CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH – COURT NO.4

Service Tax Appeal No. 52908 Of 2019

[Arising out of Order-in –Appeal No. 720(CRM)/ST/JDR/2019 dated 29.07.2019 passed by the Commissioner (Appeals) of Central Excise and Central Goods, Service Tax, Jodhpur]

Indira Devi Chhabra : **Appellant**
9 G-12 R. C. Vyas Sector II
Hiran Magri, Udaipur (Raj.)

Vs

Commissioner of Central Goods Service Tax, Udaipur : **Respondent**
142-B, Sector-II Hiran Magri-Udaipur (Raj.)

APPEARANCE:
None for the Appellant
Shri Aejaz Ahmad, Authorised Representative for the Respondent

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 51362/2025

Date of Hearing:29.08.2025

Date of Decision:29.08.2025

DR. RACHNA GUPTA

None is present for the appellant. Learned DR has mentioned that the appellant was already given sufficient opportunities and today was warned as last opportunity. Keeping in view the said objection and the directions of the Hon'ble Apex Court in the case of **Balaji Steel Rolling Mills vs. CCE, Customs reported as 2014 (310) ECT 209**, we proceed to decide the matter on merits based on the submissions made on behalf of the Department and the grounds of appeal and the documents on the record of appeal.

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 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 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

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[1] (herein referred as M/s FSL)

[2] (RCM)

show cause notice No. 2434 dated 24.02.2014, amount of service tax Rs. 16,09,451/- 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 proposal of the show cause notice had been confirmed by the original adjudicating authority vide Order-in-Original No. 29/2018-19(ST) dated 15.03.2019. Appeals against the said order has been rejected by Commissioner (Appeals) vide the Order-in-Appeal No. 720(CRM)/ST/JDR/2019 dated 29.07.2019. Being aggrieved, the appellant is before this Tribunal.

3. We have the learned Authorized Representatives for Revenue.

4. 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 held not liable to pay any tax with respect to two streams of income i.e. distributors profit margin and 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 which has not been provided by the appellant. Impressing upon no infirmity in the order under challenge, all these appeals are prayed to be dismissed.

5. Having heard the learned AR, foremost we have perused the definition of 'Business Auxiliary Service' (BAS) given in Section 65(105(zzb) of Finance Act, 1994. It reads as follows:

> "Business auxiliary service" means any service in relation to,-
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> (i) Promotion or marketing or sale of good produced or provided by or belonging to the client; or
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> (ii) Promotion or marketing of service provided by the client; or
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> 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

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Now we observe that the arrangement in question is between first line distributor of M/s FSL and second line distributor and is like 'RCM Business Marketing Plan". It 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."

6. From these observations, 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, is 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). Accordingly, we hold that it should have to be treated as consideration received by the appellant for Business Auxiliary Service for 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 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.

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

> 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 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.
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> (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

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[4] **2016 (41) STR 313 (Tri.-Del.)**

> 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 him. However, service tax is not 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 extended 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. It is observed that the said decisions have not been considered by the Commissioner (Appeals) holding that vide the said order, the matter was remanded back for fresh adjudication that this Tribunal

vide Final Order No. 53386-54390/2016 dated 17.10.2016 held as follows:-

(i) The activity of the appellant is service and liable of tax under BAS.

(ii) The value of taxable service is the commission earned on the purchases made by distributors sponsored by the appellants only.

(iii) The liability is to be calculated for normal period.

(iv) Penalties are deleted.

9. This order has attained the finality as has not been challenged by any of the parties. The perusal makes it abundantly clear that the commission earned by a distributor from M/s FSL on the products purchased by his sales group is an amount for rendering 'Business Auxiliary Service' being rendered to M/s FSPL. Resultantly, we hold that the adjudicating authority below has rightly confirmed the demand. Appeal is accordingly dismissed.

(Dictated & pronounced in the open Court)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.