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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 21 OF 2021

The Commissioner of CGST & Central Excise,
Mumbai Central Commissionerate ..Appellant
Vs.
Yes Bank Ltd. ..Respondent

AND
CENTRAL EXCISE APPEAL NO. 20 OF 2021

The Commissioner of CGST & Central Excise,
Mumbai Central Commissionerate ..Appellant
Vs.
Indusind Bank Ltd. ..Respondent

Mr. Vijay H, Kantharia a/w. Mr. Ram Ochani for the appellant.
Mr. Prasad Paranjape a/w. Mr. Kumar Harshvardhan i/b. Lumiere Law Partners for the respondents.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : SEPTEMBER 12, 2023.

P.C.:

1. Both the appeals are filed by the revenue against the respondents which are engaged in the banking business. Central Excise Appeal No. 21 of 2021 is filed against the respondent-Yes Bank Ltd. against an order dated 15 September, 2020 passed by the Central Excise & Service Tax Appellate Tribunal (CESTAT) whereas the companion appeal filed against Indusind Bank Ltd., the impugned order is 29 September, 2020.

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.

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 vs. 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?
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> (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?
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> (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?
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> (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)?"

5. Mr. Kantharia, learned counsel for the appellant/revenue has limited submissions. The primary contention as raised by Mr. Kantharia is that the CESTAT, Mumbai ought not to have followed the Larger Bench decision in allowing the appeals of the respondents. It is also his contention that the amounts which were paid by way of premium by the respondents to the DICGC could not have been taken into account for input services. Drawing our attention to the questions of law and the grounds as raised in the appeals, Mr. Kantharia would submit that the questions as raised should be decided by this Court.

6. On the other hand, Mr. Paranjape, learned counsel for the respondent/revenue would submit that the impugned orders would not require any interference. He has taken us through the orders passed by the

Larger Bench of the CESTAT to submit that the respondents were entitled to reckon the service tax which were paid on insurance premium to DICGC. He submits that the Larger Bench has taken into consideration that the requirement to make payment of such premium was a mandatory requirement under the Deposit Insurance and Credit Guarantee Corporation Act, 1961, hence in respect of all the deposits, which is the only subject matter of the present proceedings, the respondents were entitled to take the benefit of the service tax paid to avail the input tax credit.

7. It is also Mr. Paranjape's submission that the Division Bench of Kerala High Court in the case of *The Principal Commissioner of Central Tax/Central Excise vs. M/s. South Indian Bank* had an occasion to consider as to whether the Larger Bench of the CESTAT has correctly interpreted the position in law when it comes to the bank availing of the input tax credit in respect of insurance premium paid to DICGC.

8. It is submitted that the decision as rendered by the Division Bench of Kerala High Court has considered the decision of the Larger Bench on all the issues and 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. The Division Bench observed that it was in agreement with the view of the Larger Bench in all fours. Mr. Paranjape has taken us to the decision of the Kerala High Court.

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 vs. 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.
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> 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.
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> 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:
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>> "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.

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