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

APPEAL No.ST/70380/2018-CU[DB]

(Arising out of Order-in-Appeal No. 16/ST/Appeal/Audit/LKO/2018 dated 31/01/2018 passed by Commissioner of Central Goods & Services Tax & Central Excise (Audit), Lucknow)

M/s N.P. Travels, **Appellant**

Vs.

Commissioner of Central Excise & S.T., Lucknow **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)
Hon'ble Mrs. Rachna Gupta, Member (Judicial)

Date of Hearing : 31/10/2018
Date of Decision : 31/10/2018

FINAL ORDER NO-**72541 / 2018**

Per: Anil G. Shakkarwar

The present appeal is directed against impugned Order-in-Appeal No. 16/ST/Appeal/Audit/LKO/2018 dated 31/01/2018 passed by Commissioner of Central Goods & Services Tax & Central Excise (Audit), Lucknow.

2. Brief facts of the case are that the appellants were providing air condition cars on hire to various Government Departments. Revenue considered the said activity as covered by "Rent-a-Cab Service" and raised a demand of Rs.39,75,999/- for the period from 2010-11 to 2014-15. The

said demand was confirmed and the matter has culminated into filing of the present appeal.

3. Heard the learned Chartered Accountant Shri Kapil Vaish on behalf of the appellant and Shri Mohammad Altaf, learned Assistant Commissioner A.R. on behalf of the revenue. We note that the demand was raised by invoking the extended period of limitation and the matter was related to interpretation and the matter was in dispute at various levels about the taxability of vehicles which is provided along with drivers and the issue was whether such activity was covered by definition of "Rent-a-Cab Service". On submission by the learned Counsel, we note that the matter has reached finality through a ruling by Hon'ble Uttarakhand High Court in the case of Commissioner of Central Excise Vs Sachin Malhotra reported at 2015 (37) STR 684 (Uttarakhand). We have noted that the learned Counsel has submitted that since the matter was under dispute and required interpretation, the extended period is not invocable in the present case and the show cause notice was issued on 24.09.2015. We, therefore, note that the normal period of limitation started w.e.f. 25.03.2014 and the period prior to 24.03.2014 was covered by extended period of limitation. We further note that it was submitted by the learned Counsel that w.e.f. 01.07.2012 to 10.07.2014 the activity was exempted through Clause 23(b) of Mega Exemption Notification No.25/2012 dated 20.06.2012. We further note that the said notification was amended through

Notification No.6/2014 dated 11.07.2014 wherein the said entry at Clause 23 (b) has been amended and the said exemption was restricted only to non air-conditioned vehicles. We also note that the learned Counsel has agreed that from 11.07.2014 the air-conditioned vehicles provided by appellant attracted services tax, as applicable.

4. We also note that learned A.R. for revenue has supported the impugned order.

5. On careful consideration of submissions from both the sides and on perusal of records, we find that in view of the Notification No.6/2014, for the period from 11.07.2014 the demand is sustainable. We find that in view of litigations going-on, on the issue, there is no element of suppression involved and therefore, we set aside the demand for the extended period of limitation up to 24.03.2014. We also note that from the period from 25.03.2014 to 11.07.2014 levy was exempted under the said Mega Notification. Since the demand during the extended period of limitation is not sustainable, we set aside the penalty imposed under Section 78 of the Finance Act, 1994. To sum up, we hold that for the period prior to 24.03.2014 the demand is set aside since the same is for extended period, for the period from 24.03.2014 to 10.07.2014 the levy was exempted under the said Notification No.25/2012 and from 11.07.2014 the demand is sustainable. We also set aside penalty imposed under Section 78 of Finance Act, 1994.

6. In above terms, appeal is allowed. The appellant shall be entitled for consequential relief.

(Pronounced in Court)

(Rachna Gupta)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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