CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.71277 of 2018

(Arising out of Order-in-Appeal No.205-ST/APPL/KNP/ADG-NACIN/2017-18 dated 02/05/2018 passed by Additional Director General, National Academy of Customs, Indirect Taxes and Narcotics,(ZTI), Kanpur)

M/s Shree Parcel Services, **.....Appellant**

(Shop No. 112, Express Road,

Ghanta Ghar, Kanpur, U.P.-208001)

VERSUS

Commissioner of Central Excise

& Service Tax, Kanpur **.....Respondent**

(Kanpur)

<u>APPEARANCE:</u>

Ms. Rinki Arora, Advocate for Appellant
Shri Santosh Kumar Agarwal, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.70062 / 2020

DATE OF HEARING: 28 November, 2019
DATE OF DECISION: 28 November, 2019

ARCHANA WADHWA

After hearing both the sides duly represented by Ms. Rinki Arora learned Advocate appearing on behalf of the appellant and Shri Santosh Kumar Agarwal learned Authorized Representative appearing on behalf of the Revenue, we find that the appellant was registered with the Service Tax Department under the category of 'Courier Agency Service' and were discharging their service tax liability accordingly.

However, w.e.f. June, 2010, they by entertaining a view that the services being rendered by them are GTA service, as the goods are being transported to the destination through rails started paying duty under the category of GTA services. While paying duty on reverse charge basis they availed benefit of Notification No.26/2012-ST and the service tax was being paid after availing the abatement of 70% of the value of the rail freight. All the above information was being supplied by them in their ST-3 Returns filed with the Revenue.

2. Learned Advocate appearing for the appellant assailed the impugned order only on the point of limitation. She submits that when they switched from payment of service tax under the category of courier agency service to payment under GTA service with the claim for benefit of notification. The said facts were fully in the knowledge of Revenue inasmuch as they were filing the requisite returns etc. The said return contains the full information about the availment of notification and payment of service tax under abated value. The Adjudicating Authority in his impugned order has also observed that entire facts were being reflected by the appellants in their statutory records.

3. In such a scenario, we fully agree with the learned advocate that there cannot be any *mala fide* or suppression and mis-statement on their part with an intention to evade payment of duty. As such, we hold that the demand raised and confirmed beyond normal period of limitation is hit by bar of limitation and cannot be upheld.

As regards the demand falling within the normal period, learned advocate is not contesting the same. Accordingly, we direct the Lower Authorities to quantify the demand falling within the limitation period which will be paid by the appellant along with interest.

4. Inasmuch as we have held that there was no *mala fide* on the part of the appellant, the penalty imposed upon them is required to be set aside. We order accordingly.

5. Appeal is disposed of in above terms.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Nihal