CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 756 of 2012

[Arising out of Order-in-Original No. 14/Ldh/2012 dated 27.03.2012 passed by the Commissioner of Central Excise and Service Tax, Ludhiana]

M/s Unique Family Services **......Appellant**
B-xxvi, 759/1, Punjab Bhawan Road,
Near Petrol Pump, Bharat Nagar Chowck,
Ludhiana

VERSUS

Commissioner of Central Excise & Service Tax, Ludhiana **......Respondent**
Central Excise House, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

WITH

Service Tax Appeal No. 757 of 2012

[Arising out of Order-in-Original No. 14/Ldh/2012 dated 27.03.2012 passed by the Commissioner of Central Excise and Service Tax, Ludhiana]

Shri Kulwant Singh, Partner of M/s Unique Family Services **......Appellant**
B-xxvi, 759/1, Punjab Bhawan Road,
Near Petrol Pump, Bharat Nagar Chowck,
Ludhiana

VERSUS

Commissioner of Central Excise & Service Tax, Ludhiana **......Respondent**
Central Excise House, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

APPEARANCE:

Present for the Appellant: Shri K.K. Sharma, Advocate

Present for the Respondent: Shri Anurag Kumar, Authorized Representative

<u>CORAM:</u> HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60574-60575/2023

DATE OF HEARING: 07.03.2025
DATE OF DECISION: 27.05.2025

<u>P. ANJANI KUMAR:</u>

M/s. Unique Family Services, Ludhiana M/s. Unique Family Services Ludhiana, the appellant and Shri Kulwant Singh, Partner, assail the order-in-original, No. 14/LDH/2012 dated 27-03-2012, passed by Commissioner of Central Excise, Ludhiana.

2. Brief facts of the case are that the appellants provide sub-agent services of corporate agents, who were working for Insurance Companies; the appellant through their marketing patterns identify the potential customers who would buy the life insurance policies and refer them to their clients i.e. M/s Unifam Insurance Services Ltd, M/s Unique Health Care and M/s. Unique Insurance Services, who in turn close the policies and these policy holders ultimately become customers of the respective insurance companies i.e. M/s. Max New York, M/s. Bajaj Allianz and M/s Life Insurance Corporation of India; these insurance companies then issue the insurance policies to these clients; the appellants receive a portion of the commission received by the corporate agents from Insurance Companies, in respect of insurance policies sold by them; the appellants were further paying part of the commission received to their workers (down line members) working in this marketing set up run and

operated/managed by the appellant; the part of the commission received by the appellant has been reflected as referral income in their Balance Sheets.

2.1. Special Cell of Central Excise Commissionerate, Ludhiana visited the premises of the Appellant on 05.02.2010; scrutiny of various records and the Balance Sheets of the Appellant, revealed that the appellants received three types of incomes on account of providing different services falling under the category of taxable services but were not paying any service tax thereon:

(i) The referral charges from the Corporate Insurance Agents; the appellants were not registered as agents, with any Insurance Company, as required under Insurance Act.

(ii) income on account of Processing Fee, Cheque Processing charges. Cheque Reissue charges, BC Transfer fee from their down line members, for services provided to their down line members for supportive working relationship with the customers of their Corporate Insurance agents.

(iii) The income on account of CBT (Certified Business Training) charges from their down line members by providing training to them.

2.2. Department entertained an opinion that the services rendered by the appellants to the sub-agents and to their downline members fall under the category of 'Insurance Agent's Services' "Business Auxiliary Service' and 'Commercial Training and Coaching Centre Service'. A Show Cause Notice dated 18-04-2011 was issued to the appellants, invoking extended period, covering the period 10-10-2005 to 31-03-2010. The proposals in the Show Cause Notice were confirmed vide impugned order confirming demand of Service Tax of Rs 1,54,54,425 along with interest and equal penalty; Penalty Rs. 200/- per day or 2% of Tax per month subject to maximum service tax and Penalty of Rs. 5000 were also imposed under applicable Sections. Hence, these two appeals ST/756/2012- (DB) and ST/757/2012-CUS(DB) by the appellant and Shri Kulwant Singh.

3. Shri K.K. Sharma, Learned Counsel for the Appellants, submits as far as Referral income is concerned that most of the demand of tax in this case are against the amount showing as referral income in their Balance Sheets; the appellant were engaged in generating references (Potential Insurance Customers), through Marketing efforts and forwarding these Potential Insurance Customers to the related Insurance Agents (Corporate Agents) who further passed on these customers to their related Insurance Companies for issuance of policies; the insurance companies insurance commission to Corporate Agents who pay a part of the commission to the appellants; the appellants were in fact marketing only for Insurance Companies for selling insurance policies, apprising the clients as to which policy was better and beneficial to them and in motivating them to purchase the insurance policies; it is clear that, the appellant was essential part of the sale of insurance policy; it is not disputed that the referral income received by the appellant was only a commission against the sale of insurance policies, which was

ultimately paid by insurance companies though passed on by M/s. Unifam Insurance Services Ltd., M/s. Unique Health Care & M/s. Unique Insurance Services; the appellants are further paying part of this commission to their members working in this multilevel marketing network/chain system, run and operated/managed by them.

3.1. Learned Counsel for the Appellants submits further that normally, it is the person who provides the taxable service, on receipt of service charges, who is responsible for paying the service tax under Section 68(1) of the Finance Act, 1994; however, for the services in relation to Insurance Auxiliary Service by an Insurance Agent, the Service tax is to be paid by the Insurance Company; it was clarified by Board Circular No. B. 11/1/2002-TRU, dated 1-8-2002 that in relation to Insurance Auxiliary Service provided by the insurance agents, the service tax shall be paid by the Insurance Company (Insurer); therefore, in the instant case, the insurance companies who provided the service, to the insurance companies in promotion and marketing, are covered under the category of 'Insurance Auxiliary Service'; they received a commission from the insurance companies and the service tax was paid by the insurance companies as evidenced by the certificates issued by M/s. Max New York and M/s. Life Insurance Corporation of India.

3.2. Learned Counsel for the Appellants submits also that there is no service provided by the appellant to these Corporate Agents; neither the appellant had marketed these corporate agents in any manner nor they have promoted any business of these corporate agents; appellant had marketed only Insurance Companies on behalf of these corporate agents by creating customers/clients in purchasing insurance policies; the appellants are not covered under Business Auxiliary Services. He submits that it would amount to double taxation, in case the appellant is asked to pay service tax, on the commission received by them from corporate agents of insurance companies, which already suffered tax; department has already charged the service tax on gross amount of commissions paid by insurance companies. He submits that in case the appellant is required to pay service tax on the commission received by them, the appellant is entitled to avail the Cenvat credit on the portion of commission received by them; therefore, it is a revenue neutral case; revenue reliance on M/s. TVS Motor Co. Ltd. 2012 (28) S.T.R. 127 (Tri. Chennai) and M/s. Pagariya Auto Centre 2014 (33) S.T.R. 506 (Tri. LB) is misplaced as facts these cases are different. He relies on the following.

- M/s. Popular Vehicles & Services Ltd. 2010 (18) S.T.R. 493 (Tri. Bang.)
- Abharan Motors Pvt Ltd. as reported in 2011 (23) S.T.R. 72 (Tri. Bang.)
- M/s Lone Star Engineers, STA No.8 of 2019 Punjab & Haryan High Court

4. Learned Counsel submits, in respect of demand on Income on Accounts of Processing Fee, Cheque Processing Charges, Cheque Re-Issue Charges & BC Transfer Fee Received from their Down Line Members, that the appellant charged Processing Fee for calculation of income of the workers by way of deducting from the amount payable

to their worker/down line members; Cheque Processing Charges, @ 30/- per dispatch, is deducted from the payable to workers; Cheque Reissue Charges, were deducted from payment payable to the worker for making stop payment of that cheque, which is reissued.; BC Transfer Fee, is to be charged from the workers when they he transfer Business Centre to any other person; all charges were deducted by the present appellant from the payments due to their down line members; these amounts have not been collected from anyone for any service; as no service is involved, demand of service tax on these incomes are not justified in the eyes of law.

5. Learned Counsel submits, as far as income on accounts of CBT charges, that the amounts received were part of expenses of training given to their employees in different places; training is educational in nature to develop various skills to enhance their employability; there was no profit motive; if any amount received for a profit motive can be included in the taxable value; these are only expenses borne by the appellant in giving training and conducting seminars at different place and was deducted from the payment of commission payable to their down line members; the activity cannot be covered under Commercial Training and Coaching Centre Service; judgement of Larger Bench in the case of Great Lakes Institute of Management Ltd 2013 (32) S.T.R. 305 (Tr. LB) is not applicable in the present case.

6. Learned Counsel submits that the appellant has not suppressed any fact from the department; appellant had already disclosed all the documents before the department when they required the same and

all receipt of the payment were shown in their Balance Sheet for the relevant period; Balance Sheet is a public document; it is well settled law, that, if the demand has been confirmed on the basis of statutory records and Balance Sheet of the assessee, then the extended period can't be invoked; It is the case of the interpretation of law and the same fact also accepted by learned Adjudicating Authority; on this count also extended period cannot be invoked; he relies on (i) Hindalco Industries Ltd 2003 (161) E.L.T. 346 (Tri. Del.) (ii) Martin & Harris Laboratories Ltd 2005 (185) E.L.T. 421 (Tri. Del.) and (iii) Kirloskar Oil Engines Ltd 2004 (178) E.L.T. 998 (Tri. Mumbai). Learned Counsel further submits that as no Service tax demand can be made against the appellant, the interest, under Section 75 of the Act, can't be demanded and penalty under Section 76 of the Act, can't be imposed; as there is no suppression, penalty imposed under Section 78 of the Act on the appellant merits to be set aside.

7. Shri Anurag Kumar, Learned Authorized Representative, for the respondent department, submits that the appellant was engaged in generating references (Potential Insurance Customers) through Multi-Level Marketing concept and forwarding these Potential Insurance Customers to the related Insurance agents/corporate agents who further passed on these customers to their related Insurance Companies for issuance of policies; the appellant was not registered as Insurance Agent but was using the Agent Codes of the above-mentioned Corporate Agents who were registered with the insurance Companies; the Appellant was receiving commission from their

corporate agents for such services, which was shown as "referral charges' in their books of accounts and balance sheets; the activities of the Appellant are allegedly covered under the category of 'Business Auxiliary Service'.

7.1. Learned Authorized Representative submits further that the Appellant has contended that they were working as sub-agents of the "corporate agents" of the insurance companies and therefore, the services provided by them ought to be covered under the category of Insurance Auxiliary Service; the appellants argued that the Service Tax in case of Insurance Auxiliary Services has to be paid by the Insurance Company as per Circular No. B. 11/1/2002-TRU, dated 1-8-2002l; the appellants argued that as per the provisions of Service Tax Rules, the insurance companies were liable to pay Service Tax on commission paid to their corporate agents, thus the Service Tax stands already paid on the amount of commission received by them; the appellants argued that they are not further liable to pay any Service Tax on the amount of referral charges received by them.

7.2. Learned Authorized Representative submits also that the Appellant has agreed to the fact of providing services; however, they have contended that the services provided by them are covered under the category of "Insurance Auxiliary services". He takes us through the definition of the "Insurance Auxiliary Service", as provided by Section 65(55) of finance Act, 1994 and Section 2 of the Insurance Act, 1938 and submits that seen in the light of definitions, any services could be termed as "insurance auxiliary services" only if the same are provided or are to be provided - to a policy holder or any person) or (insurer, including re-insurer) by an actuary or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services; the Appellant were not registered with any insurance Company in the capacity of actuary or intermediary or as agent and appellants were not providing any services to either the policy holders or insurer or reinsurer; therefore, the services provided by them are not covered under the ambit of insurance auxiliary services; therefore, the insurance companies were not liable to pay any tax on the income of "referral charges" received by the Appellant from their corporate agents; in this case, the service receiver are the Corporate Agents and the service providers are the Appellant.

7.3. Learned Authorized Representative submits further that Shri Kulwant Singh. Partner of the Appellant, in his statement on 18.02.2010, admitted that they were not registered as insurance agents; they provided services to the corporate agents; income of the Appellant were for providing the marketing services such as referral and support functions to the sister corporate agents who in turn finally sell the policies; they do not have any corporate agency license and their business model is to provide expert knowledge and referrals of the potential buyers of insurance product; incentives are paid by them to the workers who help the Appellant to generate references. Learned Authorized Representative takes us through the definition of Business Auxiliary Services, as defined under Section 65(19) of the Act and submits that from the aforesaid facts, it is evident that the services provided by the Appellant are not covered under the definition of insurance auxiliary services and squarely fall under clauses ii, iv, vi and vii of the definition Business Auxiliary Services. He relies on TVS Motor Co. Ltd (2012 (28) S.T.R. 127 (Tri. - Chennai) and Pagariya Auto Centre (2014 (33) S.T.R. 506 (Tri. LB).

8. Learned Authorized Representative submits that the income received and shown by the Appellant as Processing Fee, Cheque Processing charges, Cheque Reissue charges, BC Transfer fee from their down line members. thus, the Appellant was providing services of supportive working relationship with the customers of the Insurance companies; the services provided by the Appellant are also not covered under the category of "Insurance Auxiliary Service" in as much as, the Appellant was providing such services in order to supplement the business of the corporate agents; these services are of the nature of incidental and auxiliary to the services provided by the Appellant to the corporate agents of Insurance Companies; Thus, these services are covered under the definition of Business Auxiliary Service.

9. Learned Authorized Representative submits that appellants in their reply, with respect to the receipt of CBT charges, says that they were not providing the above services in an organized manner and even if they admitted that they had provided such services, the value of such services was much below, in respective financial years, the SSI exemption limit, they were not required to pay any Service Tax on

the income’ He submits that the Appellant imparted training for a consideration to the willing candidates, who acted as their down line members, and who acted to further generate business for them and their clients; such an activity would be covered under Commercial Coaching or Coaching Centre Service' as defined under Section 65 of the Act; the contention of the Appellant for SSI exemption is not tenable here as they have calculated the value of services provided under the category of Commercial Training and Coaching Centre Service only, whereas the value of services provided by the Appellant under the category of 'Business Auxiliary Services' during the relevant financial years is also required to be added to determine the total exemption limit. He submits that the income received by the Appellant on account of CBT (Certified Business Training) charges from their down line members, is covered under 'Commercial Training and Coaching Centre Service', as defined under Section 65(26) (27) of the Act; he relies on the decision of the Tribunal in Great Lakes Institute of Management Ltd2013 (32) S.T.R. 305 (Tri. - LB).

10. Learned Authorized Representative submits on the issue of limitation that that the fact of providing taxable service by the Appellant came to the knowledge of the department on the basis of an intelligence; in pursuance of that information, the premises of the Appellant were searched on 5.2.2010; it was only during the search, Balance Sheets showing referral and other income; the Appellant had provided taxable services, did not register themselves; did not pay service tax; did not file ST-3 returns; hence, the demand has been

correctly raised by invoking the extended time limitation of five years; the appellants rendered the Service Tax evaded liable to be demanded under proviso to Section 73(1) of the Act and rendered themselves liable to pay penalties imposed. Shri Kulwant Singh. Partner of the appellant, was fully aware that they were providing taxable service; he was in charge of the company and the accounts of the Appellant; he willfully suppressed the material facts of rendering taxable services from the knowledge of the Department with the intent to evade payment of Service Tax. He rendered himself liable to penalty.

11. Heard both sides and perused the records of the case. Brief issues to be decided in the instant case are as to whether

(i). the Referral Charges, received by the appellants from the corporate agents are liable to service tax under 'Business Auxiliary Service'?

(ii) the amounts deducted by the appellants, from the payments due to their down line members, on account of Processing Fee, Cheque Processing Charges, Cheque Re-issue Charges, BC Transfer Fee, etc would be taxable under 'Business Auxiliary Service'?

(iii) Whether appellants rendered 'Commercial Training and Coaching Centre Service' in imparting Certified Business Training to their down line members? were covered under or not?

(iv) Whether the extended period is invokable in the facts and circumstances of the case?

(v) Whether penalties under Section 76, 78 & 77 imposable on the appellant and Shri Kulwant Singh?

12. Coming to the issue (i) as above, we find that the appellants claim that they are rendering the services as insurance agents; the sub-agents who get the tax paid commission from insurance companies, share the same with the appellants and that they are promoting the Business of the Insurance Companies rather than of the sub-agents and as such they cannot be said to have rendered 'Business Auxiliary Service' to the sub-agents. On the other hand, the adjudicating commissioner finds that the appellants are not insurance agents as per the definitions, both under Finance Act,1994 and the Insurance Act 1938; any services could be termed as "insurance auxiliary services' only if the same are provided or are to be provided to a policy holder or any person] or [insurer, including re-insurer) by an actuary or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services; the Noticee were not registered with any insurance Company in the capacity of actuary or intermediary or as agent; they were not providing any services to either the policy holders or insurer or reinsurer as defined in the above said definition of insurance auxiliary services; therefore, the services provided by them are not covered under the ambit of Insurance Auxiliary Services; the insurance companies were not liable to pay any tax on the income of "referral charges" received by the Noticee from their corporate agents; in this case, the service

receiver are the Corporate Agents and the service providers are the Noticee.

13. It is the case of the appellant that the corporate agents of the insurance companies as well as themselves are rendering services in procuring the clients for the insurance companies; the insurance companies pay the commission to the corporate agents and also discharge the applicable service tax on the same; the corporate agents share a part of the commission to the appellants. Learned Adjudicating Authority finds that as per the definition, "Insurance Auxiliary Service" means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business and includes risk management, claim settlement, survey and last assessment; the appellants are not either an actuary or an intermediary or an insurance intermediary an insurance agent as defined under Insurance Regulatory and Development Authority Act, 1999; they accepted that they are not registered as insurance agents and therefore, he finds that services rendered by the appellants do not fall under the category of Insurance Auxiliary Services.

14. In order to see if the services rendered by the appellant to the sub-agents would qualify to the "Business Auxiliary Services, we find that it would be beneficial to refer to the definition of Business Auxiliary Services. We find that Section 65(19) of the Finance Act, 1994 defines Business Auxiliary Services to mean:

> "Business Auxiliary Service" means any service in relation to,
> (1) promotion or marketing or sale of goods produced or provided by or belonging to the client; or
> (ii) promotion or marketing of service provided by the client; or
> (iii) any customer care service provided on behalf of the client, or
> (iv) procurement of goods or services, which are inputs for the client; or
> [Explanation. For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "inputs" means all goods or services intended for use by the client:
> ((v) production or processing of goods for, or on behalf of the client; or]
> (vi) Provision of service on behalf of the client; or
> (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision, and includes services as a commission agent. [but does not include any activity that amounts to "manufacture" of excisable goods.]
> [Explanation.
> For the removal of doubts, it is hereby declared that for the
> purposes of this clause, (a) "commission agent" means any person who acts on behalf of another person and causes sale or purchase of goods, or provision or receipt of services, for a consideration, and includes any person who, while acting on behalf of another person
> (1) deals with goods or services or documents of title to such goods or services; or
> (ii) collects payment of sale price of such goods or services; or
> (iii) guarantees for collection or payment for such goods or services; or
> (iv) undertakes any activities relating to such sale or purchase of such goods or services.

15. We find that learned adjudicating authority observes that the services provided by the appellants are covered under clauses ii, iv,

vi, vii. We proceed to examine the different clauses vis-à-vis the service rendered by the appellant. We find that clause ii pertains to promotion or marketing of service provided by the clients. In the instant case, the appellants are certainly promoting and marketing the service of the insurance companies in procuring the clients for issuance of policies and not of their clients i.e. the sub-agents, who are the clients. Therefore, it appears that the clause(ii) is not applicable. Clause iv pertains to procurement of goods or services, which are inputs for the clients. We find that the appellants are not procuring goods or services for their clients and therefore, clause iv is not attracted. We find that clause vi pertains to provision of service on behalf of the clients. The appellants are canvassing for the policies to be issued by the insurance companies. The sub-agents are not providing the service to the clients of the appellants; they are simply procuring customers for the insurance companies on behalf of the sub-agents. Therefore, we find that the services do not fall under clause vi. Coming to the clause vii, we find that the appellants are not undertaking any activity such as billing etc. so as to fall under clause vii of the definition of "Business Auxiliary Services". Therefore, we find that the activity undertaken by the appellants to their clients i.e. sub-agents of the insurance companies does not fall under any of the clauses ii, iv, vi, vii of the definition of the "Business Auxiliary Services, as found by the adjudicating authority.

16. In fact, the appellants and the Sub-agents of the insurance companies are together performing the same service and are sharing

the commission paid by the Insurance Companies. The applicable service Tax on the Commission paid is discharged by the said Insurance Companies. There is no separate service rendered by the appellants to their clients, i.e. the sub-agents which could be taxable under "Business Auxiliary Services'; we find that non-registration of the appellants as insurance agent does not alter the nature of the services rendered by the appellants to sub-agents. It can be understood from the scheme of the things that the appellants and the sub-agents are rendering the same service to the insurance companies and are sharing the commission paid by the insurance companies to the sub-agents. We find that there is no such bar under the service tax law prohibiting such joint rendering of the service. We find that Tribunal had decided an issue involving identical facts in the case of Popular Vehicles & services Ltd 2010(18) STR 493(Tri-Bang) and held as follows.

> We find that in the case on hand, tax was paid on the commission paid by the insurance company and by the banks/finance companies. Once service tax is paid by MIBL/MUL on commission paid by their clients for provision of the respective services, no liability survives under BAS on any work carried out by an intermediary which contributed to the same outcome. Moreover, if any service tax is paid by the appellants on commission received, MIBL/MUL will be eligible for credit of such tax paid, thereby rendering the impugned demand a revenue neutral exercise. In the circumstances, there cannot be demand of any service tax under BAS for the share of commission received by MIBL/MUL and paid to the dealers. The impugned orders are therefore not sustainable. They are set aside to the extent they

> affirmed orders-in-original No. 4/2006 and 16/2006 and these appeals are allowed.

17. In view of the above, we find that the issue is no longer *res integra.* Therefore, we find that there is no reason as to why we should differ from the above judgement. The cases relied upon by the Authorized Representative for the Revenue are not applicable as the facts are different. Thus, issue raised at (i), in Para 11 above, is answered in favour of the appellants.

18. Coming to the issue, raised at (i) in Para 11 above, of proposal to levy service tax on account of processing fee, cheque processing charge, cheque re-issue charges and B.C. Transfer fees, we find that Revenue considers the same as provision of services of supportive working relationship with the customers of the insurance companies and intends to charge the same under Business Auxiliary Services. We find that the logic given by the adjudicating authority is involute and far-stretched. The charges recovered from the customer of the appellants and Revenue wants to treat the same as the consideration for the services rendered by the appellant to the insurance companies. The adjudicating authority terms the service as supportive working relationship with the customers of insurance companies. We fail to understand the logic. If the consideration is flowing from the customers of the appellant to the customers, by no stretch of imagination the same can be considered as remuneration in the hand of the appellants received from either the corporate agents or the insurance companies. There is no service alleged to have been

provided by the appellants to their customers in this regard so as to treat the same as remuneration. Moreover, the appellants are not supporting any business of their customers and purchasing of insurance policy cannot not termed as a business of the customers. Therefore, the relation of service provider, service recipient and the consideration is not established in respect of this activity. These have to be considered as incidental expenses recovered or income generated in the course of business of the appellant and therefore cannot be held to the exigible to service tax. Therefore, we find that no case has been established against the appellants on this account.

19. Coming to the other issue, raised at (iii) in Para 11 above, of demand on account of Certified Business Training (CBT), the adjudicating authority finds that they are covered under "Commercial Training and Coaching Centre Services". The appellants submit that the training provided by them is an in-house training for the benefit of their down the line members to improve their marketing skills and cannot be construed strictly to be "Commercial Training and Coaching Centre Services". The appellants also take the plea that even if they are considered as taxable service, their total turnover on this account will not be more than 10 lakhs the appellants are entitled to the benefit of SSI exemption. We find that the so-called training given by the appellants is not an open training given to the general public for a consideration. Even though, certain amounts are taken as fees, the training is only to their down line members in order to improve their skills. This is a sort of in-house training for their own employees.

Almost, all big business entities and corporates do conduct such training to their employees in order to make them competent in the respective fields. This cannot be equated to ""Commercial Training and Coaching Centre Services". Revenue does not bring about any evidence as to the trainees who have undertaken the CBT, are capable of being employed elsewhere. In the absence of the same, it has to be understood that training is an in-house training, intended to train their own personal. It is the appellants who are the ultimate beneficiaries are consumers of the benefit. Therefore, the CBT given by the appellants cannot be a commercial coaching of the training. Revenue appears to be under a fallacy that every income should be as result of a service and every income is for a certain service. This argument is not acceptable. At the same time, we find that the argument, of the appellant that even if the said activity is treated as service they will be covered under small scale limit, is not acceptable. The limit for exemption is to be seen in the totality of the consideration received by the appellants in respect of all the services put together and not each service wise as rightly observed by the adjudicating authority.

20. In view of the above discussion, we find that all the questions raised, at Para 11 above, for discussion are answered in favour of the appellants. We find that the appellants are not liable to pay Service Tax on any of the issues raised in the impugned Show Cause Notice and confirmed in the impugned order. The appellants are not liable to pay Service tax on the amounts received under various heads such as

referral charges received from Corporate sub-agents; income on account of Processing Fee, Cheque Processing charges, Cheque Reissue charges, BC Transfer fee from their down line members and the income on account of CBT Certified Business Training charges received from their down line members. As the appellants squarely succeed on merits, we are not inclined to go in to the aspect of limitation in detail. However, we also find that there is merit in the argument of the appellants on limitation, as the issues are about the interpretation of the provisions of Law and no positive evidence to allege suppression, misstatement etc. with intent to evade payment of duty has been adduced, we are of the considered opinion that the appellants succeed on limitation too. When the demand of duty is not sustainable, there is no question of interest and penalties.

21. In the result, both the appeals are allowed.

(Order pronounced in the open court on 27/05/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK