CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 54892 of 2014

[Arising out of Order-in-Appeal No. CHD-EXCUS-000-APP-182-14-15 dated 12.06.2014 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

M/s Mangat Randhir Kaur and Ajitpal Singh ......**Appellant**
H.No. 1784, Phase-3B2, Mohali,
Punjab-160059

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh-I ......**Respondent**
Central Revenue Building, Plot No.19, Sector-17C,
Chandigarh-160017

APPEARANCE:

Shri Kapil Kher, Advocate for the Appellant

Shri Narinder Singh, Authorized Representative for the Respondent

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

FINAL ORDER NO.60932/2025

DATE OF HEARING: 05.08.2025
DATE OF DECISION: 05.08.2025

P.ANJANI KUMAR:

M/s Mangat Randhir and Ajitpal Singh are distributors of M/s Amway India Enterprises Pvt. Ltd. and have commission for promoting sales/ marketing of the products of Amway. Revenue entertained an opinion that the services rendered by the appellants are liable to service tax under the category of "Business Auxiliary Service". Show cause notice dated 16.10.2008 demanding service tax of Rs.16,44,486/- along with interest and penalty has been issued to the appellants; the proposals in the show cause notice has been confirmed by the Order-in-Original dated 03.03.2010, which was affirmed by the Order-in-Appeal dated 12.06.2014.

2. Shri Kapil Kher, learned Counsel appearing for the appellant squarely submits that many cases on the same issue have been remanded back to the original authorities for a *de novo* consideration.

3. Learned Authorized Representative for the Department has no objection for the same.

4. Heard both sides and perused the records of the case. We find that this Bench, in the case of M/s A B Network Development Pvt. Ltd. vide Final Order No.60672/2023 dated 30.11.2023 after going through the various decisions given earlier by other Benches, has remanded the case back to the original authority for a *de novo* consideration. We find that the Principal Bench, in the case of Charanjeet Singh Khanuja – 2016 (41) STR 213 (Tri. Del.), has held that:

> **12.** According to the Department, the activity of the assessees is "promotion or marketing or sale of the goods produced or provided by or belonging to the client." In our view, the activity which is covered under Section 19(i) is in relation to the promotion or marketing or sale of the goods produced by the client

or provided by the client or belonging to the client. This expression, in our view, would not cover the sale of the goods by a person, which belong to him, as the activity of the promotion or marketing or sale of the goods by a person belonging to him would not constitute service. The assessees in these cases are distributors, who purchase the goods from Amway at the Distributors' Acquisition Price (DAP)) and sell the same in retail at price not exceeding MRP fixed by the Amway. This activity of the Distributors, in our view, cannot be treated as promotion, marketing or sale of the goods produced or provided by or belonging to the client (Amway), as the sale of the goods purchased by the Distributors from Amway is not the sale of the goods belonging to their client - Amway. Once the Amway products have been purchased by a Distributor from Amway, those products cease to belong to Amway, but belong to the Distributor and sale of these goods by the Distributor would not constitute service to Amway. For the same reason, any incentive or commission received by a Distributor from Amway for buying certain quantum of goods from Amway during a month can not be treated as the consideration received for promotion or marketing or sale of the goods produced by or provided by or belonging to the client, more so, as this commission is not linked to the goods sold by the Distributor, but is linked to the goods purchased by the Distributor from Amway during a month and is in the nature of volume discount. Therefore, no service tax is chargeable on the profit earned by the distributors from 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 quantum of goods from Amway.

13. However, activity of a Distributor of identifying other persons, who can be roped in for sale of the Amway products/marketing of the Amway products and who on being sponsored by that Distributor are appointed by Amway as second level of distributors is, in our view, the activity of marketing or sale of the goods belonging to Amway and the commission received by the Distributor from Amway, which is linked to the performance of his sales group (group of the second level of distributors appointed on being sponsored by the Distributor) would have to be treated as consideration for Business Auxiliary Service of sales promotion provided to Amway. Therefore, service tax would be chargeable on the commission received by a Distributor from Amway on the products purchased by his sales group. However, in the impugned orders Service tax has been demanded on the gross amount of commission and no distinction has been made between the commission earned by a Distributor from Amway based on his own volume of purchase from Amway and the commission earned by him on the basis of the volume of purchases of Amway products made by his sales group i.e. group of second level of Distributors appointed by Amway on being sponsored by the Distributor. For quantifying the Service tax demand on the commission received from Amway on the volume of purchase made by the distributors sponsored /enrolled by a particular distributor i.e. the Distributor’s sales group, these matters would have to be remanded to the Original Adjudicating Authority.

14. Another objection raised by the appellants in Appeals Nos. ST/138 and 139/2009, ST/406/2010, ST/522 to 525/2010, ST/257, 259, 433, 473, 502, 580, 1123, 1383, 1781 & 1802/2011, ST/56, 86, 126, 645/2012 and ST/1723-1724, 2337 and 2810/2012 and the respondents in Appeals Nos. ST/851 to 854, 863, 864, 865, 866, 867, 868, 869, 870 and 878/2012 is that the assessees are individuals and during the period till 30-4-2006, Service tax was chargeable only on the services provided to a client by a commercial concern in relation to Business Auxiliary Service and the individual persons cannot be treated as Business concern. We do not accept this plea as a business concern can be a proprietary firm also which is owned by an individual and there is no difference between proprietary firm owned by a person and that person. When an individual engages himself in a commercial activity, he has to be treated as business or commercial concern. Therefore, notwithstanding the fact that w.e.f. 1-5-2006 the term, 'commercial concern' in Section 65(105)(zzb) was replaced by 'any person', we are of the view that even during the period prior to 1-5-2006, the Business Auxiliary Service, even if provided by an individual to a client, was taxable. Moreover, in this group of appeals, the Appellants in Appeal No. ST/257/2011 and ST/259/2011 are proprietary firms who, without any doubt, are commercial concerns.

15. Another point of dispute is as to whether duty exemption under notification No. 5/2006-ST would be admissible to the Distributors in this group of cases. In this regard, the Department's plea is that this exemption is not applicable when the taxable service is provided by a person under a brand name/trade name, whether registered or not, of another person and in this group of cases, the Distributors have promoted the sale/marketing of branded products. This plea of the Department is not correct, as in these cases the distributors are engaged in promoting sales/marketing of the products of Amway and they are not marketing or promoting any taxable service which is branded and the brand name belongs to another person. Marketing or sale promotion of branded products by a person/ commission agent does not amount to providing branded service by him and hence, marketing or sales promotion of a branded product does not come under the exclusion category as mentioned in the proviso to Notification No. 6/05-S.T. In this group of cases, the eligibility of the Distributors (assessees) for the exemption Notification No. 6/2005-S.T. has not been examined and for this purpose also, these matters have to be remanded to the Original Adjudicating Authority.

5. Therefore, in the interest of justice, we find that this case too should follow the same route. Accordingly, the appeal is allowed by way of remand to the original authority with a direction to complete the adjudication proceedings within a period of 16 weeks of the receipt of this order. It is needless to say that the appellant shall be given an opportunity to represent his case along with necessary documents.

(Dictated and pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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