CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066
<u>BENCH-DB, COURT –III</u>

<u>Service Tax Appeal No. ST/60341/2013-ST[DB]</u>

[Arising out of Order-in-Appeal No. 7-8/GRG/26/2013 dated 31.01.2013 passed by the Assistant Commissioner, New Delhi]

M/s. Reena Chaturvedi ...Appellant

Vs.

C.S.T. – New Delhi …Respondent

Appearance:

Mr. S.S. Dabas, Advocate for the Appellant
Mr. Sanjay Jain, DR for the Respondent

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

Date of Hearing: 05.06.2017

<u>Final Order No. 53686 /2017</u>

<u>Per S.K. Mohanty</u>:

This appeal is directed against the impugned order dated 26.06.2013 passed by the Commissioner (Appeals), Service Tax, New Delhi.

2. Non-payment of service tax on the activity of providing Multi Level Marketing by the appellant to its principal M/s. Amway India Enterprises 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 for the services provided by the appellant during the disputed period 2004-05 to 2006-07.

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 is barred by limitation of time in as much as the services were provided during 2004-05 to 2006-07, whereas the show cause notice was issued on 18.09.2009. Thus, he submits that 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, fraud, collusion, suppression, etc. cannot be attributable, justifying invocation of the extended period of limitation.

4. On the other hand, the ld. DR appearing for the Revenue reiterates 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 in this case for invoking fraud, misstatement, etc., on the part of the appellant for defrauding the Government Revenue.

9. Therefore, the entire demand confirmed by invoking the extended period of limitation is liable to be set aside. Accordingly, after setting aside the impugned order, we allow the appeal in favour of the appellant.

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

(B.RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Sakshi