IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/826/2012- ST[DB]

[Arising out of Order-In-Appeal No.40/S.Tax/APPL/D-II/2011/527 dated 23.03.2012 passed by Commissioner Central Excise(Appeals) New Delhi.]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/S. Subhash Bhatnagar ...Appellant

Vs.

C.C.E.- Delhi …Respondent

Appearance:
Sh. Anil Sood, (Advocate) for the Appellant
Sh. Ranjan Khanna, DR appeared for the Respondent

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

Date of Hearing/ Decision. 05.01.2017

Final Order No 52570 /2017

Per S K Mohanty

This appeal is directed against the impugned order dated 23.03.2012 passed by the Commissioner (Appeals), Service Tax, New Delhi.

2. In the present case, the authorities below have confirmed the service tax liability on the activity of providing multi level marketing by the appellant to its principal M/s. Forever Living Products India Ltd. The demand was under taxable category of 'Business Auxiliary Services' for the period 2004-05 to 2008-09.

3. The ld. Advocate, appearing for the appellant fairly concedes that the services provided by them fall under the taxable category of 'Business Auxiliary Service' as per the decision of this Tribunal in the case of Charanjeet Singh Khanuja Vs. C.S.T., Indore/ Lucknow/ Jaipur/ Ludhiana reported in 2016 (41) S.T.R. 213 (Tri. Del.). However, he submits that the demand should be confined to the normal period of limitation, since there was ambiguity with regard to levy of service tax on the activity of multi level marketing provided by the appellant, which was resolved by the Tribunal in the said decision. He also submits that since there is no fraud, collusion or suppression of fact with intent to evade payment of service tax, penalty under Section 78 of the Finance Act, 1994 cannot be imposed on the appellant.

4. He further submits that the service tax of Rs. 7,79,616/- already paid by the appellant for the Commission received from 01.05.2006 onwards, has neither been considered by the authorities below nor appropriated against the confirmed demand. However, he submits that the appellant is not contesting the liability to said amount, which has already been paid by it.

5. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

6. Heard both side and perused the records.

7. We find that the activity of Multi Level Marketing whether liable to levy of service tax was contentious issue, which was resolved by the Tribunal in the case of Charanjeet Singh Khanuja (supra), holding that such activity should fall under the Business Auxiliary Service in terms of Section 65 (19) of the Act.

8. Considering the fact that there was ambiguity in interpretation of the statutory definition of Business Auxiliary Service, we are of the view that the demand for extended period of limitation cannot be sustained. There is no sustainable ground for invoking fraud, misstatement etc., on the part of the appellant, for defrauding the government Revenue. However, since the Tribunal in the case of Charanjeet Singh Khanuja has specifically held that the service tax of Multi Level Marketing is payable under the taxable category of Business Auxiliary Service and the appellant is not contesting its liability, the service tax attributable to the services provided by the appellant should be confined to the normal period of limitation.

9. Further, considering the fact that the appellant was not involved in the fraudulent activities concerning suppression fraud etc, we are of the view that the penalty imposed under Section 78 *ibid* cannot be impugned. The same is set aside

10. Therefore, after setting aside the impugned order we remand the matter back to the original authority for quantification of service tax liability payable by the appellant within the normal period of limitation.

11. We find that the amount of Rs. 7,79,616/- paid by the appellant has been considered in the adjudication order, but the said amount has not been appropriated. Therefore, while quantifying the demand for the normal period the, original authority should verify such payment particulars and if the amount deposited pertains to the normal period of limitation, should give adjustment of the amount so deposited. The appeal is disposed of in above terms.

(Operative Portion pronounced in open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi