HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Central/excise Appeal No. 1/2014
CNR: RJHC010609102013 | URN: EXCIA / 1U / 2014

Mahaveer Saharan

----Appellant

Versus

Dy. Commissioner Central Excise

----Respondent

Rajasthan High Court Web Copy - Not Official

For Appellant(s)	:	Mr. Deepak Gupta (through VC)
For Respondent(s)	:	Mr. Rajat Arora

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order (Oral)

04/11/2026

Per: Arun Monga, J.

1. The present appeal has been preferred by the appellant assailing the order dated 19.09.2013 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (CESTAT), whereby the Tribunal affirmed the levy of service tax on the commission/discount received by the appellant under the Right Concept Marketing (RCM) scheme, treating the same as consideration for providing Business Auxiliary Services under the Finance Act, 1994.

2. Brief facts of the case are that the appellant was a member/ dealer of M/s Fashion Suitings Private Limited, a multi-level marketing company, which marketed its products under the scheme known as Right Concept Marketing (RCM). Under the said scheme, customers purchasing products from the company could

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opt to become members and introduce other purchasers as members, thereby forming a group at different levels. The total purchases made by each group were calculated monthly, and the discount earned by the group was distributed amongst its members in accordance with a pre-determined formula. The appellant contends that the amount so received was in the nature of a discount arising from the purchase-based scheme and not consideration for any services rendered to the company.

2.1. During the relevant period, the appellant received discounts amounting to Rs.18,56,480/- for the year 2005-06 and Rs.23,25,958/- for the year 2006-07. The respondent Deputy Commissioner, Central Excise and Service Tax Division, Sikar-Bhilwara, issued a show cause notice dated 22.04.2010, proposing to levy service tax at the rate of 10%, along with applicable education cess and penalties under Sections 76, 77 and 78 of the Finance Act, 1994, treating the said receipts as consideration for Business Auxiliary Services under Section 65(19) of the Act. The appellant submitted a detailed reply dated 20.05.2010, contending that the discounts received did not constitute consideration for any services rendered and, therefore, were not exigible to service tax.

2.2. The adjudicating authority, vide order dated 29.04.2011, rejected the appellant's contentions and treated the discounts received as consideration for services rendered under the category of Business Auxiliary Services, thereby confirming service tax of Rs.2,35,737/-, penalty of an equivalent amount under Section 78 and interest under Section 75 of the Finance Act, 1994. Aggrieved thereby, the appellant preferred an appeal before the

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Commissioner of Central Excise (Appeals-I), which came to be dismissed vide order dated 22.10.2012, thereby affirming the order passed by the adjudicating authority.

2.3. Thereafter, the appellant preferred a second appeal under Section 86 of the Finance Act, 1994, before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (CESTAT), registered as Appeal No. ST/55494/2013. The Tribunal, vide order dated 19.09.2013, restored the order passed by the adjudicating authority, holding that the amounts received by the appellant under the multi-level marketing scheme constituted consideration for marketing and promotion of the company's products and fell within the ambit of Business Auxiliary Services.

2.4. Hence this instant appeal.

3. The grounds raised in the appeal and so are the arguments urged before us by learned counsel for the appellant*, inter alia*, are that the Tribunal has committed a grave error of law in rejecting the appeal vide impugned order dated 19.09.2013, without properly appreciating the facts and legal position involved in the matter. The Tribunal has failed to examine whether the discount/commission received by the appellant under the Right Concept Marketing (RCM) scheme constituted consideration for any services rendered by him. The appellant was merely a member/customer of the company and the amount received was in the nature of discount arising out of the marketing scheme, which was available to purchasers irrespective of their membership status. The company cannot be treated as a client of the appellant and, therefore, the provisions of Sections 65(19)

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and 65(105) (zzb) of the Finance Act, 1994, relating to Business Auxiliary Services, are not attracted.

4. Per contra, learned counsel for the respondent opposes the appeal and contended that the activities undertaken by the appellant constitute sales promotion and marketing of the company's products, falling within the ambit of Business Auxiliary Services under the Finance Act, 1994. It is further submitted that the commission/discount received is consideration for such services and the impugned orders warrant no interference.

5. In the aforesaid backdrop, we have heard learned counsel for the parties and perused the case file.

6. The short controversy herein is whether the amounts received by the appellant under the Right Concept Marketing scheme represent purchase discounts or consideration for promoting and marketing the company’s products.

7. It is borne out that the receipts were linked to the purchases made by members introduced into the appellant’s marketing network and constituted remuneration for promoting the company’s business. We are of the view that the learned Tribunal rightly followed its earlier decision dated 27.06.2013 in Surendra Singh Rathore v. CCE and the connected appeal of Chanda Bohra, concerning the same scheme, wherein such network-linked commission was held to constitute consideration for Business Auxiliary Services.

8. The appellant’s self serving description of the receipts as “discount” cannot be the decisive factor. A discount attributable to a buyer’s own purchases stands on a different footing from

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remuneration or discount linked to purchases generated through a network of introduced members.

8. We, therefore, find no ground warranting interference with the impugned order dated 19.09.2013. The appeal is accordingly dismissed. All pending applications, if any, also stand disposed of.

(YOGENDRA KUMAR PUROHIT),J **(ARUN MONGA),J**

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Dhananjay Sharma

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