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

ST/26/2009

(Arising out of Orders-in-Appeal No. 137/2008-ST (SLM) dated 29.9.2008 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. S.K. Associates — Appellant

Vs.

Commissioner of Central Excise, Salem — Respondent

ST/150/2009

(Arising out of Orders-in-Appeal No. 57/2008 dated 14.11.2008 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Reliance Associates — Appellant

Vs.

Commissioner of Central Excise, Trichy — Respondent

ST/182/2009

(Arising out of Orders-in-Appeal No.65/2008 dated 18.12.2008 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. Aditya Marketing Services — Appellant

Vs.

Commissioner of Central Excise, Trichy — Respondent

ST/485/2009

(Arising out of Orders-in-Appeal No.94/2009 dated 9.7.2009 passed by the Commissioner of Central Excise (Appeals), Trichy)

Customs, Excise & Service Tax Appellate Tribunal

M/s. ANM Associates Appellant

Vs.

Commissioner of Central Excise, Trichy Respondent

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Appellants
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: **11.09.2017**

Final Order Nos. 42043-42046/2017

Per Ms. Sulekha Beevi C.S.

The issue involved in all these appeals being the same, they were heard together and are disposed by this common order.

2. Brief facts of the case are that the appellants were agents of ICICI bank and they were providing services for them and received commission from ICICI Bank. Scrutiny of details revealed that they had not paid service tax on the commission received by them from ICICI bank. Show cause notices were issued alleging non-payment of service tax under the category of Business Auxiliary Service. After adjudication, the original authority confirmed the tax along with interest and also imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence these appeals.

3. The details of the demand and period involved in each of the appeals are shown in the Table below:-

Appeal No.	Appellants	Period of Dispute	Demand
ST/26/2009	S.K. Associates	1.9.2003 to 28.2.2005	Rs.2,14,001/-
ST/150/2009	Reliance Associates	July 2003 to March 2006	Rs.17,47,637/-
ST/182/2009	Aditya Marketing Services	July 2003 to March 2006	Rs.2,61,258/-
ST/485/2009	ANM Associates	July 2003 to March 2006	Rs.2,83,959/-

4. On behalf of the appellants, ld. counsel Ms. Minchu Mariam Punnose strongly argued on the ground of limitation. She submitted that the definition of Business Auxiliary Service was amended with effect from 10.9.2004 thereby including the services provided on behalf of the client. Further, Notification No.25/2004-ST dated 10.9.2004 exempted Business Auxiliary Service provided on behalf of client prior to the period 10.9.2004. The entire disputed period in all appeals except ST/26/2009 falls within the extended period. In ST/26/2009, part of the period would be in normal period of notice. The ld. counsel submitted that the show cause notices have been issued invoking the extended period of limitation alleging suppression of facts. That, apart from the bare allegation, the department has not proved or established any suppression on the part of the appellants. The appellant had not discharged the service tax for the reason that they were under bonafide belief that their services are not covered by Business Auxiliary Service prior to 10.9.2004 and after such date which was

extended upto 16.6.2005 in terms of notification of 25/2004. They are sole proprietors and therefore eligible for exemption as per this notification upto 16.6.2005. That there was no concealment of facts with any intent to evade payment of service tax. On being pointed out, they have taken service tax registration and have discharged the service tax liability. She relied upon the decision in the case of Car World Autoline Vs. Commissioner of Customs & Central Excise, Cochin - 2017 (48) STR 470 (Tri. Bang.).

5. Against this, the ld. AR Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that the appellants were engaged in promotion of business of the ICICI bank and therefore their activities were covered by the definition of Business Auxiliary Service as it stood during the relevant period of dispute. As agents of ICICI bank, the appellants used to canvass prospective customers and arrange for the home loans for the interested parties. They perform the work from the stage of obtaining the application from prospective customers, processing of such applications and undertake file sourcing till the disbursement of loan amount to the customers. The appellant received commission from the bank on the total volume of business done by them; that such activities involved promotion of services or marketing of service provided by the client and therefore the activities were squarely covered under the definition of Business Auxiliary Service. He also adverted to the agreement entered into

between the appellant and the ICICI bank and pointed out that the appellants were appointed as agents of the bank. He therefore pleaded that the impugned order may be sustained.

6. Heard both sides and perused the records.

7. The appellants were appointed as agents by the ICICI bank to provide specialized services to them in respect of home loans, personal loans and credit cards. The department seeks to bring the said activities under Business Auxiliary Service applying the second limb of the definition 'promotion or marketing of service provided by the client'. The appellant submitted that their services were provided on behalf of the ICICI bank and therefore would not fall within this second limb of definition. It is pertinent to note that the definition of Business Auxiliary Service had undergone amendment with effect from 10.9.2004 wherein the services provided 'on behalf of the client' was included within the scope of the definition. Prior to that, the services rendered for a client were only covered by the definition. The Notification No. 14/2004 dated 10.9.2004 granted exemption to various services provided to a client in relation to Business Auxiliary Service. Another Notification No. 25/2004 of even dated granted exemption to Business Auxiliary Service rendered prior to 10.9.2004. The amendment along with these exemption notifications had caused much confusion and doubt and the issue was subject matter of dispute before various fora. The department has not established any positive act of suppression. Mere non—filing of

Customs, Excise & Service Tax Appellate Tribunal returns and non-remittance of tax for rendering Business Auxiliary Service cannot be viewed as suppression of facts with intent to evade tax. Further, the issue being interpretational one, we find no ground to invoke the extended period of limitation. In Car World Autoline Vs. Commissioner of Customs & Central Excise, Cochin (supra), the Tribunal has set aside the demand giving the benefit of Notification No. 25/2004. Thus, the demand in all the appeals for the extended period is liable to be set aside which we hereby do.

8. In ST/26/2009, the appellant is liable to pay the service tax for the normal period. However, for the reasons stated above, the penalties imposed are unjustified and therefore we set aside the same.

9. In the result, the impugned order in ST/26/2009 is modified to the extent of setting aside the demand for the extended period and also setting aside all the penalties imposed. Appeal No. ST/26/2009 is partly allowed with consequential relief, if any. The impugned orders in all the other appeals are set aside on the ground of the demand being time-barred. The appeal Nos. ST/150/2009, ST/182/2009 and ST/485/2009 are allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(B. Ravichandran) 13917.
Member (Technical)

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

Rex

Customs Excise & Service Tax Appellate Tribunal

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