CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 20439 of 2014

(Arising out of Order-in-Appeal No.614/2013 dated 11.11.2013 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

M/s. Way2Wealth Securities Pvt. Ltd.
No.14, Ground Floor,
Frontline Grandeur, Walton Road,
Bangalore – 560 001.

Appellant(s)

VERSUS

The Commissioner of Service Tax
Traffic & Transit Management Centre,
BMTC Building, 3rd Floor,
Above BMTC Bus Stand, Domlur,
Bangalore – 560 071.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant.

Shri Vinod Kumar Gerhwal, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21218 / 2025

DATE OF HEARING: 10.07.2025
DATE OF DECISION: 10.07.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether demand can be confirmed by invoking extended period of limitation and regarding service tax liability in respect of income from marketing support. Appellant is providing taxable service under the category of Business Auxiliary Service. During the period from 1.7.2003 to 30.06.2004, appellant had received income from distribution of mutual funds, initial public offer, fixed deposits, trading of bonds, marketing support, income on account of promotion of mutual fund and from marketing. Alleging that appellant had not paid service tax under Business Auxiliary Service category, proceedings were initiated and adjudicating authority as per the impugned order confirmed the demand and also imposed penalties. Aggrieved by said order, an appeal was filed before Commissioner (A), who in turn partially allowed the appeal and directed the lower authority to recalculate the demand, interest and penalty. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted that appellant is a registered assessee and were filing returns regularly. The learned counsel also drew our attention to the Audit Note No.36/2005-2006 dated 11.11.2005 and submitted that even after conducting detailed audit, no objections were made and thereafter, show-cause notice was issued only on 20.10.2009 which was received by the appellant on 23.11.2009 as evident from the envelope produced by the appellant. Thus, the entire demand is barred by limitation. Learned counsel also drew our attention to the Table produced in the show-cause notice and submitted that the demand for the period July 2004 to October 2004 are even beyond the extended period of limitation. Learned counsel further submitted that the service tax on trial commission demanded for the period from July 2004 to March 2005 is pertaining to the service rendered prior to 1.7.2003 by selling of mutual funds whereas the service tax on Business Auxiliary Service was introduced only thereafter. Learned counsel also drew our attention to the Rule 6 where it is categorically stated that *"provided further that notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable."* As regarding demand of service tax

of Rs.10,88,464/-, the learned counsel submitted that as per para 7 of the show-cause notice, the said demand is made on the ground that the appellant failed to inform the department regarding the centralised accounting and had just got their corporate office registered with the department. As regarding issue on merit, the learned counsel reiterated the grounds of appeal and submitted that entire demand is unsustainable on merit also.

2.1 As regarding invoking extended period of limitation, the learned counsel submitted that the since the audit note was prepared on 28.10.2005, show cause notice was issued on 20.10.2009, the impugned order confirming the extended period of limitation is unsustainable. In this regard, the learned counsel drew our attention to the decision of the Tribunal in the case of **Commissioner of Central Excise, Bangalore vs. Pragathi Concrete Products P. Ltd.: 2015 (322) ELT 819 (SC)** which was upheld by the Hon'ble Supreme Court in **2015 (322) ELT 819 (SC)** and also judgment of the Hon'ble Supreme Court in the case of **CCE vs. Pals Microsystems Ltd.: 2011 (270) ELT 305 (SC)** and **Continental Foundation Jt. Venture vs. CCE, Chandigarh-I: 2007 (216) ELT 177 (SC)**.

3. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order.

4. Heard both sides. It is an admitted fact the appellant had started paying service tax and were filing returns from time to time. The Audit Note which led into the issue of show-cause notice was issued on 20.10.2009. Further, demand is confirmed even beyond the period of 5 year. As held by the Hon'ble Supreme Court in the case of **Pragathi Concrete Products** (supra), once audit was conducted regularly and considering the fact that the appellant were filing ST-3 returns, no suppression can be alleged and considering the same, demand confirmed by invoking extended period of limitation is *prima facie*

unsustainable. Since entire demand is barred by limitation, hence, appeal is not considered on merit. Consequently, the impugned order is set aside and the appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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