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

Appeal(s) Involved:

ST/160-161/2009-DB

[Arising out of Order-in-Appeal No.3/2009 dt. 29/01/2009 and No. 6-2009 dated 13/02/2009 passed by CCE(Appeals), LTU, Bangalore]

Commissioner of Central Excise,
Customs and Service Tax
BANGALORE-LTU
NULL 100 FT RING ROAD JSS TOWERS,
BANASHANKARI-III STAGE,
BANGALORE, - 560085
KARNATAKA

Appellant(s)

Versus

CANARA BANK HEAD OFFICE
ET & T SECTION, NO.51,BGSE TOWERS,1ST
CROSS, J C ROAD, BANGALORE.

Respondent(s)

Appearance:

Dr. J. Harish, Dy. Commissioner(AR) — For the Appellant
Shri Dheeraj, M., Chartered Accountant — For the Respondent

Date of Hearing: 24/07/2018
Date of Decision: 24/07/2018

CORAM:

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

Final Order No. 21003-21004 / 2018

Per : S.S. GARG

The Revenue has filed these two appeals against the impugned orders dt. 29/01/209 and 13/02/2009 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has allowed the appeals of the Bank by setting aside the Orders-in-Original. The issue in both the appeals is identical. Therefore both the appeals are being disposed by this common order.

2. For the sake of convenience, the facts of appeal No.ST/161/2009 are taken.

3. Briefly the facts of the case are that M/s. Canara Bank are engaged in providing taxable services under the category of 'Banking and Other Financial Services (BOFS)' as defined in Section 65(12) of the finance Act, 1994. Based on the intelligence received regarding the non-payment of service tax on certain type of transactional charges paid to SWIFT (Society for World-wide Interbank Financial Telecommunication), Belgium for usage of their secured internet for facilitating fund transfer, an enquiry was initiated and it appeared that they are liable to pay service tax on certain charges paid to SWIFT under BOFS. A show-cause notice was issued demanding Rs.39,09,300/- for the period 01/04/2003 to 31/03/2009 in terms of Section 73 along with interest and proposing penalty under Sections 76,77, 78 of the Finance Act, 1994 and proposing appropriation of the amount already paid for period 19/04/2006 to 31/03/2008. After following the due process, the original authority vide Order-in-Original No.104/2008 dt. 14-10-2008 /15-10-2008 confirmed the demand except penalty under Section 78. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) and the Commissioner(Appeals) allowed the appeal of the Bank by relying upon the decision of the Bombay

High Court in the case of Indian National Shipowners Association Vs. UOI [2008-TIOL-633-HC-MUM-ST]. hence these two appeals by the Revenue.

4. Heard both sides and perused records.

5. Learned AR for the Revenue submitted that the impugned orders are not legal and proper and have been passed without properly considering the legal provisions under Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 read with Section 66A.

6. On the other hand, learned consultant for the assessee (Bank) submitted that this issue is no more res integra and has been settled by the High Court of Bombay in the case of Indian National Shipowners Association (cited supra). He further submitted that the decision of the Bombay High Court has been upheld by the Hon'ble Supreme Court by dismissing the SLP filed by the Revenue which is reported in 2010 24 STT 366 (SC). He further submitted that after the Supreme Court judgment, the Department has also accepted the decision of the Supreme Court and issued a circular on 25/09/2011 whereby the Department clarified that the service tax liability on any taxable service provided by a non-resident or a person located outside India, to a recipient in India, would arise w.e.f. 18/04/2006 i.e. the date of enactment of Section 66A of the Finance Act, 1994.

7. After considering the submissions of both parties, we find that the issue involved is no more res integra and has been settled by the apex court in the case of Indian National Ship Owners' Association (supra). By following the said ratio of the apex court, we find no infirmity in the impugned orders, which are upheld by dismissing both the appeals filed by Revenue.

(Operative portion of the Order was pronounced
in Open Court on **24/07/2018**)

P. ANJANI KUMAR	**S.S. GARG**
TECHNICAL MEMBER	**JUDICIAL MEMBER**

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