CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No. ST/59793/2013-ST [DB]

[Arising out of Order-in-Appeal No. 153/ST/DLH/2012 dated 09.08.2012 passed by the Commissioner Appeals, Service Tax, New Delhi]

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

M/s. S. Harlalka ...Appellant

Vs.

C.S.T.- Service Tax-Delhi …Respondent

Appearance:

Mr. Abhisek Jaju, (Advocate) for the Appellant
Mr. J.P. Singh, DR for the Respondent

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

Date of Hearing.24.01.2017
Date of Decision.31/03/2017

Final Order No. 52670 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 09.08.2012 passed by the Commissioner (Appeals), Central Excise, New Delhi.

2. Non-payment of service tax on the activity of providing Multi Level Marketing by the appellant to its principal M/s. MYS Forever Living Products India Pvt. Ltd is the subject matter of present dispute. The service tax Department has confirmed the demand under the head Business Auxiliary Services for the services provided by the appellant for the period April 2004 to March 2009.

3. The ld. Advocate, appearing for the appellant fairly concedes that the services provided falls 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 cannot be imposed on the appellant.

4. On the other hand, the ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. 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.

7. 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 concedes its liability, the service tax attributable to the services provided by the appellant should be confined to the normal period of limitation.

8. Further, considering the fact that the appellant has not involved in the fraudulent activities concerning suppression fraud etc, we are of the view that the penalty imposed under Section 78 *ibid* can be set aside invoking Section 80 in the interest of justice.

9. 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. The appeal is disposed of in above terms.

(Pronounced in the open court on 31.03.2017)

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

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

Sakshi