IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:17.01.2017

ST/232-233/2011 (DB)

[Arising out of Order-in-Appeal No.431(CB)/ST/JPR-II/2010 dated 16.11.2010 in Appeal No.ST/232/2011 and Order-in-Appeal No.445(CB)ST/JPR-II/2010 dated 19.11.2010 in Appeal No.ST/233/2011, passed by the Commissioner of Central Excise (Appeals), Jaipur]

Ms.Kavita Mathur
Shri Manish Jain Appellants

Vs.

CCE, Jaipur-II Respondent

Appearance:

Rep. by Shri S.K. Sarwal, Advocate for the appellant.
Rep.by Shri J.P. Singh, DR for the respondent.

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.50739-50740/2017

Per S.K. Mohanty:

In this case, the appellant is engaged in the activity of Multi-Marketing, termed as Right Concept Marketing (RCM) of the consumer goods. The service tax demand has been confirmed by the authorities below on the ground that such services provided by the appellant are confirming to the taxable service i.e. "Business Auxiliary Service".

2. Ld. Counsel appearing for the appellant submits that the issue involved in this case is no more *res integra*, having been decided by this Tribunal vide Final Order No.ST/A/55817-55819 dated 13.12.2016, wherein service tax demand has been restricted to the normal period and the penalties imposed were set aside.

3. On the other hand, the ld. AR for the Revenue reiterates the findings in the impugned order.

4. We find that the issue involved in this case is settled by this Tribunal in the Final Order dated 13.12.2016, holding that service tax will be charged on commission received by the distributor on the products purchased by his sales group. Further, it has also been held that the service tax is not leviable on commission earned by the distributor on the basis of volume of purchases made by the group of second level of distributors appointed by FSL on being sponsored by the distributor. The Tribunal vide the said order has also held that the demand should be restricted to the normal time limit.

5. In view of the above decision of the Tribunal, the impugned order is set aside and the matter is remanded to the Original Authority for quantifying the demand within the normal period of limitation. The penalty imposed by the authorities below are set aside.

6. The appeals are allowed by way of remand.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.