IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. ST/70962-70963/2016-ST[SM]

(Arising out of Order-in-Appeal No. 28-29/ST/APPL-AGRA/LKO/2016 dated 14/01/2016 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Lucknow)

Krishna Kumar Kaushik **Appellant(s)**

Vs.

Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow **Respondent(s)**

Appearance:

Shri Kapil Kher (Advocate) for Appellant(s)
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent(s)

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 27/04/2018
Date of Decision : 27/04/2018

FINAL ORDER NOs. **70258-70259/2019**

Per: Anil Choudhary

The issue in these appeals relate to chargeability of service tax under the head Business Auxiliary Services for services rendered by the appellant to M/s Amway India Enterprises. In the impugned order the learned Commissioner (Appeals) following the earlier ruling of this Tribunal being Final Order No. ST/A/52279 – 52280/2015 – CU(DB) dated 30 June, 2015, have held that:-

"No service tax is chargeable on the profit earned by the distributors from the sale of the goods in retail which had been purchased by them from Amway and on the commission earned by them every month on purchase of certain goods from Amway and,

Service tax would be chargeable on the commission received by a distributor from Amway on the products purchased by his sales group or in other words by the dealers or sub dealers working under the dealer/assessee. Accordingly, allowing the benefit of SSI Exemption for the period 2012 – 13, the turnover and tax was worked out after allowing threshold limit as follows: –

Year	**Other Commission received**	**Taxable Value after Small Scale exemption**	**Rate of Service Tax**	**Service Tax payable**
2012-13 (April to March, 2013)	12,76,337	2,76,337	@12.36%	34155

2. Accordingly the learned Commissioner (Appeals) have worked out the net service tax liability of Rs.34,155/- and have been further pleased to confirm the demand of interest and also imposed penalty of Rs.17,078/- under Section 76 of the Finance Act being 50% of the confirmed service tax.

3. The learned counsel for the appellant states that two separate show cause notices were issued. The first one being dated 28 January, 2014, and the second was dated 07 October, 2014 for the period July, 2012 to September, 2012, and October, 2012 to March, 2013, respectively. He further

points out that in the SCN dated 07 October, 2014, shows that the appellant have admittedly deposited service tax of Rs.30,302/-. The grievance of the appellant is that the credit for this amount has been given to them while considering the net liability and also the liability towards penalty. The learned counsel states that they have further deposited an amount of Rs.2,050/- in March, 2015, at the time of filing appeal. Thus, almost the rule of the service tax stood paid save and except a small amount of Rs.2,000/- approx. In these facts and circumstances I set aside the penalty under Section 76 of the Finance Act, 1994.

4. So far the issue of limitation is concerned under the facts and circumstances I hold that the extended period of limitation is not liable to Revenue in terms of the law laid down by this Tribunal in Final Order dated 30 June, 2015 of the Division Bench mentioned hereinabove.

5. Accordingly, I direct the Adjudicating Authority to rework of the demand for the normal period and to allow credit of the taxes already paid, the proof of which led by the appellant before him. The balance tax if any shall be payable by the appellant with interest as applicable. If the tax is found to be in excess the appellant shall be entitled to refund as per rules.

(Dictated and pronounced in Court)

Sd/-
(Anil Choudhary)
Member (Judicial)

Ankit