CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 62 of 2010

[Arising out of Order-in-Appeal No. 43/2009 dated 15/10/2009 passed by the Commissioner of Central Excise and Service Tax, Bangalore]

Commissioner of Service Tax
Bangalore
No. 16/1, S.P. Complex
Lalbagh Road
Bangalore – 560 085

Appellant(s)

VERSUS

Dell International Services
(I) Pvt. Ltd.
No. 12/1, 12/2A, 13/1A,
Divyasree Greens
Koramangala Inner Ring Road
Domlur Post
Bangalore – 560 071

Respondent(s)

APPEARANCE:

Mr. Dyamappa Airani, AR for the Appellant
Mr. Syed Peeran, Advocate for the Respondent

CORAM:

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

Final Order No. 21247 / 2023

Date of Hearing: 30/08/2023
Date of Decision: 30/08/2023

PER: D.M. MISRA

This is an appeal filed by the Revenue against Order-in-Appeal No. 43/2009 dated 15/10/2009 passed by the Commissioner of Central Excise and Service Tax (LTU), Bangalore.

2. Briefly stated the facts of the case are that the respondent had filed a rebate claim on 17/06/2008 for Rs. 9,78,22,270/- (Rupees Nine Crores Seventy Eight Lakhs Twenty Two Thousand Two Hundred and Seventy only) in terms of Notification No. 12/2005-ST dated 19/04/2005 on the ground that they have exported Business Auxiliary Services during the period October 2007 to March 2008. Alleging that they had included Call Centre Services, Back Office, Data Processing and IT Support Service under the category of "Business Auxiliary Services", show-cause notice was issued to them on 29/07/2008 proposing rejection of the said refund claim. On adjudication, the refund claim was rejected. Aggrieved by the said rejection, the respondent filed an appeal before the learned Commissioner (Appeals), who in turn, remanded the matter to the adjudicating authority for *De novo* consideration of the claim taking note of the observation made in the impugned order. The Revenue is in appeal against the said order.

3. The learned Advocate for the respondent has submitted that present proceeding is infructuous inasmuch as after passing the remand order by the learned Commissioner (Appeals), the matter was adjudicated by the Assistant Commissioner vide order dated 30/04/2010 sanctioning an amount of

Rs. 37,73,507/- (Rupees Thirty Seven Lakhs Seventy Three Thousand Five Hundred and Seven only). Aggrieved by the said order, the respondent filed an appeal before the learned Commissioner (Appeals) who thereafter remanded the matter vide Order-in-Appeal No. 10/2011 dt. 29/03/2011 to the adjudicating authority for *De novo* adjudication.

4. Learned AR for the Revenue does not dispute the said facts submitted by the learned Advocate for the respondent.

5. Heard both sides and perused the records. We find that by the impugned order, the learned Commissioner (Appeals) has remanded the case observing as follows:

> *"22. I hold that the appellants are entitled for rebate under Notification No. 12/2005-ST dated 19/04/2005 on export of services under the categories of 'call centre service' and 'back office data processing service'. In respect of 'IT Support Service' which by the nature of service rendered by them falls under the category of 'information technology software service' they are not entitled for rebate. I direct the original authority to work out and allow the rebate on the above lines in respect of eligible input services/inputs. I direct the appellants to furnish the original authority with all related documents/information for working out the admissible rebate. The appeal is disposed of in above terms."*

Pursuant to the said remand order, the adjudicating authority sanctioned part of the refund claim of Rs. 37,73,507/- (Rupees Thirty Seven Lakhs Seventy Three Thousand Five

Hundred and Seven only) and rejected remaining amount of Rs. 8,70,06,671/- (Rupees Eight Crores Seventy Lakhs Six Thousand Six Hundred and Seventy One only). The respondent preferred an appeal against the said rejection on 22/07/2010 before the Commissioner (Appeals) Bangalore who once again remanded the matter by order dated 29/03/2011. Thus after the impugned order was passed, the matter has been adjudicated and an appeal was preferred against the *De novo* order before the learned Commissioner (Appeals). In these circumstances, as rightly pointed out by the learned Advocate for the respondent, the present appeal filed by the Revenue becomes infructuous. Consequently, Revenue's appeal is dismissed being infructuous.

(Operative portion of the order was pronounced
in Open Court on 30/08/2023)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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