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

**APPEAL No.ST/59506/2013-CU[DB]**

(Arising out of Order-in-Appeal No. 75/ST/APPL/NOIDA dated 27/03/2013 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

**M/s Jagran Prakashan Ltd.** **Appellant**

Vs.

**Commissioner of Customs, C.E. & S.T., Noida** **Respondent**

Appearance:

Request for Adjournment, for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

**CORAM:**

**Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 02/07/2018
Date of Decision : 02/07/2018

FINAL ORDER NO-**71362 / 2018**

**Per: Anil G. Shakkarwar**

The present appeal is arising out of Order-in-Appeal No. 75/ST/APPL/NOIDA dated 27/03/2013 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. When the matter was called, no one appeared on behalf of the appellant. We are informed that a request for adjournment was received. After rejecting the request for

adjournment, we have taken up the matter for disposal with the assistance of learned A.R. for revenue Shri Mohammad Altaf, Assistant Commissioner.

3. The facts leading to filing of the present appeal are that the appellants were registered with Services Tax Department for certain services. The appellants were paying freight charges towards hiring taxies for transportation of Newspapers to various places. Revenue took up the matter with the appellant entertaining a view that under Section 68 (2) of Finance Act, 1994 the appellants should pay service tax on GTA Service. The appellant through various letters dated 03.04.2008 to 22.03.2012 informed revenue that under Rule 4B of Service Tax Rules, issuance of consignment note is compulsory for satisfying the condition of definition of 'Goods Transport Agency Service' (GTA) and also contended that they engaged taxies and therefore, they were not required to pay service tax, since taxies did not fall under the definition of 'Goods Carriage'. The appellants were issued with a show cause notice dated 09.04.2012 alleging that the said activity was GTA Service and raised a demand of service tax of Rs.16,01,730/-. The appellant contended before the Original Adjudicating Authority that they hired taxies from various individual taxi owners and no consignment notes

were issued in respect of said activity, therefore, the activity did not fall under the category of GTA Service. The Original Authority did not appreciate the submissions and confirmed the demand and imposed equal penalty through Order-in-Original dated 25.09.2012. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The Learned Commissioner (Appeals) upheld the said Order-in-Original, through impugned order. Appellant preferred appeal before this Tribunal against said impugned order.

4. We have carefully gone through the case records. We find that in the said show cause notice there is no evidence provided to establish that consignment notes were issued by anybody in respect of said activity and that revenue sought to classify the said activity under GTA Service. We also find that the issue herein is no more res-integra in view of the finding of this Tribunal in Final Order in the case of M/s Nandganj Sihori Sugar Co. Ltd. Vs Commissioner of Central Excise, Lucknow reported at 2014 (34) STR 850 (Tri.-Del.) wherein this Tribunal held that mere transportation of goods by motor vehicles is not service provided by GTA and that as required under Rule 4B of Service Tax Rules, if consignment note in wherever

form is not issued, the activity is not covered by the definition of GTA Service.

5. Relying on the said Final Order of this Tribunal, we set aside the impugned order and allow the appeal filed by the appellant.

(Pronounced in Court)

**(Archana Wadhwa)**
**Member (Judicial)**

**(Anil G. Shakkarwar)**
**Member (Technical)**

*akp*