(2014) 12 KL CK 0012

In the High Court Of Kerala

Case No : W.P.(C) No. 30490 of 2014 (I)

The Kalladikkode Service Co-operative Bank Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2015) 50 GST 40 : (2015) 40 STR 240

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : O.D. Sivadas, Advocates for the Appellant; Tojan J. Vathikulam and Thomas Mathew Nellimoottil, SCs, Advocates for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioners have approached this Court with the following prayers (the prayers are more or less similar in both the writ petitions):

"i) declare that the proceedings (Exts. P2 and P4) issued by the 4th respondent is illegal, arbitrary and without jurisdiction and further declare that the co-operative societies are not liable to pay service tax.

ii) call for the records leading to Exts. P2 and P4 proceedings and quash the same by issuing a writ of certiorari.

iii) issue a writ of mandamus or other appropriate writ, order or direction restraining the 3rd respondent to consider whether the petitioner society is liable to be assessed under the provision of service tax and if a finding is rendered holding that the petitioner society is not liable to pay service tax, issue necessary proceedings to refund the service tax collected from the petitioner society.

iv) issue appropriate writ, order or direction restraining the 4th respondent in taking coercive proceedings against the petitioner''s society and further direct the authority to decide whether the petitioner society is liable to pay service tax or not and thereafter proceed further in the matter.

v) grant the petitioner such other reliefs which this Hon''ble Court deem just and fit in the circumstances of the case including the cost of this proceedings."

2. The petitioners'' establishment is a co-operative society registered under the relevant provisions of the Kerala Co-operative Societies Act. The contention of the petitioners is that none of the activities being pursued by the petitioners'' society will come within the purview of Section 65(12)(v) of the Finance Act, so as to attract payment of Service Tax. It is without any regard to the actual facts and figures and relevant provisions of law, that the petitioners are served with a show-cause notice followed by Ext. P2 notice intending to proceed with further steps to mulct liability upon the petitioners. It is stated that the petitioners have already submitted Exts. P1, P3 and P4 replies in response to the above notices. Reference is also made to Exts. P5 and P6 judgments as to the course to be pursued. As per the said verdicts, this Court directed the departmental authorities to consider the case projected by those like the petitioners herein, as to their liability to pay service tax and if the liability is upheld, to proceed with further steps for quantifying the same as well.

3. When the matter is taken up for consideration, the learned Counsel for the petitioners submits that the issue is squarely covered by the decision of this Court in W.P.(C) No. 28713 of 2014 in favour of the petitioners and seeks for similar relief in these cases as well.

4. In the above circumstance, this writ petition is disposed of in terms of the judgment in W.P.(C) 28713 of 2014. The relevant paragraphs of the said judgment are extracted below:

"3. The learned Standing Counsel for the respondents submits that, pursuant to Exts. P4 and P5 judgments, the matter was considered by the competent authority and a finding was rendered holding that the activity pursued by the said society was very much within the purview of Service Tax net and accordingly, assessment was finalised and the liability was quantified, passing appropriate orders in this regard. A copy of the order dated 18.07.2014 in ORIGINAL No. 88/2014/ST is placed for perusal of this Court.

4. The learned Counsel for the petitioner submits that whether the petitioner''s activities will come within the purview of ''TAX NET'' is a matter to be considered with reference to the bye-laws and other records maintained by the Society in relation to the activities.

5. In the said circumstance, the petitioner is relegated to pursue the matter before the third respondent/Superintendent of Central Excise in response to Exts. P1 and P3 proceedings. The third respondent/Superintendent of Central Excise/ competent authority shall consider the reply submitted by the petitioner by way of Exts. P2 and P6 and shall also hear the petitioner on the question of their liability to pay service tax; and if the liability is upheld, direction be given to the petitioner to produce further documents for quantification of the liability. The proceedings, as above, shall be finalised at the earliest, at any rate, within two

months from the date of receipt of a copy of the judgment. The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the competent authority for further steps. All contentions are left open."

5. In view of the submission made by the learned Counsel for the petitioners that, service tax in respect of the period October 2007 to June 2012 has already been satisfied under protest, but adjudication is still to be finalised, it is made clear that, in the course of such adjudication exercise, if the authority arrives at a finding that the petitioners are not liable to satisfy service tax, the amount already satisfied by the petitioners shall be refunded at the earliest, at any rate, within one month thereafter.

The writ petitions are disposed of.

