IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision: 3.10.2017

Service Tax Appeal No.60641/2013-DB

[Arising out of Order-in-Appeal No.158/S.Tax/D-II/13 dated 15.07.2013 passed by the Commissioner of Service Tax (Appeals), New Delhi]

M/s.Crown Network Pvt. Ltd. Appellants

Vs.

CST, Delhi Respondent

Appearance:

Rep. by Shri Anil K. Kher, Sr. Advocate with Shri Kapil Kher, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

Coram: Hon’ble Mr. Ashok Jindal, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Final Order no.57038/2017

Per B. Ravichandran:

The appeal is against order dated 15.07.2013 of the Commissioner (Appeals), Delhi-I. The appellants were acting as distributor/marketing agent of M/s. Amway India Enterprises Pvt. Ltd. They are getting commission for providing the said service. The dispute in the present case relates to service tax liability of the appellant for their service as commission/marketing agents under the category of “Business Auxiliary Service”. The lower authorities confirmed service tax liability of Rs.3,99,349/- along with various penalties against the appellant.

2. Ld. Counsel appearing for the appellant submitted that a large number of appeals on identical set of facts were disposed of by the Tribunal vide Final Order No.51818-51855/2015 dated 9.6.2015. He prayed for similar orders.

3. Ld.AR is also in agreement with the above proposition.

4. We note that the service tax liability is settled by the Tribunal in the said final order. The Tribunal observed as below:-

> *12. According to the Department, the activity of the assessees is "promotion or marketing or sale of the goods produced or provided by or belonging to the client." In our view, the activity which is covered under Section 19(i) is in relation to the promotion or marketing or sale of the goods produced by the client or provided by the client or belonging to the client. This expression, in our view, would not cover the sale of the goods by a person which belong to him, as the activity of the promotion or marketing or sale of the goods by a person belonging to him would not constitute service. The assessees in these cases are distributors, who purchase the goods from Amway at the Distributors' Acquisition Price (DAP) and sell the same in retail at price not exceeding MRP fixed by the Amway. This activity of the Distributors in our view, cannot be treated as promotion, marketing or sale of the goods produced or provided by or belonging to the client (Amway), as the sale of the goods purchased by the Distributors from Amway is not the sale of the goods belonging to their client – Amway. Once the Amway products have been purchased by a Distributor from Amway, those products cease to belong to Amway, but belong to the Distributor and sale of these goods by the Distributor would not constitute service to Amway. For the same reason, any incentive or commission received by a Distributor from Amway or buying certain quantum of goods from Amway during a month cannot be treated as the consideration received for promotion or marketing or sale of the goods produced by or provided by or belonging to the client, more so, as this commission is not linked to the goods purchased by the Distributor from Amway during a month and is in the nature of volume discount. Therefore, no service tax is chargeable on the profit earned by the distributors fro sale of the goods in retail which had been purchased by them from Amway and on the commission earned by them every month on purchase of certain quantum of goods from Amway.*

13. However, activity of a Distributor of identifying other persons, who can be roped in for sale of the Amway products/ marketing of the Amway products and who on being sponsored by that Distributor are appointed by Amway as second level of distributors is, in our view, the activity of marketing or sale of the goods belonging to Amway and the commission received by the Distributor from Amway, which is linked to the performance of his sales group (group of the second level of distributors appointed on being sponsored by the Distributor) would have to be treated as consideration for Business Auxiliary Service of sale promotion provided to Amway. Therefore, service tax would be chargeable on the commission received by a Distributor from Amway on the products purchased by his sales group. However, in the impugned orders service tax has been demanded on the gross amount of commission and no distinction has been made between the commission earned by a Distributor from Amway based on his own volume of purchase from Amway and the commission earned by him on the basis of the volume of purchases of Amway products made by his sales group i.e. group of second level of Distributors appointed by Amway on being sponsored by the Distributor. For quantifying the service tax demand on the commission received from Amway on the volume of purchases made by the distributors sponsored/ enrolled by a particular distributor i.e. the Distributor's sales group, these matters would have to be remanded to the Original Adjudicating Authority.

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15. Another point of dispute is as to whether duty exemption under Notification No. 5/2006-ST would be admissible to the Distributors in this group of cases. In this regard, the Department's plea is that this exemption is not applicable when the taxable service is provided by a person under a brand name/ trade name, whether registered or not, of another person and in this group of cases, the Distributors have promoted the sale/ marketing of branded products. This plea of the Department is not correct, as in these cases the distributors are engaged in promoting sales/ marketing of the products of Amway and they are not marketing or promoting any of taxable service which is branded and the brand name belongs to another person. Marketing or sale promotion of branded products by a person/ commission agent does not amount to providing branded service by him and hence, marketing or sales promotion of a branded product does not come under the exclusion category as mentioned in the proviso to Notification No. 6/2005-ST. In this group of cases, the eligibility of the Distributors (assessee) for the exemption notification No. 6/2005-ST has not been examined and for *this purpose also, these mattes have to be remanded to the Original Adjudicating Authority".*

5. The Tribunal remanded the matter for a fresh adjudication by the Original Authority. It was also held that the duty demand has to be restricted to normal period of limitation from the relevant date.

6. In view of the above mentioned order of the Tribunal, on identical set of facts, we remand the present case to the Original Authority for a fresh decision in line with the observations made in the above mentioned final order dated 9.6.2015. The appeal is allowed by way of remand.

[Operative portion of the order already pronounced in open court]

(B. Ravichandran)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

Ckp.