IN THE 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/60620/2013 - CU [DB]

[Arising out of Order-in-Original No.203/ST/DLH/2013 dated 30/08.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

M/s. Pahuja Cars and Credits …Appellant

Vs.

C.S.T., Delhi-I … Respondent

Present for the Appellant : Ms.Vibha Narang, Advocate.
Present for the Respondent: Mr.Sanjay Jain, D.R.

Coram:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 01.08.2017

FINAL ORDER NO. 55723/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 30.08.2013 of Commissioner (Appeals), Delhi-1. The appellants are engaged as direct selling agent of financial Companies and in the present proceedings were put to Service Tax liability of Rs.10,27,464/- under the category of 'business auxiliary service'. The original authority apart from confirming the above Service Tax liability also imposed equal amount of penalty under Section 78 and further penalty of Rs.5,000/- under Section 77 of the Finance Act, 1994 on the appellant. On appeal, the Commissioner (Appeals) reduced the tax liability to Rs.99,915/-, penalty also to that extent.

2. The ld. Counsel for the appellant submits that the present show cause notice issued on 23.03.2011 is actually a second notice, as there was an earlier notice dated 16.02.2009 covering the period 2003-04 to 2007-08. The said first notice is still pending adjudication with the original authority. The present second notice again invoked extended period on the ground that the appellants failed to provide required details, when called for by the Department. The ld. Counsel submitted that the appellant being a proprietary concern, closed down the business, sometime in February, 2009 and there is no question of any tax liability thereafter. Even otherwise a show cause notice, which covered the period 2008-09 to 2010-11 was based on certain TDS records of income tax with no other basis. Further, the confirmation of Service Tax was extended upto 20.12.2013, which is beyond the scope of show cause notice. The ld. Counsel submitted that they have all along cooperated with the Department, even at the time of issue of show cause notice. Many of the earlier correspondence was not received by them. She further submitted that there is

absolutely no basis for invoking extended period and above all, invoking provisions of Section 72 without any basis.

3. We have heard both the sides and perused the appeal records. Admittedly, the present proceedings are pursuant to a second notice issued to the appellant covering 5 years period. There was an earlier notice again covered 5 years period. *Prima facie,* the second notice will not stand legal scrutiny, as it invoked extended period again. However, the reason for such proposal was mentioned as non-cooperation by the appellant. We note that the appellants are making a claim that they have provided the details and cooperated with the Department in the proceedings. Regarding application of Section 72, we note that the basis of arriving at the taxable value should be clearly recorded. In the present case the claim of the appellant is that they ceased operation in February, 2009 itself. This aspect also requires verification. Since the appellant is a proprietary concern, the details available in Form 26 AS for Income tax purpose cannot automatically form basis for computing taxable value under Finance Act, 1994. There should be evidence of rendering of taxable service during the material period. At this juncture, we note that the first show cause notice dated 16.02.2009 issued to the appellant is still pending adjudication. The appellant's claimed that they have cleared the tax liability for that material

period. However, no adjudication order is issued. Considering the serious infirmities in the present impugned order and also considering that the first notice on the same issue is still pending adjudication, we find fit and proper to remand the matter to the original authority to decide the case together. The submissions made by the appellant as recorded above, needs examination for clear findings. Due opportunity shall be provided to the appellant to present their case.

4. In view of the above discussion, the impugned order is set aside. The matter is remanded to the original authority.

[Dictated and pronounced in the open Court]

(S.K. MOHANTY) **MEMBER (JUDICIAL)**	**(B. RAVICHANDRAN)** **MEMBER (TECHNICAL)**

Anita