CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 52055 of 2016 [DB]

[Arising out of Order-in-Appeal No. 05(AK) ST/JPR/2016 dated 13.01.2016 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

Mr. Prahalad Singh **…Appellant**
S/o. Shri Girdhari Singh,
Village Shyampura, Via-Phagalwa,
Distt.- Sikar

Vs.

Commissioner **…Respondent**
Central Excise, Jaipur

<u>APPEARANCE:</u>

Ms. Priyanka Goel, Advocate for the Appellant
Shri G.R. Singh, Authorised Representative for the Respondent

Coram: HON’BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON’BLE MR.BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. <u>50486/2019</u>

DATE OF HEARING : 29 March, 2019
DATE OF DECISION: 29 March, 2019

<u>ARCHANA WADHWA:</u>

The Service tax in the present appeal stands confirmed against the appellant under the category of Business Auxiliary Services on the ground that multi-level marketing activities being provided by them are covered under the said category.

2. Ld. Advocate fairly agrees that the issues stands decided against them by the Tribunal decision in the case of **Charanjeet Singh Khanuja vs. CST, Indore reported as 2016 (41) STR 213 (Tri.-Del.).** However, she submits that the period for which the demand has been raised and confirmed is April 2009 to March, 2010 whereas the show cause notice stands issued on 05.04.2011

i.e. beyond the normal period of limitation. She submits that in the said decision of **Charanjeet Singh Khanuja** itself the Tribunal observed that the disputed issue was being agitated by all the assessees similarly situate, before various forums and as such, no malafide can be attributed to them. By observing so, the Tribunal set aside the penalties imposed upon the assessee in that case. She submits that by adopting the same criteria, the longer period of limitation cannot be invoked. She also relied upon the Tribunal's decision in the case of **Paramjit Kaur vs. C.S.T., Delhi reported in 2018 (4) TMI 962 – CESTAT NEW DELHI** on this issue.

3. Ld. AR appearing for the Revenue submits that the appellant was not disclosing the fact of the said activities being undertaken by them and as such the longer period stands rightly invoked. He relies upon the Tribunal decision in the case of Surendra Singh Rathore vs. Commissioner of Central Excise, Jaipur-I reported in 2014 (34) S.T.R. 147 (Tri.-Del.), wherein penalty was upheld on the assessee.

4. We note that there is no dispute about the taxability on the activities undertaken by the assessee. However, the demands stand raised by invoking the longer period, Tribunal in the case of **Paramjeet Kaur** referred supra has dealt with the issue of limitation and as observed as under:-

> *"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."*

5. By following the said decision, we hold the demand to be barred by limitation, except a part of the period, for which the matter is being remanded to the lower authorities for quantification of the demand falling within the limitation period. Penalty is however, set aside. Appeal is disposed of in above manner.

[Dictated and pronounced in the open Court]

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Anita