CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/494/2008-DB

[Arising out of Order-in-Appeal No. 18-2008 dated 05/08/2008 passed by Commissioner of Central Excise, Mangalroe]

M/S CANARA MOTORS
ARAVIND BUILDING BALMATTA ROAD,
MANGALORE-575001

Appellant(s)

Versus

Commissioner of Central Excise and Service Tax MANGALORE
NULL 7TH FLOOR...TRADE CENTRE,
BUNTS HOSTEL RD.,
MANGALORE, - 575003
KARNATAKA

Respondent(s)

Appearance:

Mr.Siddeshwar Yelamali, FCA
CHARTERED ACCOUNTANTS, 6TH FLOOR,
TRADE CENTRE, #29/4, RACE COURSE
ROAD, BANGALORE
BANGALORE - 560001
KARNATAKA

For the Appellant

Mr. Pakshi Rajan, AR

For the Respondent

Date of Hearing: 11/06/2018
Date of Decision: 11/06/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20928 / 2018

Per : P.ANJANI KUMAR

The appellants are engaged in transportation of chasis of Commercial Vehicles from the factories of the Tata Motors Ltd.

to their Regional sales officers for further sale. The department alleged that the appellants are liable to pay Service Tax under Business Auxiliary Services. A SCN dated 06.09.2007 covering the period of 01.07.2003 to 30.09.2006 was erred to appellants. Commissioner of Customs vide Order-in-Original No. 6/2008 dated 25/18-3-2009 confirmed the demand holding that the services rendered by the appellants is squarely covered under 'BAS'.

2. On an appeal filed by the appellants, this Bench in Appeal No. 228/2008 has decided the issue in favour of the appellants holding that the activities rendered by the appellant would be covered only under the category of 'BSS' and that also with effect from 01.05.2006 when a specific entry was brought in to taxable services under Section 65(104C) of the Finance Act, 1984 and prior to 01.05.2006, the services rendered by the appellants would not fell under the category of 'BAS'.

3. Meanwhile, another SCN dated 21.04.2006 was issued to the appellants alleging that, during 01.10.2006 to 31.03.2007, have short paid duty and that too under the category of 'BAS' and that they have availed ineligible CENVAT Credit. Commissioner vide Order-in-Original No. 18/2008 dated 31.07.2008 has

confirmed the demand holding that the services rendered by the appellants was under 'BAS'. Aggrieved by the order, appellants have filed the present appeal.

4. The appellants submitted that the service they undertake is providing of a person to drive the vehicle from the premises of Tata Motors to the premises of customers in terms of the argument; the service rendered by them would not involve promotion, marketing and the sale of goods on behalf of Tata Motors; the service at best can be categorized as 'BSS' held by this Tribunal STA 228/2008 and not 'BAS' as held by learned adjudicating authority; in view of that penalties levied may be dropped.

5. The appellants submitted that the services rendered prior to May 2006 amounting to Rs.3,28,232/- is not liable for Service Tax though the amount was received in October 2006; The Department considered CENVAT Credit availability short by Rs.24,980/-. Amount of tax of Rs.5001/- remitted was not considered. Bank account statement is a proof of payment; Department calculated SHE Cess excess by Rs.10,525/-. The appellants pleaded for trading of service as 'BSS' and sought relief on the basis of calculations as above.

6. The Departmental Representative has reiterated the finding in Order-in-Original and submitted that in case the Bench works to consider qualification as requested by the appellants, the matter needs to go back to the original adjudicating authority.

7. Heard both sides and perused the records. We find that the appellant's argument and the main issue of classification of service stands squarely covered by the order of the Bench in their own case cited above. We reiterate the view taken by this Bench and hold that the services rendered by the appellants are to be classified under 'BSS' that too only from 01.05.2006. Regarding the other issues discussed in the appeal and prayer of the appellants, we are with the Departmental Representative that the issue needs to back to the original adjudicating authority for a proper evaluation of the submissions of the appellant supported by documentary evidence. However, in view of the order of this Bench and looking in to the facts of the case i.e. being in the nature of interpretation of statute and appreciation of documentary evidence, we set aside the penalties imposed in Order-in-Original.

8. The appeal is allowed by way or remand, in view of the above, with a direction to classify the services rendered by the appellants under 'BSS' under Section 65 (104C) of Finance Act, 1984 and to examine the claim of appellants and the other issues raised therein.

(Operative portion of the Order was pronounced
in Open Court on **11/06/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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