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 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 coterminous 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 coterminous 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 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 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"**."*

8.1 The decision of the Tribunal in Final Orders No. A/85799/2020 dated 15.09.2020 in the case of Yes Bank Ltd., and No. A/85798/2020 dated 20.09.2020 in the case of Indusind Bank Ltd., in allowing the appeal in favour of the appellants on the basis of the aforesaid decision of the Large Bench of the Tribunal was appealed before the Hon'ble High Court of Bombay by the department in Central Excise Appeal CEA No. 20 & 21 of 2021.

8.2 We find that the said case was decided vide judgement dated 12.09.2023, wherein the Hon'ble High Court of Bombay, by agreeing with the views of the Tribunal, had dismissed the appeals filed by the department. The relevant paragraphs of the said judgement passed by the Hon'ble High Court is extracted below:

> *"2. The facts are not in dispute. The respondents/assessees are engaged in the business of providing "banking and other financial services (BOFS)" defined under section 65 of the Finance Act, 1994. During the period under dispute, the respondents/assessees availed cenvat credit on service tax paid on Deposit Insurance Service provided by Deposit Insurance and Credit Guarantee Corporation (for short "DICGC"), considering the same as input service, defined under Rule 2(l) of the Cenvat Credit Rules, 2004 (for short "CCR"). The respondents availing such cenvat credit was disputed by the department inter alia on the ground that such services have no nexus or connection with the actual performance of the banking service provided by the respondents/ assessees. It is on such ground, investigations were conducted by the Directorate General of Central Excise Intelligence. The case of the department is that the respondents availing of the Cenvat credit on insurance premium paid to DICGC, was not permissible and/or was in contravention of the CCR. Accordingly, show cause notices were issued to the respondents, which came to be adjudicated by the Commissioner, Service Tax-I, Mumbai in passing the Orders-in-Original, confirming the demand raised against the respondents in the show cause notices. The respondents being aggrieved by the Orders-in-Original approached the CESTAT, which allowed the appeals of the respondents/assessees by the impugned order.*
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> *3. In the impugned orders, the CESTAT has observed that as different views were taken by different Benches of the Tribunal, the issue in regard to availment of Cenvat credit on the disputed service was subject matter of consideration of the Larger Bench of the CESTAT, South Zonal Bench, Bangalore in the case of South Indian Bank v. Commissioner of Customs, Central Excise & Service Tax, Calicut. In the said case, the Larger Bench vide judgment dated 20 March, 2020 reported in 2020 (41) G.S.T.L. 609 (Tri.-LB) answered the reference which was made to it, by holding 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 such service received by the banks from the Deposit Insurance Corporation could be availed by the banks for rendering 'output services'. Thus, the CESTAT has followed the said*

decision of the Larger Bench in passing the impugned order and has observed that the issue which fell for consideration in the respondents' appeals was no more res-integra being fully covered by the said decision of the Larger Bench. In this view of the matter, the CESTAT, Mumbai set aside the impugned orders and allowed the appeals filed by the respondents. It is on such backdrop, the proceedings are before us.

4. The revenue in preferring the present appeals has raised the following substantial questions of law:

"(i) Whether in the facts and circumstances of the case and in law, the CESTAT was correct in deciding that the deposits by the customer to the Bank is adjunct to the business of banks?

(ii) Whether in the facts and circumstances of the case and in law, the CESTAT was correct in holding that Sec. 66D(n) is not applicable?

(iii) Whether in the facts and circumstances of the case and in law, the CESTAT was correct in holding that it is statutory requirements for the banks to pay insurance premium, hence they are entitled to claim Cenvat Credit; does all the other statutory obligations would fall under this category?

(iv) Whether in the facts and circumstances of the case and in law, the CESTAT was correct in deviating in its earlier stand taken in case of DCB Bank Ltd. vs. Commissioner - 2017(6) G.S.T.L. 479 (Tribunal)?"

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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 has 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.

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 v. M/s. South Indian Bank (supra), to which we subscribe:-

> *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.

13. The argument of Mr.Sreelal Warrier disjuncts allied services provided by the assessee under one umbrella and expands the meaning of 'extending' as including activities related to acceptance of deposits and consequential assurance or services provided by the bank. Such construction not only cause violence to the clear expression but would act contrary to the intended expressions in Section 66D.

14. It can be construed from a plain reading of section 66D that the negative list is compiled of the services stated therein and is relied on to bring the assessee within the negative list is clause-(n) i.e. services by way of extending deposits, loans, advances etc. in so far as the consideration is represented by way of interest or discount. The expression used in clause-(n) begins with the words 'extending deposits, loans or advances', and such activity is represented by way of interest or deposit of money. The determining word in the clause is 'extending deposits, loans or advances etc.' `Extending deposits' literally understood is the deposits, loans etc. extended by the assessee. The acceptance of deposits is a pure and simple money transaction. But the realm in which the controversy operates is after receiving the deposits from public, the assessee is under statutory obligation to insure the deposits received for conducting the bank business and extends under law services on which service tax is paid. The services provided by the assessee are not falling within the negative list. Therefore, there is relatability on a hostile consideration of business in banking between the services availed and services rendered. The suggestion of revenue would compartmentalise the activities in an odd way only to deny the claim of CENVAT credit and we are not persuaded, firstly, by the argument now canvassed before us and secondly, upon taking note of are the applicable sections in this behalf. The payment of premium on insurance together with service tax for valid and correct reasons has been held by the larger bench as follows:

> *"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".*

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."

9. In view of the foregoing discussion and on the basis of the order passed by the Larger Bench of the Tribunal in the case of *South Indian Bank* (supra), and judgements delivered by the Hon'ble High Court of Bombay in the cases of *Yes Bank Ltd.,* and *Indusind Bank Ltd.,* (supra), denial of insurance premium paid by the appellants to DI&CGC as 'input service' and denial of service tax paid thereon as CENVAT credit for providing taxable output service does not stand the legal scrutiny. Therefore, the confirmation of CENVAT credit demand along with interest and imposition of penalty on the appellants, in impugned order dated 30.09.2016, are not legally sustainable and thus it is liable to be set aside.

10. In the result, the impugned order dated 30.09.2016 passed by the learned Commissioner of Central Excise & Service Tax, LTU, Mumbai are set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Operative portion of the Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM