CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.419 of 2010

(Arising out of Order-in-Appeal No.425/MA/RTK/2009 dated 31.12.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Vanijya Nikunj, Udyog Vihar,Phase-V, Gurgaon)

Shri Ramdiya Sharma Gautam ......**Appellant**
(House No.2851-B, New Housing Board Colony, Jind, Haryana)

VERSUS

CCE & ST, Rohtak ......**Respondent**
(SCO No.6, Sector 1, Rohtak)

WITH

Service Tax Appeal No.438 of 2010
(Arising out of Order-in-Appeal No.421/MA/GGN/2009 dated 30.12.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Vanijya Nikunj, Udyog Vihar,Phase-V, Gurgaon)

Service Tax Appeal No.439 of 2010
(Arising out of Order-in-Appeal No.423/MA/RTR/2009 dated 31.12.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Vanijya Nikunj, Udyog Vihar,Phase-V, Gurgaon)

Service Tax Appeal No.440 of 2010
(Arising out of Order-in-Appeal No.424/MA/RTR/2009 dated 30.12.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Vanijya Nikunj, Udyog Vihar,Phase-V, Gurgaon)

Service Tax Appeal No.441 of 2010
(Arising out of Order-in-Appeal No.426/MA/RTR/2009 dated 30.12.2009 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Vanijya Nikunj, Udyog Vihar,Phase-V, Gurgaon)

Service Tax Appeal No.1502 of 2010
(Arising out of Order-in-Appeal No.263/BK/RTR/2010 dated 30.7.2010 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Vanijya Nikunj, Udyog Vihar,Phase-V, Gurgaon)

Service Tax Appeal No. 1524 of 2010
(Arising out of Order-in-Appeal No.267/BK/RTR/2010 dated 16.7.2010 passed by the Commissioner (Appeals), Central Excise, Delhi-III, Vanijya Nikunj, Udyog Vihar,Phase-V, Gurgaon

Smt. Anita Mohan ......**Appellant**
(House No. 597, Sector 11, Urban Estate, Jind, Haryana)

Shri Vijai Pal Virodhiya
(House No. 3518, Sector 11, Urban Estate, Jind, Haryana

Smt. Suman Devi
(House No. 4949, Sector 11, Urban Estate, Jind, Haryana
Smt.Sushma Devi
(House No. 1119, Housing Board Colony, Jind, Haryana

Smt.Sudesh Vats
(House No. 2701, Urban Estate, Near Moti Lal School, Jind, Haryana)

Shri Rakesh Sharma

(House No. 2851, Housing Board Colony, Jind, Haryana)

VERSUS

CCE & ST, Rohtak **......Respondent**
(SCO No.6, Sector 1, Rohtak)

APPEARANCE:

Present for the Appellant: , None

Present for the Respondent: Shri Vijay Gupta, AR

CORAM: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.SANJIV SRIVASTAVA , MEMBER (TECHNICAL)

FINAL ORDER NO.60130-60136/2020

DATE OF HEARING: 21.01.2020
DATE OF DECISION: 21.01.2020

PER ASHOK JINDAL:

The appellants are in appeal against the impugned orders demanding service tax under the category of 'Business Auxiliary

Service' along with interest and imposing penalty on all the appellants.

2. The facts of the case are that the appellants are distributors of M/s. Fashion Suiting Pvt.Ltd., Swaroo Ganj, District Bhilwara, Rajasthan. The working of the appellants is like that the M/s. FSPL is marketing the consumer goods through multi level marketing system. A customer comes to the showroom and makes certain purchases and the customer pays the price and is allowed certain discount. M/s.FSPL asked the appellants whether they would like to be a distributor for the company wherein the distributor is required to introduce two customer. This system of marketing is called RCM. As per agreement, the appellants agree to be distributor and introduces B and C two customers. When B and C make purchases, discount is allowed to B and C and part of discount goes to the appellant-A. Further, B and C also register themselves as distributors and introduce D -E and F –G another two customers each. The discount allowed to D-E and F-G goes to these purchasers and part goes to B-C-A. The tree of distributors goes up, the discount comes down the line. On these discounts received by the appellants, the Revenue sought to demand service tax under the category of 'Business Auxiliary Service'. Therefore, the show cause notices were issued to the appellants by invoking the extended period of limitation and the matters were adjudicated and the demand service tax under the category of 'Business Auxiliary Service' were confirmed along with interest and penalties were also imposed on all the appellants. Against these orders, the appellants are before us.

3. Ld. Counsel for the appellants submits that although the issue has been settled against them in the case of Surendra Singh Rathore vs. CCE, Jaipur-I-2014 (34) STR 147 (Tri.-Del.). But the appellants submit that the extended period of limitation is not invokable in the facts and circumstances of the case as held by this Tribunal in the case of Charanjeet Singh Khanuja and others vs. CST, Indore and others reported in 2016 (41) STR 213 (Tri.-Del.) wherein it has been held that the extended period of limitation is not invokable. Consequently, the demands pertaining to the extended period of limitation are not sustainable and no penalty is impossible on all the appellants.

4. On the other hand, Ld.AR heavily relied on the decision of this Tribunal in the case of Surendra Singh Rathore (supra) to say that the extended period is also invokable in these cases as held by this Tribunal in the case of Surendra Singh Rathore (supra) and penalty were also confirmed against them wherein the demand for extended period was also confirmed.

5. Heard Ld.AR and perused the records.

6. On perusal of the records, we find that in the case Surendra Singh Rathore (supra), the appellant has not argued the matter on the ground of limitation. Therefore, the Tribunal has not given the observations with regard to the extended period of limitation whereas in the case in hand, the appellants prayed that they might be given the benefit of extended period of limitation.

7. Therefore, we have taken the appeals for consideration whether the extended period of limitation is invokable or not?

8. Admittedly, in the case of Charanjeet Singh Khanuja and others vs. CST, Indore (supra), the Tribunal has held that the extended period of limitation is not invokable.

9. As the issue has been decided by this Tribunal in the case of Charanjeet Singh Khanuja and others vs. CST, Indore (supra) and this decision has been followed in various cases. Like in the case of Shri Bhairu Dan Karwa and others vs. CCE, Jaipur, vide Final Order No.54386-54390/2016-ST (DB) dated 17.10.2016, wherein the benefit of extended period of limitation is granted.

10. In view of this, we hold that and in the cases in hand, the extended period is not invokable, consequently, no penalty is not imposable on the appellants.

11. The appellants are directed to deposit service tax for the period within the limitation period within 30 days along with interest after communication of this order.

12. The appeals are disposed of in the above manners

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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