CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH –COURT NO. 4

Service Tax Appeal No. 51636 of 2019

(Arising out of Order-in-Appeal No. 390(CRM)/ST/JDR/2019 dated 24.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur)

Smt. Indira Devi Chhabra **Appellant**
9 G-12 R.C. Vyas Colony,
Bhilwara (Raj.)

Versus

Commissioner, Central Goods And Service Tax, Udaipur **Respondent**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

Appearance:

Present for the Appellant: Shri Umesh Sarwal, Advocate

Present for the Respondent: Ms. Jaya Kumari, Authorized Representative

With
Service Tax Appeal No. 51637 of 2019

(Arising out of Order-in-Appeal No. 390(CRM)/ST/JDR/2019 dated 24.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur)

Smt. Indira Devi Chhabra **Appellant**
9 G-12 R.C. Vyas Colony,
Bhilwara (Raj.)

Versus

Commissioner, Central Goods And Service Tax, Udaipur **Respondent**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

Appearance:

Present for the Appellant: Shri Umesh Sarwal, Advocate

Present for the Respondent: Ms. Jaya Kumari, Authorized Representative

With
Service Tax Appeal No. 51638 of 2019

(Arising out of Order-in-Appeal No. 390(CRM)/ST/JDR/2019 dated 24.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur)

Smt. Indira Devi Chhabra **Appellant**
9 G-12 R.C. Vyas Colony,
Bhilwara (Raj.)

Versus

Commissioner, Central Goods And Service Tax, Udaipur **Respondent**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

Appearance:

Present for the Appellant: Shri Umesh Sarwal, Advocate

Present for the Respondent: Ms. Jaya Kumari, Authorized Representative

With
Service Tax Appeal No. 51639 of 2019

(Arising out of Order-in-Appeal No. 390(CRM)/ST/JDR/2019 dated 24.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur)

Smt. Indira Devi Chhabra **Appellant**
9 G-12 R.C. Vyas Colony,
Bhilwara (Raj.)

Versus

Commissioner, Central Goods And Service Tax, Udaipur **Respondent**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

Appearance:

Present for the Appellant: Shri Umesh Sarwal, Advocate

Present for the Respondent: Ms. Jaya Kumari, Authorized Representative

With
Service Tax Appeal No. 51640 of 2019

(Arising out of Order-in-Appeal No. 396(CRM)/ST/JDR/2019 dated 25.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur)

Smt. Rekha Kothari **Appellant**
B-373, Shastri Nagar,
Bhilwara (Raj.)

Versus

Commissioner, Central Goods And Service Tax, Udaipur **Respondent**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

Appearance:

Present for the Appellant: Shri Umesh Sarwal, Advocate

Present for the Respondent: Shri Manoj Kumar & Ms. Jaya Kumari, Authorized Representative

With
Service Tax Appeal No. 51641 of 2019

(Arising out of Order-in-Appeal No. 374(CRM)/ST/JDR/2019 dated 16.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur)

Smt. Rekha Kothari **Appellant**
B-373, Shastri Nagar,
Bhilwara (Raj.)

Versus

Commissioner, Central Goods And Service Tax, Udaipur **Respondent**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

Appearance:

Present for the Appellant: Shri Umesh Sarwal, Advocate

Present for the Respondent: Shri Manoj Kumar, Authorized Representative

And
Service Tax Appeal No. 51721 of 2019

(Arising out of Order-in-Appeal No. 372(CRM)/ST/JDR/2019 dated 15.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur)

Manish Jain **Appellant**
1G/40 Old Housing Board,
Shastri Nagar, Bhilwara

Versus

Commissioner, Central Goods And Service Tax, Udaipur **Respondent**
142-B, Sector 11, Hiran Magri
Udaipur (Raj.)

Appearance:

Present for the Appellant: Shri Umesh Sarwal, Advocate

Present for the Respondent: Shri Manoj Kumar, Authorized Representative

CORAM:

Hon'ble Dr. Rachna Gupta, Member (Judicial)
Hon'ble Mr. P.V. Subba Rao, Member (Technical)

Date of Hearing : 04/02/2025
Date of Decision : 13.05.2025

Final Order Nos. 50663-50669/2025

Dr. Rachna Gupta:

The present order disposes of four of these appeals having same issue involved. Three of the appeals have been decided by the same order in original and same order in appeal. The details of the appeals are as follows:

S. No.	Appellant name/Appeal No.	SCN & OIA	OIO	Period	Amount
1.	Indira Devi Chhabra ST/51636/2019	223/10 dated 17.09.2010 OIA No. 390/2019 dated 24.04.2019	07-10/2018-19 dated 19.11.2018	01.01.2008 to 31.03.2010	9,76,419/-
2.	Indira Devi Chhabra ST/51637/2019	842/2011 dated 14.7.2011 OIA No. 390/2019 dated 24.04.2019	07-10/2018-19 dated 19.11.2018	2010-11	3,57,023/-
3.	Indira Devi Chhabra ST/51638/2019	30/2013 dated 18.04.2013 OIA No. 390/2019 dated 24.04.2019	07-10/2018-19 dated 19.11.2018	April 2011 to Jan. 2013	2,30,299/-
4.	Indira Devi Chhabra ST/51639/2019	339/2013 dated 23.9.2009 OIA No. 390/2019 dated 24.04.2019	07-10/2018-19 dated 19.11.2018	10.09.2004 to 31.12.2007	9,65,442/-
5.	Rekha Kothari ST/51640/2019	52/2016 dated 31.07.2017 OIA No. 396/2019 dated 25.04.2019	53/2017-18 dated Nil	2014-15 to 2015-16	3,64,932/

6.	Rekha Kothari ST/51641/2019	71/2013 dated 27.09.2013 OIA No. 374/2019 dated 16.04.2019	16/2018-19 dated 9.10.2018	2011 to Dec. 2012	63,467/-
7.	Manish Jain ST/51721/2019	06/2011 dated 6.9.2011 OIA No. 372/2019 dated 15.04.2019	06/2011 dated 30.10.2018	2010-11	1,09,991/-

2. The facts relevant for the purpose, are as follows:

2.1 The department received an information with respect to M/s Fashion Suiting Pvt. Ltd., Bhilwara[1] who are engaged in multi level marketing under the name Right Concept Marketing[2]. The goods are marketed and sold by their dedicated network of distributors and the distributors at Multi Level Marketing. It starts with a person approaching M/s FSL and filling up a form for purchasing the product of a certain minimum value termed as "kit purchase". This person filling up the form and buying their kit is a given a unique 'Distributor Number'. As per the conditions of Distributor Application Form, the person may become the distributor of the company for the purpose of selling the company's products in the framed "RCM business Marketing Plan". This distributor is required to sponsor applicants to become distributors of the company in the same manner in which he himself became the distributor. These

1 (herein referred as M/s FSL)

2 (RCM)

new distributors are called his/her down liners. The chain keeps on moving further in this manner.

2.2 The department opined that overall business aspect of the company i.e. M/s FSL gets promoted and marketed through this chain. In consideration of the said promotion/marketing, distributor gets commission in pre-defined manner depending upon his/her own purchases. The appellants were found to be the first line distributor of M/s FSL hence and were alleged to have provided the Business Auxiliary Service to M/s FSL against the commission received for the purpose. However, it was found that the appellants did not pay service tax on the amount of commission received by them. Resultantly, vide the respective show cause notices as mentioned above, the respective amount of service tax along with the interest at the appropriate rate and the penalties were proposed to be recovered for the respective period as mentioned in the table above. The proposals in each of the show cause notices have been confirmed by the original adjudicating authorities by orders as mentioned above. Appeals against the said orders have been rejected by Commissioner (Appeals) vide the respective orders as mentioned in the table above. Being aggrieved, the appellant is before this Tribunal.

3. We have heard learned counsel for the appellant and learned Authorized Representatives for Revenue.

4. Learned counsel has mentioned that the issue involved in these appeals have already been resolved in number of cases wherein it has been held that the activity rendered by the

appellants is a service liable to tax but the tax is to be paid on the commission earned by the appellant for the purchases made by the distributors appointed by him and not for the second line of distributors and listed by M/s FSL. The final order of this Tribunal in Appeal No. 54386-54390/2016 dated 17.10.2016 is relied upon. But the authorities below have chosen to tax the value of total commission earned for distributor sponsored by the appellant as well as other distributions sponsored by the subsequent distributors. It is further submitted that the directions of remand in regard to value of taxable service have also not been considered by the original adjudicating authority. The Commissioner (Appeals) vide the impugned order has also failed to consider the same. The order under challenge is, therefore, prayed to be set aside and all the appeals as mentioned above are prayed to be allowed.

5. While rebutting these submissions, learned Departmental Representative has mentioned that the adjudicating authorities below have already categorized the source of income of appellants into three streams of income. The appellants are also held not liable to any tax with respect to two streams of income i.e. distributors profit margin and commission for sale or personal consumption. The service tax has been confirmed only on the 3rd stream of income i.e. commission linked with the performance. It has been confirmed for want of the proper bifurcation/evidence not been provided by the appellant. Impressing upon no infirmity, all these appeals are prayed to be dismissed.

6. Having heard both the parties, foremost we peruse the definition of BAS given in Section 65(105(zzb) of Finance Act, 1994. It reads as follows:

> "Business auxiliary service" means any service in relation to,-
>
> (i) Promotion or marketing or sale of good produced or provided by or belonging to the client; or
>
> (ii) Promotion or marketing of service provided by the client; or
>
> Explanation – For the removal of doubts, it is hereby declared that for the purposes of this sub-clause, "service in relation to promotion or marketing of service provided by the client" includes any service provided in relation to promotion or marketing of games of chance, or organized, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;
>
> (iii) Any customer care service provided on behalf of the client; or
>
> (iv) Procurement of goods or services, which are inputs for the client; or
>
> x x x x x x x x x x x x x x x x x

Now we observe the arrangement in question to be as follows:

> "6. The arrangement between first line distributor of M/s FSL and second line distributor is that it is like 'RCM Business Marketing Plan" is a Multilevel Marketing Scheme and in this scheme the first distributor 'A' approaches M/s FSL and purchases their products of certain minimum value. 'A' recommends M/s FSL products to another distributor 'B' and 'B' recommends to subsequent introduces/subsequent to the scheme, say distributors 'C', 'D' and 'E further introduces/subsequent 'C', 'D' and 'E' are not known to 'A'. 'A' gets commission on purchases made by 'C', 'D' and 'E'. The so called commission paid by FSL to the appellant in respect of purchases made by subsequent distributors 'C', 'D' and 'E' is identical to be the commissions for promotion or marketing activities permitted by the petitioner but is impressed upon to be the dividend paid to 'A' for his efforts for introducing the scheme to new introduces/distributors who also become distributors of M/s FSL."

When both these observations are read together, it gets clear that activity of a Distributor of identifying other persons, who can be roped in for sale of the M/s FSL products/marketing of the M/s FSL products and who on being sponsored by that Distributor are appointed by M/s FSL as second level of distributors, in our view, the activity of marketing or sale of the goods belonging to M/s FSL and the commission received by the Distributor from M/s FSL, which is linked to the performance of his sales group (group of the second level of distributors appointed on being sponsored by the Distributor) we hold that it should have to be treated as consideration for Business Auxiliary Service of sales promotion provided to M/s FSL. Therefore, service tax would be chargeable on the commission received by a Distributor from M/s FSL on the products purchased by his sales group. However, in the impugned orders service tax has been demanded on the gross amount of commission and no distinction has been made between the commission earned by a Distributor from M/s FSL based on his own volume of purchase from M/s FSL and the commission earned by him on the basis of the volume of purchases of M/s FSL products made by his sales group i.e. group of second level of Distributors appointed by M/s FSL on being sponsored by the Distributor.

7. We also observe that in appellant's own case there has been a decision by this Tribunal in case titled **as Surendra Singh Rathore Vs. Commissioner of Central Excise, Jaipur-1**[3] on same set of circumstances, the order has confirmed the demand of

3 **2014 (34) STT 147 (Tri.-Del.)**

service tax on commission received by first line distributor of M/s FSL, holding it to be the consideration for rendering Business Auxiliary services to M/s FSL. It was held as follows:

> "7. On analysis of the terms and conditions of similar agreements between the FSL and the petitioners, the adjudicating authority confirmed the tax liability against the appellants. We are satisfied that RCM (Right Concept Marketing) Business Marketing Plan is neither a new arrangement nor there is any concept of dividends by the ld. Counsel. This is a clear Multilevel Marketing Service Scheme. The Consideration/commission received by the appellants from FSL (this fact is not disputed) is the result of the marketing/promotion of FSL products by the appellants and constitutes a service (Business Auxiliary Service), provided in respect of FSL products to FSL. The commission/consideration is provided according to the terms and conditions, for marketing/promotion efforts by the appellants. The receipt of commission by the appellants Clearly makes them providers of "Business Auxiliary Service" as defined under Section 65(19) of the Act. The appellate and adjudication orders are impeccable on this analysis and warrant no interference".

Though the appellant has relied upon another decision in case of **Charanjeet Singh Khanuja Vs. CST**[4]**,** but perusal reveals that in the said case also, it is held as follows:

> "(i) Demand raised on gross amount of commission received by each distributor (assessee). Business plan involves Multi Level Marketing wherein distributor having three streams of income (a) difference between retail sale price and distributor's acquisition price (DAP), i.e. distributor's profit margin, (b) commission/bonus varying from 6% to 21%, (c) monthly commission on basis of success and productivity – activity of purchasing goods from Amway at DAP and selling same in retail price not exceeding MRP fixed by Amway cannot be treated as promotion, marketing or sale of goods produced or provided by or belonging to client as sale not sale of goods belonging to client. Similarly, any incentive or commission received for buying certain quantum of marketing or sale of goods belonging to client, more so, as commission not linked to goods sold but linked to goods purchased by distributor during a month and in nature of volume discount. Therefore, no service tax chargeable on profit earned by distributors from sale of goods in retail and on commission earned on

---

4 2016 (41) STR 313 (Tri.-Del.)

> purchase of certain quantum of goods. However, activity of identifying other persons, for sale and marketing of products on being sponsored by distributor appointed by Amway as second level of distributors is activity of marketing or sale of goods belonging to Amway and commission received linked to performance of sales group to be treated as consideration for Business Auxiliary Services. Service tax would be chargeable on commission received on products purchased by sales group. Section 65(105)(zzb) read with Section 65(19)(i) of Finance Act, 1994.
>
> (ii) Business concern can be proprietary owned by individual and there is no difference between proprietary firm and that person. When individual engages himself in commercial activity, he has to be treated as business or commercial concern. Therefore, notwithstanding fact that term, commercial concern in Section 65(105)(zzb) of Finance Act, 1994 was replaced by any person w.e.f. 1.05.2006, Business Auxiliary Service, provided by individual to client, even during period prior to impugned date, taxable."

Vide the said order, the appeal was allowed but by way of remand with directions to original adjudicating authority for quantifying service tax demand on commission received on volume of purchase made by distributor's sales group. Hence it is clear that from the discussion of both the decisions, as above, one relied upon by the appellant and another by the department. The conclusion arrived at is that the service tax will be chargeable on the commission received by the distributor (such as "the appellant") on the products purchased by his sales group. However, it has been held that the service tax is no leviable on the commission earned by the distributor on the basis of the volume of the purchases made by the group of second level of distributors appointed by FSL on being sponsored by the distributor. The only difference was that in the case of **Charanjeet Singh Khanuja** as relied by appellant the appeal was allowed but by way of remand for bifurcating the quantum of both the commissions received. Also on the ground that the extended period was denied to be invokable and the demand was confirmed for the normal period. The benefit of limitation was not extending in the case of **Surendra Singh Rathore** (supra), the decision relied upon by the department. Even in **Durga Lal Bairwa** decision, another one relied upon by the appellant, the outcome was same as concluded above except that in this case also the appeal was allowed by way of remand.

8. In the present case also, while following the earlier decisions, Commissioner (Appeals) had earlier remanded back the matters to the original adjudicating authority for de novo proceedings after following the principle of natural justice. The adjudicating authority have still confirmed the demand observing that the figures submitted by the appellant were not in accordance with the three streams of income as were mentioned in the order of remand. However, since the commission mentioned in the show cause notice is based on records, hence was accepted as correct. Based on these findings, the impugned demands were confirmed.

9. We observe that before us also the appellant has not provided any document to show that out of the alleged amount received by the appellant during the relevant period what amount has been received with respect to the commission received from M/s FSL on the products purchased by his sales group. On the contrary, when the M/s FSL was requested by adjudicating authorities below to quantify the demand it reported the distributor's profit margin as 'Nil'. The commission for sale or personal consumption was also reported as 'Nil'. The entire amount as has been confirmed against the appellants in these

appeals was reflected as the amount of commission linked with the performance of appellant. The Tribunal decision dated 17.10.2016 is with reference two streams of income as mentioned by Commissioner (Appeals) in his order of remanding back to original authorities. Hence said decision is not relevant in the present circumstances. Finally coming to the issue of invocation of extended period, since the controversy in question stood already decided against the assessee with respect to the amount in question. There was no reason with the appellants to have believed that appellants are not liable to pay tax of the commission received from M/s FSL on the products purchased by his sales group. In the given circumstances, non-payment of service tax is rightly held to be an act of suppression to evade payment of duty. We hold that the extended period has rightly been invoked.

10. In the light of entire discussion as above hence, we find no infirmity in the order and the order is upheld. Consequent thereto, all the appeals are hereby dismissed.

(Pronounced in open Court on 13.05.2025)

(Dr. Rachna Gupta)
Member (Judicial)

(P.V. Subba Rao)
Member (Technical)

RM