IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING/DECISION : 20/11/2017.

Service Tax Appeal No. 57849 of 2013

[Arising out of the Order-in-Appeal No. IND/CEX/000/App/01/ 2013 dated 08/01/2013 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.]

Shri Vishnu Patidar Appellant

Versus

CCE & ST, Indore Respondent

Appearance

None – for the appellant.

Shri A.K. Singh, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 58085/2017 Dated : 20/11/2017

Per. S.K. Mohanty :-

The brief facts of the case is that the appellant is engaged in the activity of providing network marketing services to various clients. Considering the nature of activities, the Department confirmed the service tax demand under the taxable category of Business Auxiliary Service.

2. None appeared for the appellant despite notice. Heard the learned AR for the Revenue and perused the appeal record.

3. We find that the services provided by the appellant is in the nature of multi level marketing service. This Tribunal in the case of **Charanjeet Singh Khanuja vs. CST, Indore/Lucknow/ Jaipur/Ludhiana – 2016 (41) S.T.R. 213 (Tri. – Del.)** has held that the activities of multi level marketing will be classifiable under Business Auxiliary Service. Thus, the services provided by the appellant should be classifiable under such category of taxable of service and the appellant is liable to pay service tax. However, considering the fact the issue of taxability under such category of service was highly debatableand finally resolved in the case of **Charanjeet Singh Khanuja** (supra), we are of the view that the extended period of limitation cannot be invoked in absence of the involvement of the ingredients namely, mis-statement, suppression, fraud, etc., on the part of the appellant. Therefore, the service tax demand should be confined to the normal period of limitation only. Accordingly, we remand the matter to the Original Authority for quantifying the demand within the normal period. Since, the issue involved in this case relates to interpretation of taxability of service, no malafides can be attributed for imposition of penalties.

4. In the result, the appeal is allowed by way of remand to the Original Authority for quantification of the service tax liability within the normal period of limitation.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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