IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WA.No. 1472 of 2012 () IN WP(C).19981/2009

AGAINST THE JUDGMENT IN WP(C) 19981/2009 of HIGH COURT OF KERALA
DATED 21.5.2012

APPELLANT(S)/RESPONDENTS IN WPC:
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1. UNION OF INDIA,
   REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE
   DEPARTMENT OF REVENUE, GOVERNEMENT OF INDIA
   NORTH BLOCK, NEW DELHI

2. THE SUPERINTENDENT OF CENTRAL EXCISE,
   SERVICE TAX RANGE GORUP C. O/O THE SUPERINTENDENT OF CENTRAL
   EXCISE , III FLOOR, ICE BHAVAN, PRESS CLUB ROAD
   THIRUVANANTHAPURAM

3. ASSISTANT COMMISSIONER OF CENTRAL EXCISE,
   SERVICE TAX DIVISION, O/O THE ASST. COMMISSIONER OF
   CENTRAL EXCISE, III FLOOR
   ICE BHAVAN, PRESS CLUB ROAD, THIRUVANANTHAPURAM

   BY ADV. SRI.TOJAN J.VATHIKULAM,SC,C.B. EXCISE

RESPONDENT(S)/PETITIONER IN WPC:

KERALA STATE INSURANCE DEPARTMENT,
HOUSING BOARD BUILDING, THIRUVANANTHAPURAM 695001
REPRESENTED BY THE ASSISTANT DIRECTOR

R BYSPL GOVT PLEADER SRI.SEBASTIAN CHAMPAPPALLY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-06-2015, ALONG WITH WA. 1527/2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.1472 & 1527 of 2012

Dated this the 9th day of June, 2015

JUDGMENT

Antony Dominic, J.

1. These appeals arise from the common judgment of the learned single Judge in W.P(C).Nos.15892/08 and 19981/09. Both these writ petitions were filed by the Kerala State Insurance Department and the issue raised was, whether the State Insurance Department established for providing life insurance coverage to the employees of the State Government in pursuance of Rules 22A and 22B of Part I KSR and also for providing general insurance coverage for the assets of the government/Governmental institutions was liable to pay service tax treating such insurance as taxable service as defined in the Finance Act, 1994. By the judgment under appeal, learned single Judge held that the life insurance provided pursuant to Rules 22A and 22B of Part I KSR is not exigible for service tax. It is this judgment which is under challenge before us.

2.We heard learned standing counsel for the appellants and the learned special Government Pleader appearing for the respondent.

3.The short issue raised for consideration is whether the conclusion of the learned single Judge that the life insurance provided in pursuance of Rules 22A and 22B of Part I KSR is outside the purview of service tax under the Finance Act, 1994 is legally tenable or not.

4.Rule 22A of Part I KSR provides that any person who enters Government service on or after 19th August, 1976 and has not crossed the age of 50 years shall, within a period of one year from the date of such entry in service, subscribe to a policy in the official branch of the State Life Insurance at such rate as may be determined by the Government from time to time and shall continue to subscribe till he ceases to be in Government service. The period of one year has not been reduced to one month by G.O(P). 229/12/Fin dated 19.4.2012. Rule 22B also provides that such employee shall enrol as a member of General Insurance Scheme. Though, at the relevant point of time, taxable service included insurance service as well, the Central Board of Customs and Excise issued circular No.89/7/2006-Service Tax dated 18.12.2006 and the relevant part of this circular reads thus:

> "A number of sovereign/public authorities (i.e. an agency constituted/set up by government) Perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury. A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute

can be considered as 'provision of service' for the purpose of levy of service tax.

2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/ public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for preforming such activities is in the nature of compulsory levy as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

5.Reading of the above circular shows that it has been clarified by the CBDT that activities performed by sovereign/ public authorities under the provisions of law are in the nature of statutory obligations which are fulfilled in accordance with law, as the functions, according to the Board, are mandatory and statutory functions and are not in the nature of service to any particular individual for any consideration. On this basis, it is clarified that such activities performed under the provisions of law do not constitute taxable service and that no service tax is leviable on such activities.

6.As we have already seen, the respondent department is providing personal insurance and group insurance in pursuance of the statutory mandate as contained in Rules 22A and 22B of Part I KSR. In other words, the insurance provided is a mandatory statutory function discharged by a State Government Department. Such an activity is not a taxable service for the purpose of service tax in the light of the circular issued by the Central Board of Customs and Excise referred to above. This, therefore, means that the view taken by the learned single Judge does not merit interference.

Appeals fail. They are accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.

True copy/

PS to Judge