

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
BANGALORE**

REGIONAL BENCH COURT NO. 2

Service Tax Appeal No. 21089 of 2015

(Arising out of Order-in-Original No. BEL-EXCUS-COM-BHR-13(ST)-14-15 dated 11.02.2015 passed by the Commissioner of Central Excise and Customs, Belgaum.)

Snehalatha Singh

Singh Sadhan Infantry Road, Cantonment Road,
Bellary,
Karnataka- 583101

.....Appellant

VERSUS

**Commissioner of Service Tax,
Belgaum**

No. 71, Club Road, Central Excise Building,
Belagavi, Karnataka - 590001

.....Respondent

Appearance:

Shri B. G. Chidananda Urs, Advocate for the Appellant

Shri M. A. Jithendra, Authorized Representative for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mrs. R. Bhagya Devi, Member (Technical)

Final Order No. 21997/2025

Date of Hearing: 24.07.2025

Date of Decision: 10.12.2025

PER: P. A. AUGUSTIAN

The issue in the present appeal is regarding service tax liability on the Appellant whether falling under the category of business auxiliary service or under the category of mining activity.

2. Appellant were providing various services including excavation, extraction, grading, sorting of iron ore to their clients. Alleging that said activity is falling under the category of Business Auxiliary Service and alleging non payment of service tax for the period from 10.09.2004 to August, 2006, proceedings were initiated and Adjudication authority as per the impugned order, confirmed the demand and also imposed penalty on various provisions of law. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the impugned order is prima facie unsustainable. The activity undertaken by the Appellant was not liable to service tax as the levy of service tax on the mining activity was brought into statute vide Finance Act, 2007 and the service was notified as liable to service tax vide Notification No. 23/2007-ST dated 22.05.2007. Thus the Appellant is liable to pay service tax only with effect from 01.06.2007. In this regard, Learned Counsel also relied on the CBIC Circular vide MFDR letter F. No. DO/334/1/2007-TRU dated 22.02.2007 stating that all activities related to mining of oils, minerals and gas including out source activity will be taxable under the new category. The activity undertaken inside the mine and the activity that of extraction of iron or fines and lumps and therefore fall under Section 65(105)(zzzy) which is defined to mean any service provided or to be provided to any person or by any other person in relation to mining of minerals, oil or gas. The Learned Counsel further submits that law is settled that when levy of service tax is introduced on particular activity from a specific date, the earlier entries are presumed as not covering an activity if subsequent entry enacted without changing existing entry. In support of this, the Learned Counsel relied on the following decisions:

- i. **Indian National Shipowners Association v. UOI, 2009 (14) STR 289 (Bom),**
- ii. **CCE v. Indian Oil Tanking Ltd, 2010 (18) STR 577 (Tri-Mum.)**
- iii. **Diebold Systems (P) Ltd v. CST, 2008 (9) STR 546 (Tri-Che.).**

4. The Learned Counsel further submits that the impugned order is also unsustainable, since there is undue delay in disposal of the order. Show cause notice was issued on 01.09.2007 and reply to show cause notice was filed on 08.10.2007. But the Adjudication authority passed the impugned order only on 11.02.2015 after an inordinate delay of 7 years. The Learned Counsel also relied the following decisions in this regard:

- i. **Swatch Group India Pvt Ltd v. UOI., 2023(386) ELT 356(Del)**
- ii. **CMA-CGM Agencies (India) Pvt Ltd v. UOI., 2023(70) GSTL 350(Bom)**
- iii. **Reliance Transport & Travel Pvt Ltd v. UOI., 2022(62) GSTL 33(Bom)**

5. The Learned Counsel further submits that the issue is no more res integra and the issue is settled by this Tribunal in the matter of **M/s Popular**

Construction and vide Final Order No. 20469/2025 dated 19.03.2025

held that;

"21. In the instant case, the definition of BAS did not undergo any change when a new service 'in relation to mining' was introduced with effect from 1 June, 2007. The Department admits that with effect from 1 June, 2007, the activity carried out by the appellant is covered under the category of service in relation to mining. This activity could not, therefore, have been categorized under BAS prior to 1 June, 2007.

22. Thus, the demand of Service Tax in the impugned order under BAS from 16 June, 2005 to 30 May, 2007 is not justified."

6. The Learned AR reiterated the finding in the impugned order.

7. Heard both sides. The issue is no more res integra. This Tribunal considered the issue and categorically held that such activity is falling under the category of mining and taxable only with effect from 01.06.2007. Fact being so, the demand as per impugned order for the period from 10.09.2004 to 31.08.2006 under the category of Business Auxiliary Service on the Appellant is unsustainable.

8. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law.

(Order was pronounced on 10.12.2025.)

**(P.A. Augustian)
Member (Judicial)**

**(R. Bhagya Devi)
Member (Technical)**

Sasi