CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 86524 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/025/15-16 dated 17.04.2015 passed by the Commissioner of Central excise & service tax (Appeals), Mumbai)

Shri Subash Janardhan Shevatekar …..**Appellant**
At Post Kolhar (BK)
Tal. Rahata, Dist. Ahmednagar

Vs.

Commissioner of Central excise, Customs & Service tax, Aurangabad …..**Respondent**
Town Centre, N-5, CIDCO
Aurangabad

WITH

Service Tax Appeal No. 86525 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/022/15-16 dated 17.04.2015 passed by the Commissioner of Central excise & service tax (Appeals), Nagpur)

Ms Savita Madhukar Mahale …..**Appellant**
Plot no. 148, Matoshree Nagar,
Garkhede Parisar,
Aurangabad

Vs.

Commissioner of Central Excise, Customs & Service Tax, Aurangabad …..**Respondent**
Town Centre, N-5, CIDCO
Aurangabad

WITH

Service Tax Appeal No. 86564 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/026/15-16 dated 20.04.2015 passed by the Commissioner of Central excise & service tax (Appeals), Mumbai)

Shri Vikas Madhukar Kulkarni **…..Appellant**
Sanjaynagar, Ward no. 2
Opp. Anil Mule School,
Shrirampur
Dist. Ahmednagar

Vs.

Commissioner of Central excise, Customs & Service tax, Aurangabad **…..Respondent**
Town Centre, N-5, CIDCO
Aurangabad

AND

Service Tax Appeal No. 86565 of 2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APP/023/15-16 dated 15.04.2015 passed by the Commissioner of Central excise & service tax (Appeals), Mumbai)

Shri Kishor Janardhan Shevatekar **…..Appellant**
At Krishnapur, Post Bidkin,
Tal. Paithan, Dist. Aurangabad

Vs.

Commissioner of Central excise, Customs & Service tax, Aurangabad **…..Respondent**
Town Centre, N-5, CIDCO
Aurangabad

APPEARANCE:

None for the appellant
Shri Dilip Shinde, AC (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

FINAL ORDER No: A/87596-87599/2019

DATE OF HEARING : 30.07.2019
DATE OF DECISION : 30.07.2019

PER: C J MATHEW

These four appeals of Shri Subash Janardhan Shevatekar, Ms Savita Madhukar Mahale, Shri Vikas Madhukar Kulkarni and Shri Kishor Janardhan Shevatekar arise from orders-in-appeal no. NGP/EXCUS/000/APP/025/15-16 dated 17th April 2015, NGP/EXCUS/000/APP/022/15-16 dated 17th April 2015, NGP/EXCUS/000/APP/026/15-16 dated 20th April 2015, NGP/EXCUS/000/APP/023/15-16 dated 15th April 2015 of Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur, which upheld the order of the original authority holding them liable to tax as provider of 'business auxiliary service' defined in section 65(19) of Finance Act, 1994 for the purposes of section 65(105)(zzb) of Finance Act, 1994 and other attendant detriments under Finance Act, 1994.

2. None appeared for the appellants. Nevertheless, in view of settled law in the given facts and circumstances, we find that, with the assistance of Learned Authorised Representative, we can dispose of these appeals.

3. The appellants are distributors for M/s RMP Infotec Pvt Ltd in which the business model envisages enrolment of new members and thus create a continuing hierarchy of distributors down the chain. There are several such distributors who came to the attention of the tax authorities for non-discharge of the commission earned by them. In similar situations, the adjudicating authorities had confirmed the demands which were upheld in appeal leading to further appeal before the Tribunal. Considering the facts and circumstances, the Tribunal in *Lalit Dongre v. Commissioner of Central Excise, Nashik [2015 (40) STR 486 (Tri-Mumbai)]* has held that

> *'6. The issue to be decided in this case is whether the appellants are covered under the category of Business Auxiliary Services by virtue of being distributors and appointing further distributors for the sale of goods of M/s. RMP and getting paid a commission for the sale effected to chain of distributors below them. Undisputedly appellants herein appoint two distributors and encourage the said two distributors to appoint further distributors and the chain continues. Appellants claim this is not multilevel marketing scheme or binary is totally incorrect; on reading the agreement between appellants and M/s. RMP in this case it indicates that the appellants are required to appoint only two distributors they are supposed to increase these two to further appoint of 2 distributors and by such sub-distributors (if they could be called so). The appellants and the chain of distributors appointed by them are under compulsion to purchase other goods worth Rs. 10,000/-*

from M/s. RMP. Appellants herein are getting paid an amount as commission from goods which were purchased by the distributors and sub-distributors appointed by the appellant distributors.

6.1 On this factual matrix we find that there cannot be any dispute that the appellants are in receipt of commission/facilitation for the sales which were derived on the basis of purchase made by the distributors appointed by the appellant and further down line. Though it is a fact that there is a cap for payment to the appellant as a distributor, it cannot be denied that the arrangement is nothing but multilevel marketing scheme. At this juncture we have to hold that the issue involved in this case is now squarely covered by the judgment of this Tribunal in the case of Shri Surendra Singh Rathore and Smt. Chandra Bohra (supra). We reproduce the relevant paragraphs which are as under :-

> *"4. The agreement between the appellants and FSL was for the purpose of selling the company's product as per the RCM Business Marketing Plan (RCM stands for Right Concept Marketing Plan). According to terms and conditions of the agreement between the parties, FSL issues a scratch card having a password along with a standard product "Kit of the Products" by charging a price for same. Any person can submit an application through the internet using password and after acceptance becomes a distributor of the company for the purpose of selling the company's product under the RCM plan. Minimum purchases in terms of RCM products prescribed by the company from time to time is compulsory for a distributor during the month in which he desires to have*

the commission credited in his account. Company is obligated to remit consideration to the distributor for selling the company's product as per terms of conditions specified in the "RCM Business Marketing Plan" of the company. Particulars of the RCM Business Marketing Plan have been set out in the adjudication order. As per this plan a distributor gets commission on the supply made by FSL and also a share in the commission for introducing new customers, after such distributor propagates/promotes FSL products under "share your views with your friends and relatives concept." Thereafter, when a new customer starts using FSL products they in turn will propagate/promote FSL products to other persons and the distributor gets commission in respect of purchases made by such introducees, down the line. He shares the commission with others on such purchases. Consequently FSL sales are boosted.

5. The question is whether the commission received by the appellants as a consequence of the "RCM Business Marketing Scheme" in relation to discounts offered, constitutes consideration paid by the service receiver FSL to the service provider/appellants.

6. Shri Sarwal ld. Counsel for the appellants submitted that the "RCM Business Marketing Plan" is a Multilevel Marketing Scheme and in this scheme the first distributor 'A' approaches FSL and purchases their products of certain minimum value. 'A' recommends FSL products to another distributor 'B' and 'B' recommends to subsequent introducees to the scheme namely 'C', 'D' and 'E' and the further introducees 'C', 'D' and 'E' are not known to 'A'. Ld. Advocate has the submitted that 'A' gets commission on purchases made by 'C', 'D' and 'E'. It is alternatively *contented on behalf of the appellants that the so-called commission paid by FSL to the appellant in respect of purchases made by subsequent distributors 'C', 'D' and 'E' does not amount to commissions for promotion or marketing activities permitted by the petitioner but is dividend paid to 'A' for his efforts for introducing the scheme to new introducees who also become distributors of FSL.*

7. On analysis of the terms and conditions of similar agreements between the FSL and the petitioners, the adjudicating authority confirmed the tax liability against the appellants. We are satisfied that RCM (Right Concept Marketing) Business Marketing Plan is neither a new arrangement nor there is any concept of dividends as suggested by the ld. Counsel. This is a clear Multilevel Marketing Service Scheme. The consideration/commission received by the appellants from FSL (this fact is not disputed) is the result of the marketing/promotion of FSL products by the appellants and constitutes a service (Business Auxiliary Service), provided in respect of FSL products to FSL. The commission/consideration is provided according to the terms and conditions, for marketing/promotion efforts by the appellants. The receipt of commission by the appellants clearly makes them providers of "Business Auxiliary Service" as defined under Section 65(19) of the Act. The appellate and adjudication orders are impeccable on this analysis and warrant no interference."

It can be seen from the above reproduced paragraphs of the Tribunal's judgment the issue involved in this case is squarely covered against the appellant.'

4. The matter had come up subsequently before the Tribunal and decided in *Rekha Vilas Kandalkar v. Commissioner of Central Excise, Nagpur [final order no. A/87130/2018 disposing of appeal no. ST/89980/2014 arising out of order-in-appeal no. NGP/EXCUS/000/APP/087//14- 15 dated 26th August 2014 of Commissioner of Central Excise & Customs (Appeals), Nagpur]* in which the above decision, and the reliance placed on earlier decisions of the Tribunal, were taken note of to dismiss the appeal.

5. On perusal of the grounds of appeals, we do not find any fresh submission that would persuade us to adopt a contrary stand to that taken in relation to similarly placed appellants. Accordingly, we find no reason to interfere with the impugned orders. Appeals are dismissed

(Operative part pronounced in Court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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