CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL, BANGALORE
REGIONAL BENCH - COURT NO. 1
LARGER BENCH

Service Tax Appeal No. 20747 of 2015

(Arising out of Order-in-Original No. CAL-EXCUS-000-COM-0022-14-15 dated 31/12/2014 passed by the Commissioner of Central Excise, Customs & Service Tax, Calicut)

M/s. South Indian Bank **....Appellant**
South Indian Bank House
T.B. Road, Mission Quarters
Thrissur - 680 001

VERSUS

The Commissioner of Customs, Central Excise and Service Tax-Calicut **....Respondent**
Central Revenue Building,
Mananchira,
Kozhikode,
Calicut - 673 001
Kerala

Appearance

Present for the Appellant : Shri G. Shivadass, Sr. Advocate,
Ms. Sandhya Sarvode and
Ms. M V Rohan Karia, Advocates

Present for the Respondent: Shri P R V Ramanan, Special Counsel (AR)

With

(2) STA No. 21027 of 2015 with ST Cross Appeal No. 20845 of 2015
(3) STA No. 21342 of 2016 with ST Cross Appeal No. 20884 of 2016
(4) STA No. 20548 of 2017 with ST Cross Appeal No. 20295 of 2017
(5) STA No. 22135 of 2015 (6) STA No. 22214 of 2015
(7) STA No. 20417 of 2016 (8) STA No. 20928 of 2016
(9) STA No. 21795 of 2016 (10) STA No. 20151 of 2017
(11) STA No. 20152 of 2017 (12) STA No. 20198 of 2017
(13) STA No. 20252 of 2017 (14) STA No. 20263 of 2017
(15) STA No. 20415 of 2017 (16) STA No. 20423 of 2017
(17) STA No. 20635 of 2017 (18) STA No. 21030 of 2019
(19) STA No. 21031 of 2019

Present for the Appellants:

Mr. S. Ananthan & Mrs. R Lalitha,
Mr. G Thangaraj, CA for the
Mr. Kuriyan Thomas, Advocate for the
Mr. Sanjay Khemani, CA for the

Present for the Respondents:

Mr. P R V Ramanan, Special Counsel

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 06.12.2019
Date of Decision: 20.03.2020

INTERIM ORDER NOS. 13 - 31 / 2020

JUSTICE DILIP GUPTA:

1. The service provided by the Deposit Insurance and Credit Guarantee Corporation[1] to the banks for insuring the deposits of public with the banks has been considered by the banks to be an "input service" and CENVAT credit of service tax paid by the banks for this service has been availed by the banks for rendering "output services". The issue involved in all these appeals is whether the banks can avail credit of this service tax paid by the banks for the service provided by the Deposit Insurance Corporation. This Larger Bench has been constituted as divergent views have been expressed by Division Benches of the Tribunal on this issue.

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1. the Deposit Insurance Corporation

2. The appeals were listed for final hearing before a Division Bench on 8 October, 2018 and order was reserved. On an identical issue of eligibility of credit of service tax availed on the insurance service received by the banks from the Deposit Insurance Corporation, a Division Bench of the Tribunal at Delhi in **State Bank of Bikaner and Jaipur vs. Commissioner of Central Excise and Service Tax, Jaipur-I**[2] held on 11 January, 2019 that the banks can avail such credit of service tax in view of the decisions earlier rendered by the Tribunal in **DCB Bank Limited vs. Commissioner of Service Tax, Mumbai**[3] and **Punjab National Bank vs. Commissioner of Central Excise and Service Tax, Bhopal**[4] that held that the banks can avail credit of service tax.

3. However, a Division Bench of the Tribunal at Mumbai in **ICICI Bank Limited vs. Commissioner of Service Tax**[5], on an identical issue, disallowed the aforesaid credit by order dated 12 February, 2019. It appears that the decision of the Division Bench of the Tribunal at Delhi rendered on 11 January, 2019 in **State Bank of Bikaner** was not brought to the notice of the Division Bench of the Tribunal at Mumbai.

4. An application containing a prayer that the appeals may be re-listed for hearing in view of the conflicting decisions of the Tribunal at Delhi and Mumbai was, therefore, filed in the present appeals in which the order was reserved on 08 October, 2018.

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2. 2019-TIOL-558-CESTAT-DEL
3. 2017-TIOL-2849-CESTAT-MUM
4. 2018-TIOL-1395-CESTAT-DEL
5. 2019-VIL-108-CESTAT-MUM-ST

5. In the meantime, a Division Bench of the Tribunal at Chandigarh in **State Bank of Patiala vs. Commissioner of Central Excise and Service Tax, Chandigarh-II**[6] noticed the contrary views taken by the Division Benches of the Tribunal at Delhi and Mumbai and by order dated 23 May, 2019 considered it appropriate to place the matter before a Larger Bench of the Tribunal to decide the issue.

6. The present appeals were thereafter listed before the Division Bench of the Tribunal on 26 July, 2019. In view of the conflicting decisions of the Division Benches of the Tribunal at Delhi and Mumbai, the Bench ordered that the issue as to whether the Appellants would be entitled to avail CENVAT credit of service tax should be decided by a Larger Bench of the Tribunal.

7. To appreciate the issue involved in the Appeals and the contentions that have been advanced by the learned Counsel for the Appellants and the learned Authorised Representative of the Department, it would be necessary to state the relevant facts.

8. The Appellants herein are banking companies as defined under section 5(c) of the Banking Regulation Act, 1949[7]. The Deposit Insurance Corporation is a subsidiary of the Reserve Bank of India and has been established under the Deposit Insurance and Credit Guarantee Corporation Act, 1961[8] for the purpose of insuring deposits and guarantee credit facilities. The Deposit Insurance Corporation transacts business of insuring the "deposits"

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6. 2019-VIL-426-CESTAT-CHD-ST
7. the Banking Act
8. the Deposit Insurance Act.

accepted by the banks. It has to register every existing "banking company" as also a "new banking company" as an insured bank and the insured bank has to pay a premium to the Deposit Insurance Corporation at the rate notified by the Deposit Insurance Corporation. In the event of banking failure/winding up/ liquidation of a bank, the Deposit Insurance Corporation protects the deposits of the customers up to a maximum of Rs. 1 lakh per depositor. The banks pay service tax on this premium paid to the Deposit Insurance Corporation and avail CENVAT credit of such service tax for the "output services", which the banks provide in relation to "banking and other financial services" as defined under section 65 of the Finance Act, 1994[9] by treating the service rendered by the Deposit Insurance Corporation as "input service". These services provided by the banks in relation to 'banking and other financial services' are leviable to service tax as the banks do not receive consideration for the same in the form of interest. In terms of rule 6(3B) of the CENVAT Credit Rules, 2004[10], the banks also reverse 50% of the total CENVAT credit availed on input and input services during a particular month.

9. The banks claim that they are engaged in "accepting" deposits from the public, which deposits are used for the purpose of lending or investment and though no consideration is charged for making the deposits, but the banks thereafter provide number of services like discounting of cheques, minimum balance charges,

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9. the Finance Act.
10. the 2004 Rules

handling charges for gold loans, locker rent and similar services, which are in relation to "banking and other financial services" and are chargeable to service tax as consideration for providing such services are not received in the form of interest. The list of services on which the banks have to pay service tax under "banking and other financial services", can be bifurcated into two categories. The first category consists of services which have a direct nexus with the activity of "accepting" deposits, while the second category consists of those services which have a direct nexus with the "lending" activity of the banks. The services under the aforesaid two categories have been stated by the banks to be as follows:

(i) **Direct nexus with the activity of accepting deposits.**

- Charges towards issuance of Cheque book;
- Charges to maintain minimum balance;
- Debit Card charges;
- Duplicate Pass Book/ Bank Statement charges.
- Stop payment charges
- Cheque return charges
- Demand Draft charges
- Charges for providing bank guarantee
- Safe deposit locker facilities; etc

(ii) **Direct nexus with the lending activity.**

- Processing fee towards obtaining necessary sanctions/approvals for lending money to customers;
- Documentation charges towards completing loan sanction with respect to preparing, printing and executing the various documents required post appropriate sanctions/ approvals being taken.
- Inspection charges towards compensation for the time spent in visiting and inspecting the factory/godown/other assets of the borrowers.

10. The banks claim that they have availed credit of service tax paid on "input services" such as core banking software, renting of premises of the bank, maintenance of ATMs by agencies, on which credits no dispute has been raised by the Revenue. The dispute that has been raised by the Revenue is with regard to the service provided by Deposit Insurance Corporation to the banks for insuring the deposits, which service is not considered by the Revenue as an "input service" for the reason that the activity of "accepting deposits" is not a service defined under the Finance Act and so the deposit insurance service received in relation to "accepting" of deposits would not be an "input service" under rule 2(l) of the 2004 Rules. It is for this reason that show cause notices were issued to the banks for recovery of the CENVAT credit availed by the banks on the service tax paid on insurance service received by the banks by invoking the provisions of rule 14 of the 2004 Rules.

11. A reply was submitted by the banks to the show cause notices. It was pointed out that the banks are engaged in "accepting" deposits and not "extending" the deposits and so section 66D(n) of the Finance Act would not be applicable. It was also pointed out that though no consideration was charged by the banks for "accepting" the deposits, but thereafter charges for various services rendered by the banks are recovered from the depositors, for which service tax is paid by the banks. The banks also highlighted that the payment of insurance premium would fall under the main part of the definition of "input service" since any default in making payment of this insurance premium may result in

cancellation of the registration of the banks with the Deposit Insurance Corporation which could also ultimately lead to the cancellation of the licence of the banks by the Reserve Bank of India. The banks, therefore, claimed that they were justified in availing the credit of such service tax for providing "banking and other financial services" as "output services".

12. The contention of the banks in reply to the show cause notices was not accepted by the Adjudicating Officers and the demands have been confirmed. It has been found that "accepting" of deposits by the banks is not a service defined under the Finance Act and in fact is covered under the negative list of services under section 66 D(n) of the Finance Act. Thus, the "banking and other financial services" provided by the banks could not be considered as "output service" and in turn the insurance services received by the banks in relation to "accepting" of deposits would not be "input service". Insurance on deposits, it has been noted, is taken by the banks for the purpose of securing the deposits of the public and the insurance premium does not protect the actions taken consequent to the deployment of the funds mobilised by the banks through deposits. Thus, the insurance premium is linked only to the deposits accepted by the banks and has no nexus with any output service. Therefore, even if the said service is received by the banks from the Deposit Insurance Corporation to fulfil a statutory requirement, such service would not qualify as an "input service", unless the service rendered utilising such input service falls under the scope of "output service". The deposit

of insurance premium could be said to be an activity relating to the business of the banks, but the "activities relating to business" of the banks have been deleted by Notification dated 1 March, 2011.

13. It would also be pertinent to refer to the reasons given in the orders passed by the Adjudicating Authority while confirming the demands made in the show cause notices. One such order was passed on 31 December, 2014 by the Commissioner of Central Excise, Customs and Service Tax, Calicut Commissionerate[11] in Service Tax Appeal No. 20747 of 2015 filed by **South Indian Bank.** The relevant portion of the order is as follows:

> "41.1..... Hence the contention of M/s South Indian Bank that taking deposits is not a transaction in money would not stand scrutiny. Similarly their other contention that the scope of clause (1) of Section 66D(n) of FA 1994 is limited to the activity of extending deposits is not legally tenable as a plain reading of the entire section makes it evident that services involving receiving deposits in return of consideration of providing interest would fall within the purview of the said Section, thus excluding the said activity from levy of service tax. **Based on the above, I conclude that the activity of receiving/collecting deposits, for which consideration is paid to depositor by way of interest, is covered under Sec. 66D(n) of the FA 1994.**
>
> 41.2 **It is not in dispute that a service falling under the realm of Section 66D of Finance Act, 1994, stands excluded from the scope of output services as defined in Rule 2(1) (p) of Cenvat Credit Rules, 2004, and is thus not eligible for availing credit on input services. In the present case since the activity of receiving deposits is specifically covered in Section 66D(n) of FA 1994, services provided by the bank in this regard would not be an output service for the purpose of CENVAT Credit Rules, 2004.**

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11. the Commissioner

41.3 M/s South Indian Bank has contended that since registration for DICGC has a sine qua non for taking deposit it automatically follows that insurance services received would be an input service for the output services performed utilizing and deploying the deposits, so insured. As stated earlier, Government had made it mandatory for all financial institutions and banks, receiving deposits to insure deposits upto Rs. 100,000/- with DICGC. This has been done to secure the deposits of the small depositors and to protect them from any financial loss on account of any damage to the health of the financial institutions. **Thus, the insurance is taken specifically for the purpose of securing the deposits. The insurance premium does not seek to protect, in any manner, the actions taken consequent to the deployment of funds mobilized through deposits**. **M/s South Indian Bank themselves admit that incomes are generated by deploying of deposits, and it is evident that insurance cover does not extend to the said deployment of deposits. Thus the service provided by DICGC would not qualify as a direct input service for the output services performed by a bank on which service tax is paid.** Hence the contention in the show cause notice that this falls outside the ambit of the main part of the definition of input services is valid and tenable.

41.4 **The argument of M/s South Indian Bank that without receiving deposits, banks cannot function and that collection of deposits is a necessary precursor for the main activities of the bank is certainly valid. However, as stated above, services offered by DICGC by way of insurance cover, is very specific to the deposit portion and would not cover other services offered by the bank and thus would fall outside the ambit of the main portion of the definition**. The definition for input services as given in Rule 2(1)(l) of CENVAT Credit Rules, 2004 carry a main clause, the inclusive portion and certain exclusions. The claim of M/s South Indian Bank that services received from DICGC does not figure in the list of exclusion given to the definition of input services is correct and as stated earlier it does not merit classification in the main clause of the said definition as well. The contention of the M/s South Indian Bank is that it would figure in the inclusive portion of the definition is examined now:-

.....

The services received by M/s South Indian Bank from DICGC would not fall within the category of any other services listed in the inclusive portion of definition of input services. Further, after removal of clause "activities relating to

> **business" from inclusive portion, the scope of this portion has narrowed considerably. One can accept the contention of the bank that registration with DICGC and payment of premium on deposit upto Rs. 100,000/- is an activity that is linked to the services provided using deposits collected but in the absence of any provisions allowing such services to the considered as input services in the inclusive portion of the definition, it would not be possible to accept the contentions of South Indian Bank in this regard that this is an input service for the output service performed.**
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> 42. Thus based on the above, I hold that M/s South Indian Bank is not eligible to avail CENVAT credit on the services received from DICGC and all the credit availed in this regard by M/s South Indian Bank merits to be reversed."
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> **(emphasis supplied)**

14. At this stage, it will be appropriate to refer to the divergent views expressed by the Division Benches of the Tribunal on the issue involved in these appeals.

15. In **State Bank of Bikaner** that was decided on 11 January, 2019, the Principal Bench of the Tribunal at Delhi held that banks would be justified in availing credit of service tax paid as such a service would be an "input service". The relevant observations are as follows:

> "**3. Ld. Counsel appearing on behalf of the appellant submits that insurance of deposits is essential for them to secure the money retain by them and also there is a statutory provisions for the same under DICGC, wherein they have to mandatorily ensure the deposits lying with them. Therefore, insurance is essential and they have paid the service tax on that insurance premium.** In the circumstances, they are liable to availed Cenvat Credit on such services. In support of their claim reliance was placed on the decision of DGB Bank Ltd. vs. CCE, Commissioner of Service Tax-I, Mumbai [2017 (6) GSTL 479(TriMum)] and Final Order No. 52877/2018 dated 9/3/18, in case of M/s Punjab National Bank vs. Commissioner of Central Excise Service Tax, Bhopal, wherein the

> Hon'ble Tribunal has held that such, activity credit of service available to the appellant.
>
> **6. We find that the issue is no more res integra, in view of the judgments of coordinate bench of this Hon'ble Tribunal on the same issue which were relied upon by the Ld. Advocate**. We also find that the Revenue has no force in their argument since no banker will prefer to take risk against the financial services provided by not taking insurance. Moreover same is mandatory in terms of DICGE. **And accordingly, they have taken the insurance cover which will definitely form the part of input service for the output service being rendered by them."**
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> **(emphasis supplied)**

16. The aforesaid Division Bench placed reliance on the decision of the Tribunal at Mumbai in **DCB Bank**. The relevant observations of the Tribunal in **DCB Bank** are as follows:

> "**Appellant says that the deposits of the banks are insured.** Its activity is to borrow money to lend. It protects interest insuring the deposits to be returned to be depositors. **Therefore, such insurance being integrally connected with the business, CENVAT credit of the service tax paid in respect of the insurance premium paid should be allowed.**
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> xxxxx xxxxxx xxxxxx
>
> 4. The contention of the appellant has force since no banker will prefer to take risks against financial services provided. There is certain amount of risk against lending which is made out of deposits received from depositors. **Therefore, taking insurance to protect interest of the bank being integrally connected with the business of banking, CENVAT credit of service tax paid claimed is allowable.** Accordingly, appeal is allowed."
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> **(emphasis supplied)**

17. The Division Bench at Delhi in **State Bank of Bikaner** also placed reliance on the decision of the Tribunal in **Punjab National Bank,** which decision had followed the earlier decision of the Tribunal in **DBC Bank.**

18. However, in **ICICI Bank**, a Division Bench of the Tribunal at Mumbai took a contrary view on 12 February, 2019. There is no reference to the decision of the Division Bench of the Tribunal in **State Bank of Bikaner,** though decisions of the Tribunal in **DCB Bank** and **Punjab National Bank** have been referred to. The observations of the Division Bench are as follows:

> 38. The contention of the Advocates for the appellants that since lending is the core banking business and without accepting the deposit, lending business by the Bank since not possible, therefore, the activity of accepting deposit be considered as provision of service for the core business of the banking. Also, the argument of the appellants is that compliance of the provisions of DICGC Act, 1961 as per the RBI guidelines is mandatory and to commence and continue the business of banking, therefore, it is an input service used for providing output service. **Both these arguments would not also hold good, firstly, in view of the above analysis that deposit by customers does not involve any service by the bank to the customer, and interest against loans or advances covered under the provisions of Section 66D of the Finance Act, 1994; secondly, this plea would have some basis under the definition of 'input service' as was in force prior to 01.4.2012, which, interalia in the inclusive portion contained the expression 'the activities relating to business".** With the deletion of the said expression, all the activities which contribute to the commencement and continuation of the banking business may not be relevant for bringing the same within the fold of definition of 'input service' post amendment era.
>
> xxxx xxxx xxxx
>
> Hence, the argument that to commence and continue the banking business, insuring the deposits of customers is mandatory, accordingly, the service tax paid on such insurance premium, become an input service, in our opinion could not be sustained under the amended definition of 'input service' brought into effect from 01.4.2012. **Besides, it is not the business of the bankers which has been insured, but the deposit of the customers, with the social objective of the Government/RBI to protect the interest of small depositors, in the event the banks undergoing liquidation, the**

> **customers will be directly paid the insured amount."**
>
> **(emphasis supplied)**

19. The contention of the banks that they can also avail CENVAT credit of the service tax paid on insurance premium under sub-rule (3B) of rule 6 of the 2004 Rules was not accepted for the following reason:

> "40.....The said sub-rule directs payment of 50% credit on the input or input services availed. In the aforesaid analysis, we come to the conclusion that the insurance premium paid on deposits to DICGC is not an input service, consequently, the service tax paid on such insurance premiums, cannot be available as credit to the appellant during a particular month. The payment of 50% credit means that it is from the admissible amount of credit on inputs or input services as defined under the cenvat credit rules, 2004."

20. The decisions of the Tribunal in **DCB Bank** and **Punjab National Bank** were held to be per incuriam as they were found to have been rendered without consideration of the relevant statutory provisions. The observation of the Division Bench on this aspect in **ICICI Bank** is as follows:

> "42. On going through the case laws cited by the appellants and the revenue, we find that the same are pertaining to the definitions as was in existence period prior to 1.4. 2011, hence could not be of much assistance and accordingly not applicable to the facts of the present case. The finding by SMC of this Tribunal in DSC Bank Ltd.'s case which was followed subsequently in Punjab National Bank's case(supra) is per incuriam in as much it has been passed without considering the relevant statutory provisions and hence cannot be considered as binding precedent."

21. Shri G. Shivadass, learned Senior Counsel appearing for the South Indian Bank has made the following submissions:

(i) The definition of "input service" in rule 2(l) of the 2004 Rules contains a main portion, an inclusive portion and an exclusive portion. Each of the aforesaid three limbs of the definition of "input service" is independent and if an assessee can satisfy the requirement of any of the above limbs, credit of "input service" has to be given, even if the assessee does not satisfy the other limbs;

(ii) The insurance service rendered by the Deposit Insurance Corporation is not only covered under the main part of the definition of "input service", but is also covered under the inclusive part of the definition and has also not been specifically excluded from the definition;

(iii) The said insurance service is covered under the main part of the definition for the reason that "acceptance of deposits" is integrally connected to the output services provided by the bank for which service tax is paid under the category of "banking and other financial services";

(iv) The payment of insurance premium to secure the deposits is a statutory obligation and the registration of the banks with the Deposit Insurance Corporation for non-compliance of this obligation can be cancelled. The Reserve Bank of India can also cancel the licence of the banks because if the registration of the banks is cancelled the banks will not be able to conduct any banking business. Thus, the availment of service from

the Deposit Insurance Corporation is not only mandatory in nature but also commercially expedient, without which service the banks cannot function at all;

(v) Section 66D (n) of the Finance Act specifies the negative list of services on which no service tax liability arises. Clause (n) covers services by way of "extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount". The term "accepting deposits" is not included under clause (n). The activity of "accepting deposits" is different from the activity of "extending deposits" as in the case of "accepting deposits", the banks have to pay interest to the customers, while in the case of "extending deposits", the banks receive interest from other banks for extending deposits to other banks;

(vi) The conclusion arrived at in the impugned order that insurance premium is payable only in relation to the deposits accepted by the bank is not correct. The assessable deposits on which the premium is calculated, not only includes deposits such as savings, fixed, current or recurring, but also certain balances appearing in the account of the bank such as credit balances in cash credit account, margin held against letters of credit, guarantees, bills purchased, drafts and payment orders not presented, provident fund balances

relating to the staff of the bank held by the bank before they are transferred to the Provident Fund Commissioner, amount representing pay orders/bankers cheques/ demand drafts issued on closing deposit account with or without reference to depositors but remaining unpaid; and

(vii) Even if it is assumed that some part of the insurance service is not used for provision of "output services", the banks are still entitled for the credit availed on insurance services as 50% of the total CENVAT credit taken is reversed in terms of rule 6(3B) of the 2004 Rules.

22. Shri S. Ananthan, Shri G Thangaraj, Shri Kuriyan Thomas and Shri Sanjay Khemani, learned Counsel appearing for the other banks have adopted the submissions made by the learned counsel for the South Indian Bank. Learned Counsel have pointed that section 66D(n) of the Finance Act is in connection with "extending deposits" and not "accepting deposits" and "banking" has been defined in section 5(b) of the Banking Regulation Act to mean the accepting, for the purpose of lending and investment, of deposits of money from the public. Learned Counsel have also submitted that the Reserve Bank of India can cancel a licence granted to a 'banking company' if the company ceases to carry on banking business. Thus, accepting of deposits is necessary for the banks to carry on their business and that "banking and other financial

services" rendered by the banks are integrally connected to "accepting of deposits". Reliance has also been placed on the decisions of the Supreme Court in **Grasim Industries Ltd. vs. Collector of Customs, Bombay**[12] and **Thakkar Shipping P Ltd. vs. Commissioner of Customs (General)**[13].

23. Shri P R V Ramanan, learned Special Counsel for the Department has, however, made the following submissions:

(i) Since no consideration is charged by the bank in relation to acceptance of deposits, it is a transaction only in money and, therefore, outside the purview of service tax under section 66D(n) of the Finance Act;

(ii) The scope of the 2004 Rules is limited to the services consumed for providing taxable services. Thus, for any service to be covered within the scope of "input service", it should be consumed or at least used for providing taxable services;

(iii) Insurance by the Deposit Insurance Corporation is aimed at protecting the interest of the depositors against the failure of the banks leading to its liquidation and does not provide any protection to the banks;

(iv) The amount deposited with the banks form a base for arriving at the premium amount. The entire premium paid is to be borne by the banks and is not passed on to the customers;

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12. 2002 (141) ELT 593 (SC)
13. 2012 (285) ELT 321 (SC)

(v) For a service to be considered as an "input service" under the main clause of the definition of "input service", it is necessary that the service should have a direct nexus with the output service; and

(vi) The services specified in the exclusive portion of the definition are not illustrative but exhaustive.

24. To appreciate the contentions advanced by the learned Counsel appearing for the Appellants as also the learned Special Counsel of the Department, it would be necessary to reproduce the relevant statutory provisions involved in the Appeals.

25. **Section 65B of the Finance Act** was inserted with effect from 1 June 2012. Sub-section (44) of section 65B defines 'service' and is as follows:

> **"Section 65B(44)** "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-
>
> (a) an activity which constitutes merely,-
> (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
> (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
> (iii) a transfer in money or actionable claim;
>
> (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
>
> (c) fees taken in any Court or tribunal established under any law for the time being in force.
>
> **Explanation 1.** – xxxxx xxxxxx xxxxxx
>
> **Explanation 2.**- For the purpose of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form,

currency or denomination for which a separate consideration is charged.

Explanation 3.- xxxxx xxxxxx xxxxxx

Explanation 4.- xxxxx xxxxxx xxxxxx

26. The negative list of services is contained in section **66D of the Finance Act** and the relevant portion is reproduced below:

> **"66D.** The negative list shall comprise of the following services, namely:-
>
> (a) xxxxxxx
> (b) xxxxxxx
> (c) xxxxxxx
> (d) xxxxxxx
> (e) xxxxxxx
> (f) xxxxxxx
> (g) xxxxxxx
> (h) xxxxxxx
> (i) xxxxxxx
> (j) xxxxxxx
> (k) xxxxxxx
> (l) xxxxxxx
> (m) xxxxxxx
> (n) services by way of
>
> (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
>
> (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;"
>
> (o) xxxxxx
> (p) xxxxxx
> (q) xxxxxx

27. **The 2004 Rules** deal with CENVAT credit. Rule 2(l) defines "input service". The said sub rule (l), as it existed prior to 1 April, 2011, is as follows:

> "**2(l) input service"** means any service,-
>
> (i) used by a provider of taxable service for providing an output service; or
> (ii) used by the manufacture, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business such as accounting, auditing, financing, recruitment and quality control, coaching and trading, computer networking, credit rating, share registry, and security, inward transport of inputs or capital goods and outward transportation upto the place of removal;"

28. With effect from 1 April, 2011, the definition of "input service' is as follows:

"**2(l) input service"** means any service.-

(i) used by a provider of output service for providing an output service; or
(ii) used by a manufacturer, whether directly of indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotions, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer network, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;
but excludes

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act(hereinafter referred as specified services) in so far as they are used for-

(a) Construction or execution of work contract of a building or a civil structure or a part thereof; or
(b) Laying of foundation or making of structures for support of capital goods,
except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by-

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or
(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

29. "Output service" is defined under rule 2(p) of the 2004 Rules. Prior to 1 July 2012, "output service" was defined as follows:

> **"2(p) "output service"** means any taxable service, excluding the taxable service referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act, provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions "provider" and "provided" shall be construed accordingly;"

30. After 1 July, 2012, "output service" is defined as follows:

> **"2(p)"output service"** means any service provided by a provider of service located in the taxable territory but shall not include a service,
> (1) specified in section 66D of the Finance Act; or
> (2) where the whole of service tax is liable to be paid by the recipient of service."

31. Rule 3 deals with CENVAT credit. It interalia provides that a provider of "output service" shall be allowed to take CENVAT credit of the service tax leviable under sections 66, 66A and 66B of the Finance Act and CENVAT credit may be utilised for payment of service tax on any output service.

32. Rule 6 of the 2004 Rules deals with the obligation of a provider of output service. Rule 6(1) provides that CENVAT credit shall not be allowed on such quantity of input used for provisions of exempted services or input services used for provisions of exempted services, except in the circumstances mentioned in sub-rule (2). Sub-rule (2) provides that where a provider of output services avails CENVAT credit in respect of any input or input services and provides such output service which are chargeable to duty or tax as well as exempted services, then, the provider of output service shall maintain separate accounts enumerated therein. Sub-rule (3B) of rule 6 of the 2004 Rules, that was inserted with effect from 1 April, 2011, is as follows:

> "**Rule 6(3B)** Notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances shall pay for every month an amount equal to fifty per cent of the CENVAT credit availed on inputs and input services in that month."

33. The relevant provisions of the **Deposit Insurance Act** can now be examined;

> **Statement of Objects and Reasons.**
>
> "The question of establishing statutory Corporation for insuring deposits in commercial banks has been under consideration for some time.....
> 2. The Deposit Insurance Corporation will be established as a wholly-owned subsidiary of the Reserve Bank with a paid-up capital of a crore of rupees. It will insure all deposits in commercial banks including the State Bank and its subsidiaries,.....
> The premium rate will be determined by the Corporation from time to time with the previous approval of the Central Government. .....

3. The Corporation's liability will arise and be discharged in the event of the liquidation of a bank or the enforcement in relation to it for a scheme of compromise or arrangement or reconstruction or amalgamation. The payment due to the depositors up to the limit of the insurance cover offered by the Corporation will be made in the most convenient and expeditious manner which may be possible.

2. In this Act, unless the context otherwise requires:

(a) **"banking"** means the accepting, for the purpose of lending or investments, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.

(b) **"banking company"** means any company which transacts the business of Banking in India and includes the State Bank, and a Subsidiary bank but does not include the Tamilnadu Industrial Investment Corporation Ltd."

(g) **"deposit"** means the aggregate of the unpaid balances due to a depositor (other than a foreign Government, the Central Government, a State Government, a corresponding new bank, Regional Rural Bank or a banking company or a co-operative bank) in respect of all his accounts by whatever name called, with a corresponding new bank or with a Regional Rural Bank or with a banking company or a co-operative bank and includes credit balances in any cash credit account but does not include, xxxxx xxxx xxxx

(h) **"existing banking company"** means a banking company carrying on the business of banking at the commencement of this Act which either holds a licence at such commencement under section 22 of the Banking Regulation Act, 1949, or having applied for such licence has not been informed by notice in writing by the Reserve Bank that a licence cannot be granted to it and includes the State Bank and a subsidiary bank, but does not include a defunct banking company;

(k) **"new banking company"** means a banking company which begins to transact the business of banking after the commencement of this Act under a licence granted to it under section 22 of the Banking Regulation Act, 1949,

(l) **"premium"** means the sum payable by an insured bank under section 15 of this Act;

34. Sections 10, 11, 13, 15, 15A and 16 of the Deposit Insurance Act are also relevant and they are as follows:

"10. The Corporation shall register every existing banking company as an insured bank before the expiry of thirty days from the date of commencement of this Act.

11. The Corporation shall register every new banking company as an insured bank as soon as may be after it is granted a licence under section 22 of the Banking Regulation Act, 1949.

13. The registration of a banking company as an insured bank shall stand cancelled on the occurrence of any of the following events, namely:

(a) if it has been prohibited from receiving fresh deposits; or

(b) if it has been informed by notice in writing by the Reserve Bank that its licence has been cancelled under section 22 of the Banking Regulation Act, 1949 or that a licence under that section cannot be granted to it; or

(c) if it has been ordered to be wound up; or

(d) if it has transferred all its deposit liabilities in India to any other institution; or

(e) if it has ceased to be a banking company within the meaning, of sub section (2) of section 36A of the 'Banking Regulation Act, 1949, or has converted itself into a non-banking company; or

(f) if a liquidator has been appointed in pursuance of a resolution for the voluntary winding up of its affairs; or

(g) if in respect of it any scheme of compromise or arrangement or of reconstruction has been sanctioned by any competent authority and the said scheme does not permit the acceptance of fresh deposits; or

(h) if it has been amalgamated with any other banking institution.

15. (1) Premium- Every insured bank shall, so long as it continues to be registered, be liable to pay a premium to the Corporation on its deposits at such or rates as may, with the previous approval of the Reserve Bank, be notified by the Corporation, from time to time, to the insured bank and different rates may be notified for different categories of insured banks.

15 A. Cancellation of registration of an insured bank for non-payment of premium (1) The Corporation may cancel the registration of an insured bank if it

> fails to pay the premium for three consecutive periods:
> Provided that no such registration shall be cancelled except after giving to the concerned bank one month's notice in writing calling upon that bank to pay the amount in default.
>
> (2) The Corporation may restore the registration of a bank whose registration has been cancelled under sub-section (1), if the concerned bank requests the Corporation to restore the registration and pays all the amounts due by way of premia from the date of default till the date of payment together with interest due thereon, on the date of payment.
> Provided that the Corporation shall not restore the registration unless it is satisfied, on an inspection of the concerned bank or otherwise that it is eligible to be registered as an insure bank.
>
> **16 (1)** Where an order for the winding up or liquidation of an insured bank is made, the Corporation shall, subject to the other provisions of this Act, be liable to pay to every depositor of that bank in accordance with the provisions of section 17 an amount equal to the amount due to him in respect of his deposit in that bank at the time when such order is made:
> Provided that the liability of the Corporation in respect of an insured bank referred to in clause (a) or clause(b) of sub-section (1) of section (13) or clause (a) or clause (b) of section 13 C shall be limited to the deposits as on the date of the cancellation of the registration.
> Provided further that the total amount payable by the Corporation to any one depositor in respect of his deposit in that bank in the same capacity and in the same right shall not exceed Rs. 1,00,000/-."

35. It would also be appropriate to refer to the relevant provisions of the **Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961**[14] and they are as follows:

> "19.(1) An insured bank shall pay to the Corporation premium at the rate notified by the Corporation from time to time for each of the half-yearly periods

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14. the Deposit Insurance Regulations

> ending on the last day of March and September in every year.
> xxxxxx xxxxx xxxxxxx
>
> (2) The actual premium payable by an insured bank in respect of a half-year shall be determined on the basis of its total deposits as on the last day of the proceeding half-year.
> xxxxxx xxxxxx xxxxxxxx
>
> (3) Every insured bank shall, as soon as possible after the commencement of each calender half-year but in any even not later than the last day of the second month of that half-year, furnish to the Corporation a statement in duplicate, duly certified as correct by two officials authorised by it, in such from as may be specified by the Corporate showing the basis on which the premium payable by that bank has been calculated and the amount of premium payable by that bank to the Corporation for that half-year.
> xxxxxx xxxxxx xxxxxxx"

36. The relevant provisions of the **Banking Regulation Act, 1949**[15] also need to be referred. Sections 5(b) and 5(c) define "banking" and "banking company" respectively and they are as follows:

> **"5(b) "banking"** means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;
>
> **5(c) "banking company"** means any company which transacts the business of banking in India.

37. Section 22(1) of the Banking Regulation Act deals with licencing of banking companies and it is reproduced below:

> "**22 (1)** Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject of

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15. Banking Regulation Act

> such conditions as the Reserve Bank may think fit to impose.
>
> (2) xxxxx xxxxx xxxxx
>
> (3) xxxxx xxxxx xxxxx
>
> (4) The Reserve Bank may cancel a licence granted to a banking company under this section-
>
> (i) if the company ceases to carry on banking business in India; or
>
> (ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or
>
> (iii) if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled:
>
> Provided that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition."

38. It would thus be seen that the Deposit Insurance Corporation has been established under section 3 of the Deposit Insurance Corporation Act for the purpose of insuring deposits and other matters connected therewith or incidental thereto. Both, the "existing banking companies" and "new banking companies" have to be registered by the Deposit Insurance Corporation as insured banks. "Banking" has been defined under section 2(a) of the Deposit Insurance Act to mean accepting for the purpose of lending or investments, of deposits of money from the public and repayable on demand. A "banking company" has been defined under section 2 (b) of the Deposit Insurance Act to mean any company which transacts the business of banking in India. Section 65 (10) of the

Finance Act provides that "banking" would have the same meaning assigned to it under the said Act as is defined in clause (b) of section 5 of the Banking Regulation Act. The definition of "banking" under section 5(b) of the Banking Regulation Act is identical to the definition of banking under section 2(a) of the Deposit Insurance Act. "Deposit" has been defined under section 2(g) of the Deposit Insurance Act to mean the aggregate of the unpaid balances due to a depositor in respect of all his accounts. "Insured bank" has been defined under section 2(i) of the Deposit Insurance Act to mean a bank registered under the provisions of the Deposit Insurance Act. "Premium" has been defined under section 2(l) to mean the sum payable by an insured bank under section 15 of the Act. Section 10 of the Deposit Insurance Act requires the Deposit Insurance Corporation to register both an "existing banking company" as also "a new banking company" after it is granted a licence by the Reserve Bank of India under section 22 of the Banking Regulation Act. Section 13 of the Deposit Insurance Act provides for the circumstances under which the registration of a banking company as an insured bank shall stand cancelled. Section 15(1) of the Deposit Insurance Act requires every insured bank, so long as it continues to be registered, to pay a premium to the Deposit Insurance Corporation on its deposits at rates to be notified. Sub-section (3) of section 15 provides that if an insured bank makes any default in payment of any amount of premium, it shall, for the period of such default, be liable to pay interest to the Corporation. Section 15A(1) provides that the Deposit Insurance Corporation

may cancel the registration of an insured bank if it fails to pay the premium for three consecutive periods. Section 16 (1) of the Deposit Insurance Act provides that where an order for winding up or liquidation of an insured bank is made, the Deposit Insurance Corporation shall be liable to pay to every depositor of that bank an amount equal to the amount due to him in respect of his deposits in that bank at that time when such an order is made but the total amount payable by the Corporation to any one depositor in respect of his deposit in that bank shall not exceed Rs. 1 lakh.

39. It is in the light of the aforesaid provisions that it has to be examined whether the insurance service received by the banks from the Deposit Insurance Corporation can be considered to be an "input service".

40. Sub-rule (1) of rule 3 of the 2004 Rules provides that a provider of output service shall be allowed to take CENVAT credit of the service tax leviable under sections 66, 66A and 66B of the Finance Act. Sub-rule(4) of rule 3 provides that the CENVAT credit may be utilised for the payment of service tax on any output service.

41. "Input service", prior to 1 April, 2011, meant any service used by provider of taxable service for providing an output service, including amongst others, activities relating to business such as financing. However, with effect from 1 April, 2011, the definition was amended and the definition can conveniently be divided into three parts namely;

(i) main part which means any service used by a provider of output service for providing an output service;

(ii) inclusive part which means services used in relation to various activities including financing; and

(iii) services which are excluded from the definition of input service.

42. "Output service", prior to 1 July, 2012, meant any taxable service [excluding the taxable service referred to under section 65 (105) (zzp)] provided by the provider of taxable service. After 1 July, 2012, it has been defined to mean any service provided by a provider of service located in the taxable territory but shall not include a service that is either specified under section 66D of the Finance Act or where the whole of service tax is liable to be paid by the recipient of service.

43. The contention advanced on behalf of the banks is that the insurance service rendered by the Deposit Insurance Corporation to the banks is covered under the main part of the definition of "input service" and, therefore, the banks are justified in availing CENVAT credit on this "input service" for the "output service" rendered by the banks in relation to "banking and other financial services". The contention of the Department is that since insurance is paid on the deposits and the activity of acceptance of deposits is a transaction in money which would be outside the purview of service tax, the insurance service rendered by the Insurance Corporation to the banks cannot be considered as an "input service".

44. The basic activity of a banking company, as contemplated under the definition of "banking", either under the Deposit Insurance Act or the Banking Regulation Act, is to accept deposits from the public, which deposits are used for the purpose of lending or investment by the banks. Thus, the main activity of a banking company is to mobilise the resources received by the banks in the form of deposits from the public for the purpose of lending or investment. These deposits, thus generate returns for the banks. A part of the returns is given by the banks to the depositors as a consideration, which consideration is normally in the form of interest.

45. What also needs to be noticed is that the lending and investment portfolio of banks are required to be funded by deposits and the funds of the shareholders. The Credit Deposit ratio is the percentage of how much the banks lend out of the deposits they have mobilised and also indicates how much of the core funds of the banks are being utilised for lending. A higher ratio indicates more reliance on deposits for lending. In such circumstances, the raising of deposits is an important function of the banks. In other words, the acceptance of deposits is not only a pre-requisite for lending but is also necessary for the banks since the entire activity undertaken by the bank begins with the acceptance of deposits,

without which the subsequent activities of lending or investment cannot be undertaken by the banks.

46. All banks have also to obtain a licence from the Reserve Bank of India under section 22 of the Banking Regulation Act. It also needs to be noticed that it is a compulsory for all banks who have obtained a licence from the Reserve Bank of India under section 22 of the Banking Regulation Act to register themselves with the Deposit Insurance Corporation. The registration of the banks with the Deposit Insurance Corporation is not optional for the banks. The payment of premium, therefore, to the Deposit Insurance Corporation is a statutory obligation of the banks. The banks this way, protect the interest of the depositors because non payment of premium and subsequent withdrawal of the protection provided by the Deposit Insurance Corporation may lead to loss of confidence of the public in the banks and ultimately loss of deposits.

47. A licence is issued to the banks by the Reserve Bank of India under section 22 of the Banking Regulation Act subject to such conditions as the Reserve Bank of India may think fit to impose. Sub-section (3) of section 22 provides that before granting any licence, the Reserve Bank of India may require certain conditions to be fulfilled to ensure that the carrying of banking business by such banks will not be prejudicial to the public interest or the interest of the depositors. Section 22 (4) enumerates the circumstances under which the licence granted to a banking company can be cancelled by the Reserve Bank of India and they are as follows:

(i) if the company ceases to carry on banking business in India; or

(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1);

or

(iii) if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled:

48. Thus, the first condition under which the Reserve Bank of India can cancel the licence granted to a banking company is when the bank ceases to carry on banking business in India. This implies that banks must accept deposits for the purpose of lending and for the purpose of accepting deposits, the banks have to obtain registration with the Deposit Insurance Corporation and, therefore, pay premium for the insurance. It, therefore, follows that if a banking company fails to pay the premium amount to the Deposit Insurance Corporation, it would not be able to retain its registration with the Deposit Insurance Corporation, which may ultimately also lead to the cancellation of the licence granted to the banking company by the Reserve Bank of India under section 22 of the Banking Regulation Act.

49. The third condition under which the Reserve Bank of India can cancel the licence of the banking company is when the Reserve Bank of India comes to a conclusion that the interest of the depositors is being prejudiced by a banking company. The interest of depositors is protected by the Deposit Insurance Corporation and in case premium is not paid by the banks for insuring the deposits, the registration with the Deposit Insurance Corporation can be cancelled and so would the interest of the depositors as their deposits will not have the cover of insurance. Thus, if the interest

of the depositors is not sufficiently protected then under the third requirement the licence of the bank can also be cancelled by the Reserve Bank of India.

50. It cannot, therefore, be doubted that the insurance service received by the banks from the Deposit Insurance Corporation is not only mandatory but is also commercially expedient. In fact, without this service the banks may not be able to function at all.

51. Premium is paid by the banks to the Deposit Insurance Corporation for providing the insurance service for which the banks pay service tax. It is this service tax paid by the banks on the insurance service received by the banks from the Deposit Insurance Corporation that is the bone of contention between the parties.

52. It is not in dispute that after accepting the deposits there are number of services on which the banks have to pay service tax under "banking and other financial services". These services are in connection with both the "accepting" of deposits and "lending" activity of the banks. Banks would be able to lend only if they accept deposits. It has been seen that without payment of insurance premium on the outstanding deposits, banks will not be able to function or render any output service of "banking and other financial services" and the licence granted to the banks by the Reserve Bank of India can be cancelled.

53. Thus, the service rendered by the Deposit Insurance Corporation to the banks would fall in the main part of the definition of "input service", which is any service used by a provider of output

service for providing an output service. Once this service falls in the main part of the definition of "input service", it would not be necessary to examine whether the service would be covered by the **inclusive** part of the definition. It has also been noted that the service is not **excluded** from the definition of "input service".

54. The contention of the Department is that "accepting" of deposits is covered under section 66 D(n) of the Finance Act which contains the negative list. As noticed above, the negative list comprises, under sub-clause (n) of section 66D, services by way of **extending deposits**, loans or advances in so far as the consideration is represented by way of interest or discount. The issue is whether **extending** deposits would mean the activity of **accepting** deposits. The activity of **accepting** deposits would be an activity where the banks receive deposits from the customers in the form of savings account, recurring deposits, for which the banks pay interest to the customers. On the other hand, the **extending** of deposits would be an activity of a bank giving its surplus money in the form of deposit to another person, where the consideration received would be in the form of interest. This would be a case where in the course of banking activities, one bank makes a deposit with another bank for which it receives consideration in the form of interest. It is this consideration received by the banks in the form of interest which has been specified under section 66D (n) of the Finance Act in the negative list of services. Thus, in case of **accepting** deposits, the banks have to pay interest to the customers, whereas while **extending** deposits, the banks receive

interest from other banks. It is for this reason that inter-bank deposits are not included in the returns filed by the banks with the Deposit Insurance Corporation for calculating the premium payable. The banks cannot avail credit of service tax on any amount of interest earned on **extending** of deposits. It is, therefore, not possible to accept the contention of the Department that "accepting" of deposits is covered under section 66D(n) of the Finance Act.

55. The Assessable deposits, on which the premium is calculated, not only includes deposits such as savings, fixed, current, recurring, etc., but also certain balances appearing in the account of the banks such as credit balances in cash credit accounts, margin held against letters of credit, guarantees, bills purchased, etc., un-presented drafts and payment orders, provident fund balances relating to staff held by bank before they are transferred to Provident Fund Commissioner, amount representing pay orders/ bankers cheques/ demand drafts issued by closing deposit accounts with or without reference to depositors, but remaining unpaid etc. Thus, the contention of the Department that insurance premium is paid only on the deposits of the customers cannot also be accepted.

56. It has also been submitted by learned Counsel appearing for the banks that even if it is assumed that some part of the deposit is not used for providing "output service", then too the banks are still entitled for the credit availed on the insurance service provided by the Deposit Insurance Corporation as the banks have reversed 50%

of the total CENVAT credit taken in terms of rule 6(3B) of the 2004 Rules. This rule 6(3B) provides that notwithstanding anything contained in sub-rules (1), (2) and (3), a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances shall pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month. The Circular dated 28 February, 2011 issued by the Central Board of Excise and Customs explains the reason behind the abovementioned amendment. It has been stated that since substantial part of the income of a bank is from investments or by way of interest in which a number of inputs and input services are used and as there have been difficulties in ascertaining the amount of credit flowing into earning these amount, a banking company providing banking and financial services is obligated to pay an amount equal to 50% of the credit availed in terms of rule 6(3B). This sub-rule (3B) has, therefore, been introduced with a view to disallow the credit of input and input services attributable to interest/investment income earned by banking companies. Having regard to the fact that it is difficult to ascertain the actual amount of input and input services used in earning interest income, sub-rule (3B) provides for reversal of 50% of input and input services.

57. Thus, the reversal has been made, banks are entitled for credit of the entire amount of service tax paid on input service having nexus with the provisions of output service and it is irrelevant as to which part of the input service is used for provision

of taxable output service and which part has been used for provisions of exempted service. Having made reversal under rule 6(3B), the banks have duly complied with the 2004 Rules and hence they are entitled to avail CENVAT credit on the insurance service received from the Deposit Insurance Corporation.

58. It would now be useful to examine decisions on this issue.

59. In **Commissioner of Central Excise, Bangalore vs. PNB Metlife India Insurance Co. Ltd**[16], the issue that came up for consideration before the Karnataka High Court was whether an assessee can avail CENVAT credit of service tax paid on re-insurance services by treating the said service as an "input service". PNB Metlife India Insurance Company was carrying on life insurance business and on the insurance policy issued by it, service tax was charged from the customers. It also procured re-insurance service from overseas insurance companies and availed CENVAT credit of service tax paid on such services received by it. This CENVAT credit was denied by the Department for the reason that re-insurance service cannot be considered as an "input service" since it takes place after the insurance policy is issued. The Karnataka High Court examined whether CENVAT credit availed and utilized by the insurance company on service tax paid for re-insurance service is an "input service" for the output service of insurance that the company was providing and held that the process of issuance of the policy by the insurer and subsequent procurement of re-insurance policy from another company, which is a statutory requirement, is

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16. 2015 (39) STR 561 (Kar.)

an integral part of the entire process and the insurance process does not come to end merely on the issuance of the insurance policy since it continues till the existence of the term of the policy. The High Court noted that since re-insurance has to be taken under section 101 A of the Insurance Act, it is a statutory obligation and, therefore, has to be considered as having nexus with the "output service" and, therefore, would be an "input service", for which CENVAT credit can be availed. The portion of the judgment of the High Court pertaining to this aspect is reproduced below:

> **"6.** Having heard the learned counsel for the parties and in the fact of this case, we are of the opinion that the order of the Tribunal does not require any interference. Rule 2(l) of the Cenvat Credit Rules 2004 provides that 'Input Service' means service used by a provider of taxable service for providing an 'Output Service'. The submission of the learned counsel for the appellant that once the Insurance Policy is issued by the Insurer, the transaction comes to an end (and would not depend on the reinsurance policy) and as such the service provided would not come within the ambit of input service, is not worthy of acceptance. The process of issuance of an Insurance Policy by the Insurer and subsequent procurement of reinsurance policy from another company (which is a statutory requirement) is an integral part of the total process. The process of insurance does not come to an end merely on the issuance of the Insurance Policy by the Insurer. In fact, it continues till the existence of the term of the policy. The re-insurance is taken by the Insurer immediately after the insurance policy is issued, as is required under Section 101A of the Insurance Act, 1938. Since re-insurance is a statutory obligation, and the same is coterminus with the Insurance policy issued by the respondent, we are of the opinion that the stand taken by the Tribunal is correct that the transfer of a portion of the risk ox the re-insurance has to be considered as having nexus with the output service, since the re-insurance is a statutory obligation and the same is coterminus with the Insurance Policy. We only reiterate that the issuance of insurance policy by insurer, and then taking of reinsurance by it, is a continuous process, and in the facts of the present case, it cannot be said that the same would not be an 'input service' eligible for Cenvat credit within the meaning of Rule 2(l) of the Cenvat Credit Rules, 2004.
>
> **7.** We may further add that the Service Tax is levied for certain service rendered and the provision of

> giving the Cenvat credit is so that there may not be double taxation. If a person has collected service tax, no doubt the same has to be deposited, but if in the process of the same transaction he has paid some service tax, which is necessary for its business, then he is entitled to the Cenvat credit to the extent of service tax which has been paid by it. In the present case, if the entire Service Tax which is collected by the Insurer, while selling its insurance policies, has to be deposited without being given the credit of the tax which is paid by it while procuring a policy of re-insurance as (mandatorily required in law), the same would be against the ethos of Cenvat credit policy, as the same would amount to double taxation, which is not permissible in law."

60. It needs to be noted that the aforesaid decision of the Karnataka High Court in **PNB Metlife India** has been accepted by the Central Board of Excise and Customs in the Circular dated 16 February, 2018. The relevant paragraphs 8 and 8.1 are reproduced below:

> "8. Decision of the Hon'ble High Court of Karnataka at Bangalore dated 09.04.2015 in the case of M/s PNB Metlife India Insurance Company Ltd. Bangalore [2015 (39) STR 561 (Kar.)]
>
> 8.1. Department has accepted the aforementioned order of the Hon'ble High Court of Karnataka. The issue examined in the order was, whether Reinsurance is an input service which is used for providing output service, namely, insurance and whether CENVAT Credit taken on re-insurance service is admissible. Hon'ble High Court held that re-insurance is a statutory obligation and the same is co-terminus with the insurance policy. Issuance of insurance policy by insurer, and then taking of re-insurance by it, is a continuous process. Re-insurance is, therefore, an input service."

61. In the present appeals also, in order to render any output service under the category of "banking and other financial services", it is necessary for a bank to register itself with the Deposit Insurance Corporation and pay premium after registration.

A bank, without obtaining registration and without payment of insurance premium on the deposits outstanding, cannot render any "output service" of "banking and other financial service".

62. The decision of the Tribunal in **Shriram Life Insurance Company Ltd. vs. Commissioner of Customs, Central Excise and Service Tax, Hyderabad**[17] also needs to be referred to. The appellant provided life insurance services for which it had to statutorily invest the premiums collected in approved securities. The issue that arose before the Tribunal was whether such investments in securities can be considered as an exempted service as a result of which CENVAT credit was required to be reversed under rule 6 of the 2004 Rules. The Tribunal found that the activity undertaken by the Appellant of issuing unit linked policy or any instrument was covered under life insurance business and the Insurance Act made it obligatory for an insurance company to make investments. Any insurance company which did not comply with this requirement could be disqualified from undertaking insurance business. Thus, the investment activity undertaken by the Appellant was held to be an integral part of life insurance service. The Tribunal also found that since the service rendered by the Appellant was a taxable service, it could not be said that the Appellant was rendering an exempted service. The Appellant was, therefore, held entitled to avail CENVAT credit.

63. It, therefore, follows from the discussion made above and the aforesaid decisions that banks can avail CENVAT credit of the

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service tax paid by the banks on the premium amount paid to Deposit Insurance Corporation for the insurance service rendered by the Deposit Insurance Corporation to the banks.

64. This view has been taken by the Tribunal in **State Bank of Bikaner**. However, in **ICICI Bank** a contrary view was taken. For all the reasons stated above, it is not possible to accept the view taken by the Division Bench of the Tribunal in **ICICI Bank**.

65. The reference is, accordingly, 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'."

66. The appeals may now be placed for hearing before the respective Division Benches of the Tribunal.

(Order pronounced in open court on 20.03.2020)

(JUSTICE DILIP GUPTA)
PRESIDENT

(S S GARG)
MEMBER (JUDICIAL)

(C J MATHEW)
MEMBER (TECHNICAL)

Tejo