IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. ST/70248/2018-CU[DB]

(Arising out of Order-in-Appeal No. 286/ST/Alld/2017 dated 30/10/2017 passed by Commissioner of CGST & Central Excise (Appeals), Allahabad)

M/s K.V. Enterprises, **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Absent on Call, for Appellant
Shri Pradeep Kumar Dubey, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 18/02/2019

FINAL ORDER NO. **70316/2019**

Per: Archana Wadhwa

On matter being called, nobody appeared on behalf of the appellant, accordingly we have heard learned AR for Revenue and have gone through the impugned orders.

2. Service Tax of Rs.30,037/- stands confirmed on the ground that the appellant was required to discharge Service Tax liability in respect of GTA Services so availed by them. The said demand stands confirmed with the imposition of penalty by raising the same vide Show Cause Notice dated 05/08/2013 for the period 01/01/2010 to 31/03/2012.

3. Apart from contesting the demand on merits, by submitting that they have paid the said Service Tax to the transporters, who had deposited the same with the Government. The demand was also assailed on the point of

limitation. The Commissioner (Appeals) has observed that the appellant had not produced any documentary evidence to show that such Service Tax was paid to the transporters along with freight, who have, in turn, deposited the same with the exchequer. He has also rejected the demand on the ground that the same was raised as a result Audit objection and if the Auditors would not have scrutinized the records of the assessee, non-payment of Service Tax would have remained unearthed.

4. We note that the Audit raised the objection based upon the scrutiny of the entries made in the assessee's record. As such, it leads to inevitable conclusion that the appellants were reflecting the said transactions in their records, required to be maintained under the law. In such a scenario, *mala-fide* cannot be attributed to the assessee so as to justifiably invoke the longer period of limitation. As such on the ground of the demand being barred by limitation, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari