IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]

Appeal Nos.: ST/664 & 665/2012

Sl. No.	Appeal No.	Appellant	Respondent
1.	ST/664/2012	Shri. A. V. Dhanasekaran, No. C-2, Thirumal Apt., IInd Floor, Baba Street, Venkitapuram	The Commissioner of G.S.T. & Central Excise, Coimbatore
Arising out of Order-in-Appeal No. 187/2012 dated 11.09.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore			
2.	ST/665/2012	Smt. P. Deivam, No. 21, Brindavan Nagar, Vadamadurai - PO	The Commissioner of G.S.T. & Central Excise, Coimbatore
Arising out of Order-in-Appeal No. 187/2012 dated 11.09.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore			

Appearance:-
Ms. D. Naveena, Advocate
for the Appellant

Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM:
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 11.01.2019

Date of Pronouncement: 21.02.2019

Final Order Nos. 40342-40343 / 2019

Per P. Dinesha :

Show Cause Notices dated 27.10.2009 and 07.04.2010 were issued covering the periods from May 2006 to June 2009 and May 2006 to December 2008 respectively *inter alia* alleging the appellants' role as distributors for M/s. Amway India Enterprises P. Ltd. ('M/s. Amway' for short) whereby the appellant promoted the products of

M/s. Amway; that for the above activities, the appellants were paid commission every month by M/s. Amway; that such commission payments received were made after deducting the tax at source and that the appellants were covered by the service under 'Business Auxiliary Service' for which the appellants had not obtained registration.

2. The Orders-in-Original came to be passed thereafter vide Orders-in-Original dated 20.05.2011 and 08.09.2011 after considering the explanation/written submissions filed by the appellants whereby the proposals made in the Show Cause Notices came to be confirmed. In the same Orders, the adjudicating authority has appropriated the service tax liability paid vide TR-6 challans dated 11.02.2009, 31.08.2009 and 30.07.2009. Having not met with success in its first appeals before the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore who vide Order-in-Appeal Nos. 187 & 188/2012, both dated 11.09.2012, dismissed the appeals thereby upholding the Orders passed by the lower authority, the appellants are before us.

3. Heard Ms. D. Naveena, Ld. Advocate appearing on behalf of the appellants and Ms. T. Usha Devi, Ld. DC (AR) appearing on behalf of the Revenue.

4. We have considered the rival contentions, perused the documents placed on record and have also gone through the Order relied upon during the course of hearing.

5.1 Ld. Advocate submitted that on merits, the issue is decided by the Principal Bench of the Tribunal at Delhi in the case of ***Charanjeet Singh Kanuja Vs. C.S.T. – 2015-TIOL-1205-CESTAT-DEL,*** but however submitted that the appellant had entertained a *bona fide* doubt as to taxability. She also submitted that in spite of doubts, the appellants have paid the service tax after being pointed out, before the issuance of the Show Cause Notices.

5.2 She further drew our attention to a recent Order of this Bench in the case of ***P.K. Kutty Vs. Commissioner of Central Excise & Service Tax, Coimbatore in Final Order No. 42687/2018 dated 23.10.2018*** wherein, this Bench after considering the rival contentions as also the Order in the case of *Charanjeet Singh Kanuja (supra),* had held that there could be no evidence for suppression and therefore, penalty under Section 78 was not exigible.

6. *Per contra*, Ld. AR while supporting the findings of the lower authorities pleaded for sustenance of the impugned Orders since on merits, the ratio of *Charanjeet Singh Kanuja (supra)* is squarely applicable. However, she was unable to distinguish the ratio of the

above case as far as the findings on limitation/invocation of larger period in the very same case are concerned.

7. After going through the above Order as also the Order of this Bench in the case of *P.K. Kutty (supra),* we are of the considered opinion that on merits we are constrained to hold against the assessee, but however, since no evidences are brought out on record to justify the allegation of suppression, the Revenue could not have invoked the extended period of limitation. Hence, the appeals of the assessee are allowed for the larger period, but however the same will not apply for the normal period of limitation`. For the above reasons, the penalties are ordered to be set aside.

8. The appeals are allowed to the extent indicated above.

*(Pronounced in open court on **21.02.2019**)*

(P Dinesha)	**(Madhu Mohan Damodhar**)
Member (Judicial)	Member (Technical)

Sdd