IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 37 OF 2021

The Commissioner of Central Tax &
Central Excise, Mumbai South
Commissionerate ...Appellant
Versus
LIC Housing Finance Limited ...Respondent

WITH
CENTRAL EXCISE APPEAL NO. 3 OF 2021

LIC Housing Finance Limited ...Appellant
Versus
The Commissioner of CGST &
Central Excise, Mumbai South ...Respondent

WITH
CENTRAL EXCISE APPEAL NO. 2 OF 2021

LIC Housing Finance Limited ...Appellant
Versus
The Commissioner of CGST &
Central Excise, Mumbai South ...Respondent

WITH
CENTRAL EXCISE APPEAL NO. 8 OF 2021

LIC Housing Finance Limited ...Appellant
Versus
The Commissioner of CGST &
Central Excise, Mumbai South ...Respondent

WITH
CENTRAL EXCISE APPEAL NO. 7 OF 2021

LIC Housing Finance Limited ...Appellant
Versus
The Commissioner of CGST &
Central Excise, Mumbai South ...Respondent

WITH
CENTRAL EXCISE APPEAL NO. 38 OF 2021

The Commissioner of Central Tax
& Central Excise ...Appellant
Versus
LIC Housing Finance Limited ...Respondent

....

Mr. Jitendra B. Mishra for the Appellant in CEXA No.37 of 2021 & CEXA No.38 of 2021.

Mr. Jitendra B. Mishra for the Respondent in CEXA No.3 of 2021 & CEXA No.8 of 2021.

Mr. Sriram Sridharan for Appellant in CEXA No. 3 of 2021, CEXA No. 2 of 2021, CEXA No.8 of 2021 & CEXA No.7 of 2021.

Mr. Sriram Sridharan for Respondent in CEXA No.37 of 2021 & CEXA No.38 of 2021.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 22 JUNE, 2023

P.C.

1. This is a batch of appeals arise from a common order dated 21 August 2019 passed by the Customs Excise & Service Tax Appellate Tribunal (for short **"CESTAT"**), whereby the LIC Housing Finance Ltd's (for short **"the assessee"**) appeal is allowed to the extent of setting aside the penalties imposed under Sections 76, 77 and 78 of the Finance Act, 1994 and the impugned orders to the extent of confirming the demand of Service Tax and interest were upheld. Appeal (St.) No.87781 of 2013 and Appeal (St.) No.87431 of 2013 filed by the assessee were dismissed.

2. Insofar as the department's appeal's were concerned, to the extent of seeking to impose penalties on the assessee and to the extent of upholding that prepayment charges were subjected to

levy of Service Tax and appropriate the amounts paid by the assessee towards the demand of Service Tax made, came to be dismissed.

3. Learned counsel for the assessee has placed on record revised substantial questions of law. We propose to dispose of the present appeals on the following substantial question of law:

> "(ii) Whether, in the facts and circumstances of the present matter, the impugned Order is liable to be set aside and the captioned Appeal is liable to remanded back to the Tribunal for reconsideration on account of the fact that the decision of Housing & Development Corporation Ltd. v. Commissioner (2012 (26) S.T.R. 531 (Tri. - Ahmd.) (which was followed by the Tribunal in the impugned Order) has been subsequently overruled by the Larger Bench of the Tribunal in Commissioner of Service Tax, Chennai v. Repco Home Finance Ltd. (2020 (42) G.S.T.L. 104 (Tri. - LB))"

4. We have heard learned counsel for the parties. We have also perused the impugned orders as also the record.

5. Mr. Sridharan, learned counsel for the assessee has brought to our notice an order passed by the CESTAT in the case of *Small Industries Development Bank of India V. Commissioner Of Service Tax, Ahmedabad*[1], whereby the issue in regard to whether foreclosure charges collected by the Banks and Non-banking Financial Companies on premature termination of loans attract a levy of Service Tax under the heading "Banking and other

1 *2015 (38) STR 666*

financial services" as defined under Section 65(12) of the Finance Act 1994, came to be referred to the Larger Bench of the Tribunal. There were two decisions which were in favour of the assessees, firstly, in the case of *Small Industrial Development Bank of India V. CCE Chandigarh*[2], also subsequently the decision in *Magma Fincorp Limited V. CST 2016 (4) TMI 21- CESTAT Kolkata.* On the backdrop of conflicting views, the Larger Bench of the Tribunal adjudicated such issue in the case of *Commissioner of Service Tax, Chennai V. Repco Home Finance Ltd.,*[3] whereby it was held that the view taken by the Tribunal in the case of *Housing Development Corporation Ltd. (HUDCO) Vs. CST Ahmedabad*[4], was not the correct view. It was held that service tax cannot be levied on the foreclosure charges levied by the banks and non-banking financial companies on premature termination of loans under "Banking and Other Financial Services" as defined under Section 65(12) of the Finance Act and accordingly answered the question in favour of the assessees. It is on such backdrop, the proceedings are before us.

6. Having considered the decision of the Larger Bench and the

2 *2011 (23) STR 392 (Tri. Del)*

3 *2020 (42) GSTL 104 (Tri. LB)*

4 *(2012 (26) S.T.R. 531 (Tri. - Ahmd.)*

questions which otherwise would have fell for our consideration in relation to both what has been held in the impugned order in favour of the revenue and against the assessee, and also in regard to the orders on penalty, on which the revenue is aggrieved, in our opinion, it is appropriate that these appeals are remanded to the Tribunal by setting aside the impugned orders subject matters of these appeals, with a direction that the Tribunal on remand reconsiders the issue in the light of the decision of the Larger Bench in the case of *Repco Home Finance Limited* (supra).

7. All contentions of the parties before the Tribunal are expressly kept open.

8. The appeals accordingly stand disposed of, in the aforesaid terms. The Tribunal is requested to hear the parties expeditiously and pass appropriate orders preferably within a period of six months from today.

9. No costs.

[JITENDRA JAIN, J.] **[G.S. KULKARNI, J.]**

corrected as per speaking to minutes order dated 05.07.2023.