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

Service Tax Appeal No. ST/2456/2012-CU [DB]

[Arising out of Order-in-Appeal No. 120/S.Tax/APPL/D-II/2012 dated 24.05.2012 passed by the Commissioner (Appeals) Delhi-II, New Delhi]

M/s. Mahinder Bains ...Appellant

Vs.

C.S.T.- Service Tax-Delhi …Respondent

Appearance:
Mr. Arun Arora, (CA) for the Appellant
Mr. Ranjan Khanna, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing/ Decision.29.11.2016

Final Order No. 56478 /2016

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 24.05.2012 passed by th Commissioner (Appeals), Central Excise New Delhi.

2. Brief facts of the case are that the appellant was engaged in the activity of providing distribution/ marketing agent services to M/s. Forever Living Product India Pvt. Ltd., Mumbai. The service tax Department confirmed the demand for the services provided by the appellant during the period April 2004 to June 2005 under the taxable category of “Business Auxiliary Service”.

3. The ld. Consultant, 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 since there was ambiguity with regard to levy of service tax on the activity of multi level marketing and the dispute was resolved by the Tribunal in the said decision, the present demand is barred by limitation of time, since the proceedings were initiated beyond the normal period under Section 73 of the Finance Act, 1994.

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. Considering the fact that there was ambiguity in interpretation of the statutory provisions, we are of the view that extended period of

limitation cannot be invoked for confirmation of the adjudged demand.

7. Therefore, after setting aside the impugned order we allow the appeal of the appellant on the ground of limitation. The appeal is disposed of in above terms.

(Operative Portion and pronounced in the open court)

(V. Padmanabhan) (S. K. Mohanty)
Member(Technical) Member (Judicial)

Sakshi