IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Service Tax Appeal No.ST/59828/2013 [SM]

[Arising out of Order-in-Appeal No.153 Appls/S.Tax/Div-I/Delhi-I/2012/2573 dated 27.06.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

M/s.Parmesh Sharma ...Appellant

Vs.

C.C.E., Delhi-I ... Respondent

Service Tax Appeal No.ST/59830/2013 [SM]

[Arising out of Order-in-Appeal No.154 Appls/S.Tax/Div-I/Delhi-I/2012/2567 dated 26.06.2013 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

M/s.Trilok Chand Sharma ...Appellant

Vs.

C.C.E., Delhi-I ... Respondent

Present for the Appellant : Mr.A.K. Batra, Advocate
Present for the Respondent: Ms.Neha Garg, D.R.

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

Date of Hearing/Decision: 16/10/2017

FINAL ORDER NO. 57346-57347/2017

PER: S.K. MOHANTY

These appeals are directed against the impugned orders dated 26.06.2013 and 27.06.2013 passed by the Commissioner (Appeals) Central Excise & Service Tax, New Delhi.

2. Brief facts of the case are that during the material time, the appellants were working as direct sales agent/ associates (DSI) of M/s. LIC Housing Finance Ltd. The Department conducted the enquiry under Section 14 of Central Excise Act, 1944 and concluded that the activities undertaken by the appellant fall under the taxable category of business auxiliary service. Since, the appellant did not register with the Department and did not pay the Service Tax on the commission amount received from the service receiver M/s. LIC Housing Finance Ltd., the Department proceeded against the appellant for confirmation of the Service Tax demand. The matter was adjudicated against the appellant, wherein the Service Tax demand alongwith interest was confirmed and also penalties were imposed under various provisions of the Finance Act, 1994. On appeal, the ld. Commissioner (Appeals) vide the impugned orders has confirmed the adjudicated demand.

3. The ld. Consultant appearing for the appellant submits that the Service Tax attributable to the taxable service were deposited by the service recipient M/s. LIC Housing Finance Ltd. into the Government Exchequer and in such an eventuality, if the tax is again demanded from the appellant, the same will amount to double taxation. He further, submits that this is a case of revenue neutrality, inasmuch as on claiming the tax element from the service recipient, the same would have been available as credit to such recipient. Further, he submits that the proceedings initiated in this case are barred by limitation of time inasmuch as, suppression, misstatement etc. cannot be levelled against the appellant, justifying invocation of the extended period of limitation. He also submits that

the appellant is also entitled for the small scale exemption in view of the threshold exemption limit provided under Notification No. 6/2005 dated 1^{st} March, 2005.

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 case records.

6. I find that the submissions of the appellant that appropriate Service Tax liability in respect of the taxable service provided was discharged by the service recipient M/s. LIC Housing Finance Ltd. has not been disputed in these cases. Further, this is also a case of revenue neutrality, inasmuch as service tax otherwise paid on the taxable services would be available as Cenvat Credit to the service recipient M/s.LIC Housing Finance Ltd. Thus, under these circumstances, the extended period of limitation provided under the proviso to Section 73 of the Finance Act, 1994 cannot be invoked for confirmation of the Service Tax demand. However, on perusal of the case records, I find that the Service Tax demands raised by the Department are not entirely barred by limitation of time. Some of the demand is within the normal period prescribed under Section 73 ibid. Since, the demands within the normal period has not been quantified by the authorities below, I am of the view that the matter should go back to the original authority for quantification of the Service Tax demand within the normal period, which should be paid by the appellant. In view of the fact that the appellants had no intention to defraud the Government revenue, I am of the considered opinion that penalties cannot be imposed on the appellant. Accordingly, this is a fit case for invocation of Section 80

ibid. Thus, the penalties imposed against the appellant are set aside.

7. In view of above, after setting aside the impugned order, I remand the matter to the Original authority for quantification of the Service Tax demand within the normal period, which should be paid by the appellant.

8. The appeal is disposed of in above terms.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita