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/1831,3103,3104,3732,3733/2012-ST[DB]

[Arising out of Order-in-Appeal No. 52-53/AKJ/ST/JPR-I/2012 dated 12/04/2012, 132/RDN/ST/JPR-I/2012 dated 12.07.2012, 127-128/RDN/ST/JPR-I/2012 dated 11/07/2012, 181-RDN-ST-JPR-I/2012 dated 30/08/2012, 183-RDN-ST/JPR-I/2012 dated 31/08/2012 passed by the Commissioner Appeals, Service Tax, Jaipur]

Shri Puran Chand Gupta,
Shri Om Prakash Swami,
Shri Bihari Lal Chugh,
Shri Kamla Kaswan,
Ms. Manju ...Appellant

Vs.

C.S.T. - Service Tax-Jaipur-I …Respondent

Appearance:

Ms. Prerna Chopra, Advocate for the Appellant
Mr. Sanjay Jain, DR for the Respondent

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

Date of Hearing: 25.05.2017

Final Order No.53544-53548/2017

Per S.K. Mohanty:

These appeals are directed against the impugned orders passed by the Commissioner (Appeals), Central Excise, Jaipur.

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., Bhilwara is the subject matter of present dispute. The service tax Department has confirmed the

demand under the taxable category of Business Auxiliary Service for the services provided by the appellants for the disputed period.

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 appellants, 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, penalties under the Finance Act, 1994 cannot be imposed on the appellants.

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

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 appellants should be confined to the normal period of limitation.

8. Further, considering the fact that the appellants have not involved in the fraudulent activities concerning suppression fraud etc, we are of the view that the penalty imposed under Section 77 and 78 ibid can be set aside by invoking Section 80 in the interest of justice.

9. Therefore, after setting aside the impugned orders, we remand the matter back to the original authority for quantification of service tax liability payable by the appellants within the normal period of limitation. The appeals are disposed of in above terms.

(Operative part of the order Pronounced in the open court)

(**V. Padmanabhan**)
Member (Technical)

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

Bhanu