

Service Tax Appeal No.77624 of 2018

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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.77624 of 2018

(Arising out of Order-in-Appeal No.110/S.TAX-II/KOL/2018 dated 06.03.2018 passed by Commissioner of CGST & Central Excise, Haldia Commissionerate [Acting as Commissioner(Appeal)], Kolkata.)

M/s. Tide Marketing Private Limited

(48A, N. Ghosal Road, Gr. Floor, South West Side, Kolkata-700042.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata South Commissionerate

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

.....Respondent

APPEARANCE

Ms.Vipra Gang, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75462/2022

DATE OF HEARING : 12 August 2022

DATE OF DECISION : 12 August 2022

P.K.CHOUDHARY :

The Appellant is in Appeal assailing the order of the Ld.Commissioner of CGST & Central Excise, Haldia Commissionerate [Acting as Commissioner(Appeal)], Kolkata, whereby he has allowed the Appeal filed by the Department and imposed penalty of Rs.1,000/- under Section 77 and penalty of Rs.1,98,625/- (equal to the Service Tax demand confirmed in the Order-in-Original) under Section 78.

2. Heard both sides and perused the appeal records.
3. I observe that the Appellant is dealing with M/s.Amway India Enterprises Pvt.Ltd. and M/s.Britt Worldwide India Pvt.Ltd. (hereinafter referred to as Amway and Britt) and the Appellant was issued a Show Cause Notice dated 30.09.2011 by invoking the extended period of 2

limitation demanding Service Tax of Rs.5,15,277/- for the period 2006-07 to 2010-11 under the category of 'Business Auxiliary Service' alleging that the amount has been received by the Appellant as commission from Amway and Britt. Vide Order-in-Original demand of Rs.1,98,645/- was confirmed and appropriated from the amount of Rs.5,74,753/- already paid by the assessee. Amount of interest has not been calculated in the adjudication order but the Appellant has paid Rs.1,22,331/- towards liability of interest. The Adjudicating authority however refrained from imposing any penalty by applying Section 80 of the Finance Act, 1994. The Department was in appeal before the First Appellate Authority praying for imposition of penalties and the Appeal of the Department was allowed and penalties were imposed. Being aggrieved, the Appellant is in appeal before the Tribunal.

4. The Ld.Advocate for the Appellant submits that the issue is no more res integra in view of the decision of the Tribunal in the case of CHARANJEET SINGH KHANUJA Vs. C.S.T., INDORE/ LUCKNOW/ JAIPUR /LUDHIANA reported as 2016 (41) S.T.R. 213 (Tri.-Del.). It is also submitted on behalf of the Appellant that during the relevant period, there were different views on whether commission received by an individual from Amway or Britt or any such network marketing company was liable to Service Tax or not and therefore the extended period of limitation is not applicable in the present case. The Ld.Advocate has contended that the commission received by the Appellant is in two parts. One part is related to the goods received by the distributors, which is subsequently sold and in the said case of Charanjeet Singh Khanuja, it was held that no Service Tax is leviable on the said component. I further note that it was held in the said case of Charanjeet Singh Khanuja that the distributor is required to pay Service Tax on the commission earned by it on the basis of volume of purchase of Amway products made by its sales group, i.e. the group of second level of distributor appointed by Amway/Britt, who have been sponsored by the distributor. The Ld.Advocate has submitted that the commission in respect of volume purchase by second level of distributor 3 for the period from 2006-07 to 2010-11 earned by the Appellant is to the tune of Rs.42,78,252/- and Service Tax on the same was Rs.1,98,625/- and the same has been paid along with interest before issuance of Show Cause Notice and therefore the proceedings should have been concluded whereas the Ld.Authorized Representative for the Department has supported the impugned order.
5. I find force in the submissions of the Ld.Advocate for the Appellant and therefore hold that the proceedings should have been concluded before issuance of the Show

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Cause Notice. I therefore set aside the penalties imposed and do not interfere with the Service Tax as confirmed in the Adjudication order. Accordingly, the impugned order is set aside and the Appeal, filed by the Appellant, is allowed with consequential relief, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)