CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

SERVICE TAX APPEAL NO. 51008 OF 2018

[Arising out of the Order-in-Appeal No. 53 (SM) ST/JPR/2018 dated 24/01/2018 passed by Commissioner (Appeals), Central Excise & Service Tax, Jaipur.]

M/s Harji Ram Choudhary, **...Appellant**
Jat Mohalla, Kalyanpura, Kuchil
Tehsil – Kishangarh – 305 811 Raj.

Versus

The Assistant Commissioner, **...Respondent**
Central Excise & Service Tax Division,
Ajmer.

APPEARANCE:

None for the appellant.
Ms. Jaya Kumari, Authorized Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 55476/2024

DATE OF HEARING : 12.10.2023
DATE OF DECISION: 01.04.2024

P.V. SUBBA RAO

The case has been called out, but no one appeared on behalf of the appellant. It is seen from the records that nobody has been appearing on behalf of the appellant on the past also. We have heard Ms. Jaya Kumari, learned authorized representative for the department and perused the records.

2. Shri Harji Ram Choudhary[1] filed this appeal to assail the order-in-appeal dated 24.01.2018[2] passed by the Commissioner (Appeals) whereby he upheld the order- in-original dated 30.3.2015 passed by the Assistant Commissioner and rejected the appellant's appeal.

3. The appellant is registered with the Service Tax Department and has been providing "business auxiliary service" as defined under section 65 (19) of Chapter V of the Finance Act, 1994[3]. During the period April 2011 to March 2012 the appellant filed ST-3 returns declaring the taxable value and the service tax payable but had not paid service tax, as required. On further scrutiny of ST-3 returns for the period April 2011 to June 2012 it was noticed that the appellant had not filed ST-3 returns within the prescribed time limit and had also not paid the late fee for delayed filing of ST-3 returns.

4. Accordingly, a show cause notice[4] dated 11.03.2014 was issued to the appellant calling upon him to explain as to why service tax amounting to Rs. 3,06,647/- should not be recovered from him with interest and why late fee of Rs. 34,700/- should not be recovered from him under section 70 of the Finance Act read with Rule 7C for the Service Tax Rules, 1994 and why penalties should not be imposed under sections 76 & 77 of the Finance Act.

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1. **Appellant**
2. **Impugned order**
3. **Finance Act**
4. **SCN**

5. After considering the submissions made, the Assistant Commissioner, by his order-in-original, confirmed the demand for service tax with interest, the late fee and imposed penalties as proposed.

6. Aggrieved, the appellant filed an appeal before the Commissioner (Appeals) contending as follows :-

(a) The appellant was not liable to pay service tax under the category of business auxiliary service at all;

(b) Even if it was liable to pay the tax, no penalty was imposable in view of the fact that the issue involved was based on interpretation ; and

(c) The extended period of limitation could not have been invoked and penalties could not have been imposed on the appellant.

7. The Commissioner (Appeals) fixed personal hearing on three dates but the appellant had not appeared and, therefore, based on the submissions in the appeal before him, he passed the impugned order. On the question of the appellant being liable to pay service tax, the Commissioner (Appeals) found that the appellant was involved in multi level marketing scheme and the commission/consideration provided for marketing or promoting received by the appellant was the subject matter of the tax and in **Surendra Singh Rathore** versus **Commissioner of Central Excise, Jaipur – I**[5], the Tribunal had held that such commission

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5. 2014 (34) S.T.R. 147 (T)

is exigible to service tax. He also found that the appellant had not paid the service tax although he was registered with the Service Tax Department and had filed ST-3 returns indicating the amount received and tax payable but failed to pay the service tax even after the SCN was issued. He, therefore, found that there was deliberate disregard for law by the appellant. He upheld the confirmation of demand, interest, late fee and imposition of penalties.

8. In this appeal before us the following grounds have been taken :-

(a) The order-in-appeal is erroneous and was passed without appreciating the facts of the case ;

(b) Neither the SCN nor order-in-original defines business auxiliary services nor indicates under which clause of the expression the appellant falls ;

(c) The amounts earned by the appellant through the multi level marketing scheme is in the form of profit and is not commission and is not exigible to service tax;

(d) The appellant was, therefore, not the service provider nor was M/s Tulip Global Private Limited, whose products the appellant had sold or promoted, the service recipient ;

(e) No penalty is imposable from the appellant ; and

(f) Extended period of limitation could not have been imposed.

9. Learned authorized representative for the Revenue supports the impugned order and asserts that it calls for no interference.

10. We have considered the submissions in the appeal and those made by the learned authorized representative and perused the records.

11. The appellant is engaged in promoting the products of M/s Tulip Global Private Limited as part of its market level marketing scheme. The appellant had taken the registration for payment of service tax under the head of business auxiliary services. For the period April 2011 to March 2012, the appellant had declared the taxable value in his ST-3 returns and also the service tax payable. However, the appellant had not paid the service tax by due date. Further scrutiny of ST-3 returns also indicated that the appellant had filed the returns after considerable delay and was required to pay late fee as per the rules, which the appellant had not paid. Therefore, the SCN was issued to the appellant and the demand was confirmed.

12. In the impugned order, the Commissioner (Appeals) relied on the decision of this Tribunal in **Surendra Singh Rathore** to hold that the settled legal position is that the activities of the appellant are chargeable to service tax and, therefore, upheld the demand. It needs to be pointed out that even as per the self assessment by the appellant in its ST-3 returns, the appellant

had rendered business auxiliary services; the amount received for these services and the tax payable were also indicated. In other words, there was no doubt in the minds of either the appellant or the officers that the settled legal position was that the activities of the appellant were exigible to service tax. It is for this reason that the appellant had obtained service tax registration, self-assessed the amount of service tax payable and had also filed ST-3 returns accordingly. However, the appellant failed to deposit the service tax. It is not open for the appellant to now say that his activities did not amount to rendering taxable services at all when his own self assessment was to the contrary.

13. It is also not in dispute that the appellant had delayed filing of ST-3 returns and had not paid the appropriate late fee, as required under the rules.

14. In view of the above, we find that the demand of service tax with interest, the late fee and the penalties imposed on the appellant are correct and proper and call for no interference.

15. In view of the above, the impugned order is upheld and the appeal is dismissed.

(Order pronounced in open court on 01/04/2024.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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