IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.148 OF 2019
WITH
CENTRAL EXCISE APPEAL NO.149 OF 2019

Bank of Maharashtra … Appellant
Vs.
Commissioner, CGST & CX, Pune-II … Respondent

WITH
CENTRAL EXCISE APPEAL NO.151 OF 2019

Bank of Baroda (formerly known as Dena Bank) … Appellant
Vs.
Commissioner of Service Tax-I, Mumbai … Respondent

WITH
CENTRAL EXCISE APPEAL NO.155 OF 2019

Bank of Baroda … Appellant
Vs.
Commissioner of Service Tax-IV … Respondent

WITH
CENTRAL EXCISE APPEAL NO.156 OF 2019

Bank of Maharashtra … Appellant
Vs.
Commissioner of Service Tax … Respondent

WITH
CENTRAL EXCISE APPEAL NO.159 OF 2019

Bank of Baroda … Appellant
Vs.
Commissioner Service Tax-I, Mumbai … Respondent

WITH
CENTRAL EXCISE APPEAL NO.160 OF 2019

Union Bank of India … Appellant
Vs.
Commissioner of Central Excise … Respondent

WITH
CENTRAL EXCISE APPEAL NO.167 OF 2019

Bank of India … Appellant
Vs.
Commissioner Service Tax-IV, Mumbai … Respondent

WITH
CENTRAL EXCISE APPEAL NO.143 OF 2019

State Bank of India … Appellant
Vs.
Commissioner Service Tax-I, Mumbai … Respondent

Mr. Prakash Shah a/w. Mr. Prasad Paranjape i/b. PDS Legal for Appellant in CEXA Nos.148 of 2019, 149 of 2019, 151 of 2019, 155 of 2019, 156 of 2019, 159 of 2019 and 160 of 2019.
Mr. Bharat R. Raichandani i/b. UBR Legal for Appellant in CEXA Nos.167 of 2019 and 143 of 2019.
Mr. Karan Adik a/w. Smt. Maya Majumdar for Respondent in CEXA Nos.148 of 2019, 149 of 2019 and 156 of 2019.
Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. J. B. Mishra for Respondent in CEXA Nos.151 of 2019, 159 of 2019, 160 of 2019, 167 of 2019 and 143 of 2019.

CORAM : UJJAL BHUYAN &
ABHAY AHUJA, J.
DATE : SEPTEMBER 22, 2020

P.C. :

This order will dispose off all the appeals.

2. The appeals have been preferred by the respective banks under section 35-G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 assailing the legality and validity of the order dated 12.02.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (CESTAT).

3. Be it stated that the issue involved in the appeals before the CESTAT was whether the appellants i.e., the banks were eligible to avail CENVAT credit for the amount of service tax paid to Deposit Insurance and Credit Guarantee Corporation for insuring the deposits of the customers involving the period after 01.04.2012.

4. By the impugned order CESTAT came to the conclusion that the insurance premium paid on deposits to Deposit Insurance and Credit Guarantee Corporation is not an input service; consequently the service

tax paid on such insurance premium cannot be available as credit to the appellant during a particular month.

5. Accordingly, the issue was decided by holding that CENVAT credit for the service tax paid on insurance premium is not admissible.

6. In the appeal filed by State Bank of India i.e., Central Excise Appeal No.143 of 2019, this Court had passed the following order on 29.08.2019:-

> "1. This appeal under Section 35G of the Central Excise Act read with Section 83 of the Finance Act, 1994 challenges the order dated 12th February, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal).
>
> 2. The appellant urges the following re-framed substantial questions of law for our consideration :-
>
>> (a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the appellant is not entitled to avail of Cenvat credit of service tax paid on the insurance premium to ensure the deposits of its constituents with it to the different Insurance and Guarantee Corporation ?
>> (b) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have referred the issue to a larger bench as there were contrary decisions of the co-ordinate benches of the Tribunal in favour of the appellant in the case of DCB Bank Ltd. Vs. Commissioner of Service Tax-I, Mumbai (2017) 6 GSTL 479 and Punjab National Bank Vs. Commissioner of Central Excise & Service Tax, 2018 TIOL 1395 ?
>
> 3. Mr. Raichandani, learned Counsel appearing in support of the appeal states that the issue raised herein viz. entitlement to avail of Cenvat credit of service tax paid on the insurance premium to insure the deposits of its constituents is covered in its favour by decision in DCB Bank Ltd. (supra) and Punjab National Bank (supra) of the Tribunal. The grievance of the appellant herein is that instead of taking a view that is contrary to the co-ordinate bench decisions in cases DCB Bank Ltd. (supra) and Punjab National Bank (supra) the Tribunal should have referred the issue to a larger bench. It is pointed out that in subsequent matters, the Tribunal has referred this very issue to the larger bench in State Bank of Patiala Vs. Commissioner of

Central Excise and Service Tax, Chandigarh-II (2019) VIL 426 and Latur District Central Co-operative Bank Ltd. Vs. Commissioner of Central Excise and Service Tax (Service Tax Appeal No. 8422 of 2018).

4. In the above view, it is submitted that the impugned order be set aside and the appeal of the appellant before the Tribunal be listed along with the other matters referred to the larger bench for fresh decision on merits.

5. Mr. Jetly, learned Counsel appearing for the Revenue submits that the impugned order dated 12th February, 2019 of the Tribunal has been challenged by the Revenue to the extent it has not imposed any penalty upon the appellant. Mr. Jelty, states that the appeal has been filed and the objections of the Registry are to be removed. Mr. Jetly, further undertakes to remove the objections within one week, so the Revenue's appeal as well as the appellants appeal could be heard together. This appeal along with the Revenue's appeal, particulars of which would be given by Mr. Jetly to the Court Associate, be listed on 13th September, 2019.

6. Parties are put to notice that this appeal itself may be disposed of finally at the stage of admission on the next date.

7. Stand over to 13th September, 2019."

7. Subsequently in the other appeals, this Court had passed the following order on 25.09.2019:-

" These Appeals by the Revenue and the Assessee challenge a common order dated 12th February, 2019 passed by the Customs, Excise and Service Tax Appellate Tribunal (the Tribunal). The learned Counsel appearing for the parties state that the issue arising herein namely – *whether the Assessee are entitled to avail a CENVAT Credit in respect of service tax paid on premium paid to insure the deposits of its constituents by the banks?*

2. We are informed by the learned Counsel appearing for the parties that this very issue has been referred to the larger bench of the Tribunal in the case of State Bank of Patiala v/s. Commissioner of Central Excise and Service Tax, Chandigarh [2019] VIL 426 and Latur District Central Co-operative Bank Ltd., v/s. Commissioner of Central Excise and Service Tax (Service Tax Appeal No. 8422 of 2018).

3. In the above view, at the request of the parties, these appeals are adjourned by a period of 12 weeks, to enable the Advocates to place the decision of larger bench before us for

perusal.

> 4. Mr. Jetly, learned Counsel appearing on behalf of the Revenue states that the Revenue would make an appropriate application to the Tribunal for early hearing of the Reference made to the larger bench in the above two cases. The assessee before us are free to join the Revenue in such an application before the Tribunal. This adjournment is granted so as to enable the parties to place on record the view of the larger bench on the issue arising in the present Appeals.
>
> Stand over to 18^{th} December, 2019."

8. Today the appeals have been taken up for consideration on praecipe being filed by learned counsel for the appellants. It is submitted that the larger Bench of CESTAT has answered the above issue in favour of the appellants i.e., the banks and therefore, the appeals may be allowed by setting aside the impugned order.

9. While acknowledging that larger Bench of CESTAT has answered the issue in favour of the appellant banks, Mr. Jetly submits that the matters would now have to go back to the CESTAT for taking decisions in the individual appeals in conformity with the decision rendered by the larger bench.

10. Submissions made have been considered.

11. We find that a three-member bench of CESTAT, Bangalore had delivered judgment on 20.03.2020. As already noticed above, the service provided by the Deposit Insurance and Credit Guarantee Corporation to the banks for insuring the deposits of the public with the banks has been considered by the banks to be an input service and CENVAT credit for service tax paid by the banks for this service has been availed of by the banks for rendering output service. The issue involved is whether the banks can avail credit of this service tax paid by the banks for the service provided by the Deposit Insurance Corporation.

11.1. It was noted that Division Bench of CESTAT at Delhi in the appeal filed by *State Bank of Bikaner and Jaipur* had held that the banks can avail such credit of service tax.

11.2. On the other hand, it was noted that CESTAT at Mumbai in *ICICI Bank Limited* had disallowed such credit.

11.3. Since divergent views were expressed by division benches of CESTAT, the matter was referred to the larger bench.

11.4. By the judgment and order dated 20.03.2020, the larger bench held that view taken in *State Bank of Bikaner and Jaipur* is the correct view and the contrary view taken in *ICICI Bank Limited* is not acceptable. The reference has accordingly been 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'."

12. In view of the decision rendered by the larger Bench of CESTAT, the impugned order dated 12.02.2019 cannot be sustained and the same is accordingly set aside and quashed. All the appeals are remanded back to the CESTAT for fresh decision in conformity with the decision rendered by the larger bench.

13. Appeals are accordingly allowed. However, there shall be no order as to costs.

14. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(ABHAY AHUJA, J.) **(UJJAL BHUYAN, J.)**