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/244/2011-ST [DB]

[Arising out of Order-in-Appeal No. 429(CB)/ST/JPR-II/2010 dated 18.11.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur-II]

M/s. Network Vision ...Appellant

Vs.

C.C.E. Jaipur-II …Respondent

Service Tax Appeal No. ST/1001/2011-ST [DB]

[Arising out of Order-in-Appeal No. 174(CB)ST/JPR-II/2011 dated 31.03.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-II]

M/s. Manish Jain ...Appellant

Vs.

C.C.E. Jaipur-I …Respondent

Service Tax Appeal No. ST/1002/2011-ST [DB]

[Arising out of order-in-Appeal No. 141(CB)ST/JPR-II/2011 dated 21.03.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-II]

M/s. Ganesh Chand Vyas ...Appellant

Vs.

C.C.E. Jaipur-I …Respondent

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

Appearance:

Mr. S.K Sarwal, (Advocate) for the Appellant
Ms. Neha Garg, DR for the Respondent

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

Date of Hearing/ Decision.11.01.2017

Final Order No. 52716-52718 /2017

Per S.K. Mohanty:

These appeals are directed against the impugned order dated 18.11.2010 passed by the Commissioner (Appeals), Central Excise, Jaipur-II.

2. Non-payment of service tax on the activity of providing Multi Level Marketing by the appellants to their principal M/s. Fashion Suitings Pvt. Ltd. is the subject matter of present dispute. The service tax Department has confirmed the demand under the taxable category of Business Auxiliary Service.

3. The ld. Advocate, appearing for the appellant fairly concedes that the services provided are categorized under 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 appellants concede their 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 *ibid,* 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 appeals are disposed of in above terms.

(Operative Portion pronounced in open court)

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

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

Sakshi