CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 941 of 2010

[Arising out of Order-in-Original No. 05/2010 dated 30/03/2010 passed by the Commissioner of Central Excise,) Mangalore]

Canara Motors
Arvind Building, Balmatta Road,
Mangalore - 575 001

Appellant(s)

VERSUS

C.C.E. & S.T., Mangalore
7th Floor, Trade Centre
Bunts Hostel Road
Mangalore - 575 003

Respondent(s)

<u>APPEARANCE:</u>

Mr. Kushal Choudhary R., CA for the Appellant
Mr. P. Saravana Perumal, AR for the Respondent

CORAM:

HON'BLE DR. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

<u>Final Order No. 21192 / 2023</u>

Date of Hearing: 25/08/2023
Date of Decision: 25/08/2023

Per: D.M Misra

Heard both sides. This is an appeal filed against the Order-in-Original No. 5/2010 dated 31/03/2010 passed by the Commissioner of Central Excise, Mangalore. The short issue involved in the present appeal relates to classification of the services provided by the appellant. The appellant claimed the services provided by them falling under 'Business Support Service' for the period from 1st October 2007 to 31st March 2009 whereas the Department proposed to classify the same under 'Business Auxiliary Service'. Learned Advocate appearing for the appellant submits that there is no service tax implication as both the entries attract the same rate of service tax. He submits that the issue of classification of the services rendered by them was settled by this Tribunal vide Final Order No. 1300/2010 dated 20/10/2010 which has been subsequently followed in the Final Order No. 20928/2018 dated 11/06/2018.

2. The learned CA further says that since the issue relates to interpretation of law, imposition of penalty under Section 77 of the Finance Act is unwarranted. Further he submits that in one of the order of the Tribunal, penalty has been dropped.

3. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

4. We find that the Tribunal in the appellant's own case for earlier period vide Order dated 20/10/2010 held as follows:

> *"11. In sum, for the reasons stated herein above, we find that the activities rendered by the appellant would be covered only under the category of 'Business Support Services' and that also with effect from 01.05.2006 when specific entry was brought into taxable services under Section 65(104c) of the Finance Act, 1994 and prior to 01.05.2006, the services rendered by the appellant would not fall under the category of 'Business Auxiliary*

> *Services'. In the facts and circumstances of the case, the impugned order is not sustainable and liable to be set aside and we do so. The appeal is allowed with consequential relief."*

5. We do not find any reason not to follow the said ruling of the Tribunal and accordingly by following the same it is held that the services rendered by the appellant be classified under 'Business Support Service' for the relevant period. Also since the issue relates to interpretation of law, imposition of penalty under Section 77 is unwarranted. Accordingly, the same is set aside. The appeal is disposed of accordingly.

(Dictated and pronounced in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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