IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/41802/2016-SM

[Arising out of Order-in-Appeal No.383/2016 (STA-I), dated 30.06.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

C. KAMALKANNAN APPELLANT

Versus

COMMISSIONER OF SERVICE TAX, CHENNAI-I RESPONDENT

Appearance:

For the Appellant Shri N.V. Balaji, Adv.
For the Respondent Shri K.P. Muralidharan, AC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **18-05-2017**

FINAL ORDER NO. 40715/2017

Per Archana Wadhwa:

After hearing both sides, duly represented by Shri N.V. Balaji, Advocate for the Appellants and Shri K.P. Muralidharan for the Respondent, I find that the demand of service tax to the tune of Rs.37,56,343/- stands confirmed against the appellant along with confirmation of interest and imposition of penalty on the ground that during the period Apr.'07 to Mar.'12 by providing multi-level marketing

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services to their principle, they have provided services falling under the category of 'Business Auxiliary Service' which were liable to service tax.

2. I find that the period involved is Apr.'07 to Mar.'12 whereas the show-cause notice stand issued on 19.10.2012.

3. I find that the issue of multi-level marketing falling under the category of 'Business Auxiliary Services' stands finally concluded by the Tribunal in the case of *Charanjeet Singh Khanuja Vs. Commissioner of Service Tax, Indore* reported in *2016 (41) S.T.R.213 (Tri.-Del.)*. However, in the same very decision, the Tribunal has observed that since there was bonafide belief in the industry itself and, in as much as, two views stands held by the department itself regarding taxability of activity, longer period of limitation would not be available to the Revenue. As such, ~~we~~ I find that the longer period of limitation was not available to the Revenue. Learned Advocate, however, fairly agrees that part of the demand would fall within the limitation period.

4. In view of the above, I set aside the impugned order and hold that the demand beyond the limitation period would not be sustainable. Accordingly, matter is remanded to the lower authorities for re-quantification of the demand falling within the limitation period.

5. As regards penalty, I agree with learned Advocate that penal sections are invokable when there is fraud with an intention to avoid payment of duty. As ~~we~~ I have also observed that there was bonafide belief in the industry itself, imposition of penalty upon the appellant would not be justified. Accordingly, ~~we~~ I set aside the penalty.

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6. The appeal is disposed of in the above manner.

(Operative part pronounced in open court on **18.05.2017**)

19/5/17

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
18-05-2017

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चेन्नै/Chennai

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