CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH
COURT NO. III

SERVICE TAX APPEAL NO. 51758 OF 2022

[Arising out of the Order-in-Appeal No. 27(SM) ST/JDR/2022 dated 31/03/2022 passed by Commissioner (Appeals), Central Excise and CGST, Jodhpur (Raj.).]

Mukesh Kothari, **Appellant**
B-373, Shastri Nagar,
Bhilwara (Rajasthan)

VERSUS

Commissioner, Central Excise and CGST, **Respondent**
G-105, New Industrial Area, Opp. Diesel Shed, Basni,
Jodhpur (Rajasthan).

Appearance

Shri S.K. Sarwal, Advocate for the appellant.
Shri Shashank Yadav, Authorized Representative for the Department

CORAM:
HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51359/2026

DATE OF HEARING/DECISION : 15.07.2026

P.V. SUBBA RAO

Shri Mukesh Kothari[1] filed this appeal to assail the order-in-appeal dated 31.03.2022 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur in which he upheld the order dated 15.04.2021 passed by the Assistant Commissioner, Bhilwara and rejected the appellant's appeal.

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1. appellant

2. We have heard learned counsel for the appellant and learned Authorized Representative for the Department and perused the records.

3. The appellant was engaged in Multilevel Marketing[2] Scheme for M/s Fashion Suitings (P) Ltd., Bhilwara[3]. Under this scheme FSL sells various goods, such as, garments, washing powder, tea, spices, miscellaneous grocery items, etc. The appellant had purchased some goods from FSL at a given discounted price and sold them to others at higher price. The appellant had to further recruit other persons who would, likewise, purchase goods and sell them. The appellant would get a commission for the goods purchased by the persons sponsored/recruited by him. Likewise the persons who are so recruited sponsors, would, in turn sponsors or recruit other persons. The dispute is regarding the exigibility of the discounts or commissions received by the appellant under the head Business Auxiliary Service. We find that an identical case was decided by this Tribunal in the case of **Charanjeet Singh Khanuja** versus **CST, Indore[4].** It has been held that in so far as the goods purchased by the appellant therein were concerned, since the appellant was selling his own goods he was not rendering any service to the principal and, therefore, no service tax is payable. Insofar as the commission received by the appellant therein for the goods purchased by his sponsors and sponsors of such sponsors is concerned it was held

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2. MLM
3. FSL
4. 2016 (41) S.T.R. 213 (Tri.- Del.)

that they were liable to pay service tax. Paragraph 12 and 13 of the judgment are reproduced below :-

> "12. According to the Department, the activity of the assessees is "promotion or marketing or sale of the goods produced or provided by or belonging to the client." In our view, the activity which is covered under Section 19(i) is in relation to the promotion or marketing or sale of the goods produced by the client or provided by the client or belonging to the client. This expression, in our view, would not cover the sale of the goods by a person, which belong to him, as the activity of the promotion or marketing or sale of the goods by a person belonging to him would not constitute service. The assessees in these cases are distributors, who purchase the goods from Amway at the Distributors' Acquisition Price (DAP)) and sell the same in retail at price not exceeding MRP fixed by the Amway. This activity of the Distributors, in our view, cannot be treated as promotion, marketing or sale of the goods produced or provided by or belonging to the client (Amway), as the sale of the goods purchased by the Distributors from Amway is not the sale of the goods belonging to their client - Amway. Once the Amway products have been purchased by a Distributor from Amway, those products cease to belong to Amway, but belong to the Distributor and sale of these goods by the Distributor would not constitute service to Amway. For the same reason, any incentive or commission received by a Distributor from Amway for buying certain quantum of goods from Amway during a month can not be treated as the consideration received for promotion or marketing or sale of the goods produced by or provided by or belonging to the client, more so, as this commission is not linked to the goods sold by the Distributor, but is linked to the goods purchased by the Distributor from Amway during a month and is in the nature of volume discount. Therefore, no service tax is chargeable on the profit earned by the distributors from sale of the goods in retail which had been purchased by them from Amway and on the commission earned by them every month on purchase of certain quantum of goods from Amway.
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> 13. However, activity of a Distributor of identifying other persons, who can be roped in for sale of the Amway products/marketing of the Amway products and who on being sponsored by that Distributor are

appointed by Amway as second level of distributors is, in our view, the activity of marketing or sale of the goods belonging to Amway and the commission received by the Distributor from Amway, which is linked to the performance of his sales group (group of the second level of distributors appointed on being sponsored by the Distributor) would have to be treated as consideration for Business Auxiliary Service of sales promotion provided to Amway. Therefore, service tax would be chargeable on the commission received by a Distributor from Amway 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 Amway based on his own volume of purchase from Amway and the commission earned by him on the basis of the volume of purchases of Amway products made by his sales group i.e. group of second level of Distributors appointed by Amway on being sponsored by the Distributor. For quantifying the Service tax demand on the commission received from Amway on the volume of purchase made by the distributors sponsored /enrolled by a particular distributor i.e. the Distributor's sales group, these matters would have to be remanded to the Original Adjudicating Authority".

4. The case of the appellant before us is that it was liable to pay service tax only on the commissions received by it for the goods purchased by its sponsors and it was not liable to pay service tax on the goods purchased by the sponsors of such sponsors. It is also the contention of the appellant that it was not liable to pay service tax on the commission/discount received on the goods purchased by the appellant himself.

5. Learned Authorized Representative for the Revenue submits that in the order of the Assistant Commissioner in the table at para 18.3.1 the taxable value and service tax have been calculated. The taxable value at column F is taken as the sum of

columns B and D. Column B is the discount/commission from down-line numbers sponsored by the appellant. Column D is the discount/commission from second line sponsors of the appellant, i.e. commission received on the purchases by the sponsors of the sponsors. Learned Authorized Representative points out that the discounts/commission received on self-purchase by the appellant (column C) was not included in the taxable value and no service tax was confirmed on it.

6. Having considered rival submissions, we find that as per the decision in **Charanjeet Singh Khanuja**, the appellant was required to pay service tax not only on the commission on purchases by its sponsors but also on the commission on purchases by the sponsors of his sponsors. The demand has been confirmed accordingly.

7. In view of the above, we find no infirmity in the impugned order. The impugned order is upheld and the appeal is dismissed.

(Order dictated and pronounced in open court.)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

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