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

Date of Hearing/Decision:30.10.2017

Service Tax Appeal No.315/2011-DB

[Arising out of Order-in-Appeal No.430(CB)/ST/JPR-II/2010 dated 18.11.2010 passed by the Commissioner of Central Excise (Appeals), Jaipur]

Chanda Bohara Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:
Rep. by Shri S.K. Sarwal, Advocate for the appellant.
Rep. by Shri Sanjay Jain, AR for the respondent.

Coram: Hon'ble Mr.S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.58380/2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 18.11.2010 passed by the Commissioner of Central Excise, Jaipur, upholding the adjudged demand confirmed against the appellant. In this case, the appellant is engaged in the activities of providing Multi-level Marketing services for the consumer goods belonging to M/s. Fashion Suitings Ltd. The service tax demand has been confirmed on the ground that the services provided by the appellant to its clients are categorized under the taxable category of "Business Auxiliary Service" (BAS).

2. The ld. Advocate appearing for the appellant submits that the activities provided by the appellant whether to be classifiable under BAS was highly

contentious and the issue was finally resolved by this Tribunal vide Final Order No.51818-51855/2015 dated 9.6.2015, in the case of Mr. Charanjeet Singh Khanuja & Ors. Thus, he submits that the extended period of limitation can not be invoked for confirmation of the adjudged demand. Thus, he submits that the service tax demand should be only confined to the normal period. He further submits that the benefit of Section 80 should be extended, for non-imposition of penalties under Section 76, 77 and 78 of the Finance Act, 1994.

3. On the other hand, ld. AR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that in the case of appellant's own case, for the earlier period, this Tribunal vide Final Order dated 27.06.2013 has confirmed the penalties on the ground that no reasonable cause was shown to prove non-payment of the service tax within the time frame prescribed under the statute.

4. Heard both the sides and perused the case records.

5. We find that the issue regarding payment of service tax on the activity of Multi Level Marketing was contentious and the same was resolved by the Tribunal vide Final Order No.51818-51855/2015dated 9.6.2015 in the case of M/s.Charanjeet Singh Khanuja & Ors., holding that the Multi Level Marketing activities are conforming to the taxable service of "Business Auxiliary Service". Since the issue was resolved by the Tribunal in 2015, it cannot be said that non-payment of tax by the appellant is attributable to fraud, suppression of facts etc. with intend to defraud the Government revenue. Thus, the show cause notice

issued on 21.08.2008 for the period from 19.09.2004 to 10.08.2008 is partly barred by limitation of time. With regard to the submissions of the ld. AR that in the case of the appellant itself, this Tribunal has confirmed penalties, we find that the decision referred to and relied upon by the ld. AR was rendered on 27.06.2013; whereas considering the said decision, the Tribunal in the case of Charanjeet Singh Khanuja & Ors. (supra) has held that the penalties cannot be imposed on the ground that there were confusion with regard to payment of service tax on the activities of providing the Multi Level Marketing services. Further, we also find that this Tribunal, by relying on the decision of the Charanjeet Singh Khanuja (supra), has decided several appeals filed by the different parties, holding that the extended period cannot be invoked for confirming service tax demand and no penalties can be imposed for non-payment of tax within the stipulated time frame. Therefore, relying on the decision in the case of Charanjeet Singh Khanuja (supra), we are of the firm view that the extended period of limitation invoked in this case for confirmation of the adjudged demand will not be sustainable under law. Therefore, the demand should be confined to the normal period. Since the Adjudicating Authority had not quantified the service tax liability, payable by the appellant within the normal period, we remand the matter back to the Original Authority for computation of the service tax liability within the normal period.

6. In view of the fact that there were confusions with regard to payment of service tax on Multi Level Marketing services under the taxable category of "Business Auxiliary Service", we hold that benefit of Section 80 ibid should be available to the appellant for non-imposition of penalties. Accordingly, the

penalties imposed by the Authorities below under Section 76, 77 and 78 ibid are set aside.

7. Therefore, the appeal is allowed by way of remand to the Original Authority for quantification of the service tax demand within the normal period of limitation. However, the penalties imposed against the appellant are set aside.

8. The appeal is disposed of accordingly.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member(Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.