

(2016) 12 KL CK 0059
In the High Court Of Kerala
Case No : WP(C).No. 15949 of 2016

Meloore Service Co-Operative Bank Limited	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Finance Act, 1994 — Section 65B(44)

Citation : (2017) 2 KLT 19

Hon'ble Judges : Mr. A.M. Shaffique, J.

Bench : Single Bench

Advocate : Sri. C.A. Jojo, Sri. Jacob Chacko and Sri. Mathews Joseph, Advocates, for the Petitioner; Sri. Sreelal Warrior, SC, Sri. Thomas Mathew Nellimoottil, SC, CB EX, Sri. P.R. Sreejith, SC, for the Respondent

Final Decision : Dismissed

Judgement

Mr. A.M. Shaffique, J.—Since a common issue arises for consideration in these writ petitions, they are heard and decided together. In all these cases, petitioners, who are Societies registered under the Co-operative Societies Act, challenge the show cause notice issued by the Commissioner of Central Excise and Customs calling upon them to show cause why service tax shall not be imposed on them along with penalty and interest.

2. To understand the facts with a little more clarity, for easy reference, I am referring to the pleadings in WP(C) No. 17108/2016. Petitioner submits that they do not come under the purview of Service Tax Rules and is classified as "Primary Agricultural Credit Society" registered as per Section 2(oaa) of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the KCS Act) and they do not belong to any of the organization mentioned in Section 65 (105)(zm) of the Finance Act, 1994 so as to attract service tax. It is stated that petitioner was forced to take service tax registration and was paying service tax from the year 2010 to 2015 from the income derived by the Bank. Later, the petitioner

understood that they do not come under the service tax net. They submitted application to surrender the registration and also sought for refund of the service tax paid by mistake. Petitioner was therefore issued with a summons to provide records and file ST return for assessing service tax. Ext.P1 is one such notice dated 2/7/2015. Petitioner appeared and filed objection. A batch of writ petitions were filed before this Court challenging the aforesaid action. Ultimately, by a common judgment dated 5/2/2013 passed in a batch of writ petitions, it was held that the respondents will be free to call upon the Society to produce documents which are required to quantify the liability. Pursuant to the same, show cause notice dated 20/10/2015 had been issued.

3. The main contention urged by the petitioner is that the issue relating to taxability has not been decided by the 3rd respondent before issuing the show cause notice. Unless it is decided that there is an obligation on the part of the Society to pay service tax, there is no necessity to answer the show cause notice. Petitioner relies upon the judgment in WP(C) No. 6393/2012 and connected cases wherein a direction had been issued by this Court directing the respondents to enquire as to whether the activity carried on by it, viz., Group Deposit and Credit Scheme, attracts the provisions of the Finance Act, 1994, to fasten the liability of service tax. It was further held that, if the said issue is ultimately decided against the Society, the respondents will be free to call upon the Society to produce the documents. It is argued that no such decision was taken in the matter and therefore the show cause notice presently issued is illegal and arbitrary and not in compliance with the directions issued and, therefore, the said notice is liable to be quashed.

4. Counter affidavit is filed on behalf of respondents 2 and 3 wherein it is stated that petitioner is engaged in activities falling under various definitions as per Section 65(105) of the Finance Act, 1994 for the period prior to 1/7/2012 and also fall under the ambit of "services" as per Section 65(b)(44) of the Finance Act, 1994 for the period after 1/7/2012. It is stated that pursuant to the directions issued by this Court in WP(C) No. 6393/2012 and connected cases, the particulars furnished by the petitioner have been scrutinized and it was found that they were providers of "service" that are taxable as envisaged under "banking and financial services", Section 65(105)(zm) and "business auxiliary services" as per Section 65(19) as they were acting as commission agent. Further, they were providers of services falling under the definition of "renting of immovable properties" as per Section 65(105)(zzzz) of the Finance Act, 1994 as amended.

5. Heard the learned counsel for the petitioners and the learned standing counsel appearing for the respondents in these cases.

6. The main contention raised by the petitioners is placing reliance upon the judgment in WP(C) No. 6393/2012 and connected cases. In that case, the issue projected was whether a particular scheme namely Group Deposit and Credit Scheme, in which the members of the Society alone are entitled to participate,

will attract the provisions of Section 65(12)(v) read with Section 65 (105)(zm) of the Finance Act, 1994. At the relevant time, only a notice had been issued to furnish copies of the profit and loss accounts, balance sheets and trial balances of the societies. It is in that background this Court observed that the writ petition is premature and if the Society contests the stand taken by the respondents, Society has to file their objection which has to be considered in accordance with the procedure prescribed. This Court did not go into the merits of the controversy. However, it was observed that "if objections are filed as above, the respondent will hear the 1st petitioner and enquire as to whether the activity carried on by it, viz., Group Deposit and Credit Scheme, attracts the provisions of the Finance Act, 1994, to fasten the liability of service tax." It is on the basis of the above observation that petitioners contend that there has to be a finding on taxability before issuing show cause notice.

7. Perusal of the show cause notice produced as Ext.P3 would show that the representative of the petitioner was also heard and statement was verified and it was found that Society was engaged in providing "banking and other financial services" as defined under Section 65(12), "business auxiliary services" as defined under Section 65 (19) and "renting of immovable property service"s as defined under Section 65(90a) of the Finance Act, 1994 as it existed prior to 1/7/2012. Further, it is indicated that w.e.f. 1/7/2012, as per Section 65B(44) of the Finance Act, 1994, "service" has the meaning of any activity carried out by a person for another for consideration and includes a declared service. Section 65B(51) defines "taxable service" as any service on which service tax is leviable under Section 66B of the Act. Thereafter, in Ext.P3, having narrated the legal aspects involved in the matter, it was observed that the considerations received by the Society are liable to be included in the assessable value. Therefore, there is a clear finding in the show cause notice itself that the service rendered by the Society is assessable to service tax. Once there is a finding in the show cause notice, it cannot be stated that the respondent erred in not considering the taxability, when it is stated that from the statutory provisions that the services rendered by the petitioner come within the purview of Service Tax Act, nothing further requires to be considered in the matter for issuing a show cause notice.

8. Learned counsel for the petitioners further relied upon a judgment of this Court in WP(C) No. 25441/2015 decided on 19/8/2015, wherein, this Court only observed that the respondent authority shall determine whether it has jurisdiction and also whether the Society would fall within the ambit of service tax. As already mentioned above, such a consideration is very much available in the show cause notice itself and therefore there was justification on the part of the respondents to issue the show cause notice.

9. Learned standing counsel while supporting the stand taken in the matter further placed reliance upon the definition of "Financial Institution" as provided under Section 65(45) of the Finance Act. The "financial institution" has the meaning assigned to it in clause (c) of Section 45-I of Reserve Bank of India Act,

1934. Section 45-I(c) of the Reserve Bank of India Act defines "financial institution" thereby meaning, any non-banking institution which carries on its business or part of its business, any of the activities mentioned therein which includes collecting for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way to persons from whom monies are collected or to any other person. "Non-banking institution" is defined under Section 45-I(e) as meaning, a Company, Corporation or a Co-operative Society. It is therefore contended that when a Co-operative Society is carrying on activity of collecting money and paying the same, in any manner, it is a financial institution and when banking and other financial services are included as taxable service, the question of taxability is very much evident from the statutory provisions, which cannot be disputed by the petitioners. It is argued that even otherwise, it is for the petitioners to object to the show cause notice and take appropriate steps in the matter. Hence, it is contended that writ petitions shall not be entertained.

10. As already indicated, WP(C) No. 6393/12 and connected cases have been dismissed as premature. The observation made by the Court that if the issue that the activity carried on by the society attracts provisions of Finance Act, 1994 to fasten the liability of service tax is decided against the Society, objection will be considered, is clearly complied with, while issuing the show cause notice. Even otherwise, when the respondents have in the show cause notice clearly indicated that they are proceeding after hearing the petitioner or their representative and after coming to a finding that the service rendered is taxable under the Service Tax Act, there is no reason for this Court to interfere in the matter at this stage of the proceedings. Hence, I do not think that any of the contentions urged warrant interference by this Court to a show cause notice issued by the respondent authorities. It shall be open for the petitioners to file appropriate objections in the matter, which shall be considered by the respondent authorities in accordance with law.

11. Writ petitions are, therefore, dismissed.