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

Appeal No. ST/41703/2017

(Arising out of Order-in-Appeal No.204/2017 (STA-I) dated 20.4.2017 passed by the Commissioner of Service Tax (Appeals – I), Chennai)

K. Suresh — Appellant

Vs.

Commissioner of Service Tax, Chennai – I — Respondent

Appearance

Shri S. Sivaramakrishnan, Advocate for the Appellant
Shri Arul C Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **23.10.2017**

Final Order No. 42359/2017

Brief facts are that the appellant is an independent distributor of M/s. Herbalife International India Pvt. Ltd. for providing taxable services. M/s. Herbalife distributes / sells their nutritional food products and cosmetics through a network of independent distributors across India. As the products of M/s. Herbalife are not available across the counter, or through any retail outlet, independent distributors like the appellant are the persons who promote the sale of the product

Customs, Excise & Service Tax Appellate Tribunal for which they receive sales incentive from M/s. Herbalife. The department was of the view that the appellant has not discharged the liability of service tax for the commission received and show cause notices were issued which after adjudication culminated in confirmation of demand, interest and also imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. At the time of hearing, the ld. counsel Shri S. Sivarama Krishnan submitted that in an identical matter of another independent distributor, the Tribunal vide Final Order No.41626/2017 dated 10.8.2017 had set aside the demand on the ground of limitation and remanded the matter to the adjudicating authority for quantification of the demand falling within the normal period of limitation. The Tribunal in the said case had followed the decision of the Tribunal in the case of Charanjeet Singh Khanuja Vs. Commissioner of Service Tax, Indore – 2016 (41) STR 213 (Tri. Del.).

3. The ld. AR Shri Arul C. Durairaj reiterated the findings in the impugned order.

4. Heard both sides.

5. Identical issue of another independent distributor of M/s.Herbalife was analyzed by the Tribunal vide final order cited supra and the Tribunal following the decision in the case of Charanjeet Singh Khanuja (supra) had held that the demand for the normal period would only be sustainable as there is no

Customs, Excise & Service Tax Appellate Tribunal suppression or mis-statement with intent to evade payment of service tax. The penalties were also set aside.

6. On perusal of the records, the period involved is similar and the facts are also identical. There is no material to establish that the appellant has suppressed facts and in fact during the relevant time the issue whether an independent distributor engaged in multilevel marketing is subject to levy of service tax was under much dispute.

7. Following the decision of the Tribunal in the above said final order, I hold that the demand for the extended period of limitation is unjustified and requires to be set aside, which I hereby do. The penalties imposed are also set aside. However, the matter is remanded to the adjudicating authority for the limited purpose of quantification of the service tax for the normal period.

8. In the result, the appeal is partly allowed in the above terms with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
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Asst. Registrar
(CESTAT)
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