IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70726/2017-ST[SM]

(Arising out of Order-in-Appeal No. 02/ST/APPL/ALLD/2017 dated 31/07/2017 passed by Commissioner of CGST & Central Excise (Appeals), Allahabad)

Commissioner of Central GST & Central Excise,

Allahabad **Appellant**

Vs.

M/s Vinay Pratap Singh **Respondent**

Appearance:

Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Appellant
Absent, for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 06/04/2018

FINAL ORDER NO. **70890/2018**

Per: Anil G. Shakkarwar

The present appeal filed by Revenue is directed against Order-in-Appeal No. 02/ST/APPL/ALLD/2017 dated 31/07/2017 passed by Commissioner of CGST & Central Excise (Appeals), Allahabad.

2. The brief facts of the case are that the respondent-assessee had entered into a contract with Regional Food Controller, Allahabad, for transportation of foodgrains and received Rs.1,60,55,447/- as consideration for said transportation during the period from 2007-08 to

2009-10. It appeared to Revenue the said consideration was towards Goods Transport Agency Service. Therefore, a Show Cause Notice dated 18/04/2013 was issued to the respondent-assessee demanding Service Tax of Rs.18,84,188/- under the taxable service of Goods Transport Agency Service. The said Show Cause Notice was adjudicated through Order-in-Original No. (ST-93/2013 & 46/2014) 133 & 134 of 2014 dated 05/08/2014, wherein the demand was confirmed and penalties were imposed. Aggrieved by the said order, respondent-assessee preferred appeal before ld. Commissioner (Appeals). The respondent-assessee contended before the first Appellate Authority that he did not issue any consignment note and therefore, he did not get covered under the definition of Goods Transport Agency, as defined under Section 65(50b) of the Finance Act, 1994. The ld. Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal dated 31/07/2017, wherein he has held that since the respondent-assessee did not issue any consignment note, he was not covered by the definition of Goods Transport Agency, as defined under Section 65(50b) of the Finance Act, 1994 and therefore, he set aside the said Order-in-Original dated 05/08/2014.

3. Aggrieved by the said order, Revenue is before this Tribunal.

4. Heard the ld. A. R. for Revenue. He has submitted that the ground of appeal states that the ld. Commissioner

(Appeals) has erred in holding that the respondent-assessee is not covered by the definition of Goods Transport Agency.

5. Respondent is absent on call.

6. Having considered the ground raised by the Revenue and on perusal of the facts on record, I find that throughout the proceedings, Revenue could never establish that respondent-assessee issued any consignment note, in whatever form and therefore, he was not covered by the definition of Goods Transport Agency. Therefore, the activities carried out by the respondent-assessee were not Goods Transport Agency Service. I, therefore, do not find any merit in the appeal filed by Revenue and the same is rejected.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Ansari