IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/57092/2013 -CU [DB]

[Arising out of Order-in-Appeal No.CCA/CHD/05/2012 dated 11.12.2012 passed by the Commissioner (Appeals), New Delhi]

Paramjit Kaur …Appellant

Vs.

C.S.T., Delhi … Respondent

Present for the Appellant : Mr.Sudhir Malhotra, Advocate
Present for the Respondent: Mr. A.K. Singh, D.R.

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

Date of Hearing / Decision : 12.01.2018

FINAL ORDER NO. 50971/2018

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 11.12.2012, passed by the Commissioner of Customs (Appeals), New Delhi. The appellant provides multilevel marketing service, which is categorized as a taxable service under the head Business Auxiliary Service, defined under

Section 65(105)(zzb) of the Finance Act, 1994. For non-payment of Service Tax during the period November 2004 to March, 2009, the Department proceeded against the appellant for confirmation of the Service Tax demand. The matter was adjudicated vide order dated 08.03.2011, wherein Service Tax demand of Rs.6,70,958/- was confirmed against the appellant and Rs.1,84,485/- was dropped by the adjudicating authority. The adjudication order has held that the services provided by the appellant during the period 09.07.2004 to 17.04.2006 should not be subjected to levy of Service Tax under business auxiliary service, for the reason that the appellant was not a commercial concern. Against the adjudication order dated 08.03.2011, so far as it dropped the service tax demand of Rs.1,01,983/-, Revenue has filed appeal before the ld. Commissioner (Appeals), which was disposed of vide the impugned order in favour of Revenue, holding that the appellant herein is liable to pay service tax for the services provided prior to 18.04.2006. Accordingly, the impugned order has modified the adjudication order, to the extent that the amount of Rs. 6,70,958/-, wherever appears in the said order should be reads as Rs. 8,55,443/-. Subsequently, the corrigendum was issued by the Commissioner (Appeals), vide communication dated 22.01.2013, in modifying the amount from Rs. 8,55,443/- to Rs. 7,72,971/-. Feeling aggrieved with the impugned order, the appellant has filed this appeals before the Tribunal.

2. The ld. Advocate appearing for the appellant submits that the appellant is not contesting the merits of the case and he submits that the issue arising out of the present dispute is covered by the decision of this Tribunal in the case of Charanjeet Singh Khanuja vs. C.S.T., Indore/Lucknow/ Jaipur/Ludhiana – 2016 (41) S.T.R. 213 (Tri.-Del.). However, he submits that the proceedings are barred by limitation of time inasmuch as, the service tax demand dropped by the adjudicating authority and subsequently confirmed by the Commissioner (Appeals) relates to the period prior to 18.04.2006. Thus, he submits that since the show cause notice dated 22.04.2010 was issued, seeking confirmation of the Service Tax demand for the period prior to 18.04.2006, the same was barred by limitation of time, in view of the decision of this Tribunal in the case of Charanjeet Singh Khanuja (supra).

3. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the appeal records.

5. The issue as to whether, the activity of multilevel marketing should fall under the taxable category of Business Auxiliary Service was highly contentious and the issue was finally resolved by this Tribunal in the case of Charanjeet Singh

Khanuja (supra). Since the issue relates to interpretation of the taxability of service, we are of the view that the extended period of limitation cannot be invoked for confirmation of the service tax demand. In this case, since the show cause notice was issued beyond the normal period of limitation, the same is barred by limitation of time. Accordingly, the Service Tax demand of Rs.1,01,983/- confirmed in the impugned order against the appellant cannot be sustained.

6. Therefore, we do not find any merits in the impugned order in confirming the Service Tax demand. Accordingly, the impugned order is set aside and the appeal is allowed to the extent, it confirmed the service tax amount of Rs. 1,01,983/-.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita