IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75716 of 2015

AND

Service Tax Appeal No. 75717 of 2015

(Arising out of the common Order-in-Appeal No. 10-11/BOL/2015 dated 21.04.2015 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Vila, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

Shri Gadadhar Chatterjee : Appellant
4/16, Udaysankar Bithi, City Centre,
Durgapur – 713 216, District: Burdwan, West Bengal

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
Durgapur-I Division,
Satyajit Ray Sarani, City Centre,
Durgapur – 713 216, District: Burdwan, West Bengal

APPEARANCE:

None for the Appellant

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76610-76611 / 2024

DATE OF HEARING / DECISION: 07.08.2024

ORDER: [PER SHRI ASHOK JINDAL]

Both the appeals are having a common issue and therefore, both these appeals are disposed of by a common order.

2. The facts of the case are that on the basis of an investigation conducted at the premises of M/s. Pancard Clubs Limited, 111-113, Kaliandas Udyog Bhawan, Prabhadevi, Mumbai – 400 025, it was found that the appellant was receiving commissions for rendering services to M/s. Pancard Clubs Ltd. during

the period from 2007-08 to 2011-12. A chart thereof in respect of the same is extracted hereinbelow (ref. paragraph 3.2 of the Order-in-Original No. 04/DC/ST/DGP-I/2013-14 dated 05.02.2014): -

PERIODS	**COMMISSION (IN RS.)**
2007-08 (up to 10.05.2007)	
2007-08 (from 11.05.2007)	735645.00
2008-09 (up to 23.02.2009)	744213.00
2008-09 (from 24.02.2009)	0.00
2009-10	966496.00
2010-11	1324571.00
2011-12	1088398.00
TOTAL	**4859323.00**

2.1. Further investigation revealed that for the period 2012-13, the appellant had received commission from M/s. Pancard Clubs Ltd. to the tune of Rs.15,72,522/- and from M/s. TATA AIA Life Insurance Company Ltd. to the tune of Rs.2,30,331/-, the total of which works out to Rs.18,02,853/-. A chart thereof in respect of the same is extracted hereinbelow: -

Sl. No.	**Name of the Company**	**Amount of Commission Received during 2012-13 (in Rs.)**
1.	M/s. Pancard Clubs Ltd.	15,72,522.00
2.	M/s. TATA AIA Life Insurance Company Ltd.	2,30,331.00
TOTAL		**18,02,853.00**

3. Two Show Cause Notices were issued to the appellant proposing to demand Service Tax during the period from 2007-08 to 2012-13, by invoking the extended period of limitation. The matters were adjudicated and the demands of Service Tax were confirmed against the appellant vide the respective

Orders-in-Original, along with interest, and penalties were also imposed. The appellant challenged the said orders before the Ld. Commissioner (Appeals), but the confirmation of demands was upheld by the Ld. Commissioner (Appeals) vide the impugned order.

4. Aggrieved from the said order, the appellant is before us.

5. A communication has been received from the appellant stating that the appellant is not willing to attend the proceedings before this court and the matter be decided on the basis of the available records; that he has nothing to say except the prayer made in these appeals.

5.1. Therefore, the appeals are taken up for consideration.

6. A perusal of the charts extracted hereinabove reveals that for the periods 2007-08, 2008-09 and 2009-10, the services rendered by the appellant fall below the threshold limit in terms of Notification No. 06/2005-S.T. dated 01.03.2005 (as amended by Notification No. 04/2007-S.T. dated 01.03.2007 and Notification No. 08/2008-S.T. dated 01.03.2008). Hence, till the period 2009-10, no demand is sustainable against the appellant.

7. However, for the periods 2010-11, 2011-12 and 2012-13, we find that the appellant is liable to pay Service Tax on the commission received by the appellant for the services provided to M/s. Pancard Clubs Ltd. As these commissions have been received by the appellant for promotion of their business, therefore, they merit classification, till 30.06.2012, under 'business auxiliary service'.

7.1. In these circumstances, we hold that the appellant is liable to pay Service Tax till 30.06.2012 under the category of 'business auxiliary service' and for the remaining period, he is liable to pay Service Tax as per the Negative List.

7.2. We further take note of the fact that in respect of the commission received from M/s. TATA AIA Life Insurance Company Ltd., on the said commission, the service recipient is liable to pay Service Tax. Therefore, on the service commission received from M/s. TATA AIA Life Insurance Company Ltd., the appellant is not liable to pay Service Tax.

8. On whatever amount is worked out, as discussed hereinabove, the appellant shall pay Service Tax, along with interest. If any amount has been paid earlier, the same shall be appropriated against the amount of Service Tax payable by the appellant.

9. Further, by invoking the provisions of Section 80 of the Finance Act, 1994, we refrain from imposing penalty on the appellant. Thus, the penalties imposed on the appellant are set aside.

10. The appeals are disposed of in the above manner.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd