CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 52884 of 2018

(Arising out of order-in-appeal No. BHO-EXCUS-001-772-17-18 dated 28.02.2018 passed by the Commissioner (Appeals), Central Goods, Service Tax, Customs & Central Excise, Jabalpur).

Sher Khan **Appellant**
Maharajpur, Distt-Mandla (M.P.)

VERSUS

Commissioner, Central Goods, **Respondent**
Service Tax, Customs & Central Excise
48, Administrative Area, Arera Hills
Bhopal (M.P.)

APPEARANCE:

None for the appellant
Ms. Tamanna Alam, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51633/2019

DATE OF HEARING/DECISION: 19.11.2019

ANIL CHOUDHARY:

The appellant is absent on call. Heard the ld. Authorised Representative for the Revenue and perused the records.

2. It appears that the appellant does not want to appear in person or through the counsel. The appellant was absent on the previous dates on 13.09.2019, 29.04.2019 and 6.3.2019. Further, the condonation of delay application was allowed ex parte by order dated 17.10.2018. Accordingly, the appeal is disposed of ex parte with the assistance of the ld. Authorised Representative for Revenue.

3. It appears that the appellant is engaged in transportation of timber and other forest products for Van Mandal, Mandla (Government Organisation). As per the information provided by the Van Mandal, it appeared to Revenue that the appellant is providing taxable services of GTA during the period 2013-2014 to 2015-2016 and at the investigation stage, the appellant had taken the stand that since their gross receipt is below Rs.10 lakhs, therefore, they are not liable to pay service tax. However, the said contention was not accepted and the show cause notice dated 25.1.2017 was issued, invoking the extended period of limitation demanding service tax of Rs.1,02,170/- plus cess, total Rs.1,04,833/- for the period 2013-2014 to 2015-2016 along with interest . Further, the penalty was proposed under Section 76, 77 and 78 of the Act. The show cause notice was adjudicated vide order-in-original dated 28.09.2017, on contest, the appellants stated that as the pre-requisite condition under GTA is not there as the appellant is not issuing any consignment note, they are not liable to service tax. For this proposition, they relied upon the ruling of this Tribunal in the case of **South Eastern Coal Fields Ltd. – 2014 TIOL 1554 CESTAT-DELHI.** It is further contended that the appellant was under a bona fide belief that they are not liable to pay service tax. Accordingly, the extended period of limitation is not invokable. However, the Asstt. Commissioner was pleased to confirm the proposed demand and equal amount of penalty under Section 78. Further, the Asstt. Commissioner also imposed a penalty of Rs.10,000/- under Section 77 for contravention of Section 69 of Chapter V of the Act and further late fee of Rs.1,20,000/- was imposed for non-filing of ST-3 Returns.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) confirmed the demand observing that the demand relates to the period after the introduction of negative list of service w.e.f. 1.7.2012, observing that the appellant has not argued that their service is covered by Negative List or Mega Exemption Notification. Therefore, the service tax liability for the period, after the introduction of negative list of service i.e. 1.7.2012,on the activity of transporter, is established. Further, the services provided to the Government Department is also chargeable to service tax unless covered by the Mega Exemption Notification or Negative List. As regards the consignment note, it is observed that the contractor are not made responsible for any damage or loss of any consignment during the course of transport. The Forest Officials had issued a carting challan and obtained the acknowledgement from the driver. The haulage payment is made by the forest department on presentation of bills duly supported with carting challan and receipt. Such carting challan is nothing but a consignment note containing the requisite details. However, the classification of the service as GTA has enabled the appellant to avail the benefit of abatement, even for the post negative list period. As regards the contention of the appellant, rejected by the Adjudicating Authority, the same was rejected by the Appellate Authority observing that the appellant had neither taken registration nor filed ST-3 Returns.

5. Further, from the perusal of the Annexure A to show cause notice, it is evident that after allowing the abatement, the taxable

value in each of the year under dispute is less than Rs.3.5 lakhs. Further, I find that vide exemption notification (SSI) for service providers, as amended by Notification No.33/2012-ST dated 20.06.2012, the exemption continues to eligible assessees. Further, Clause-3 of the said notification provides that, for determining the aggregate value not exceeding Rs.10 lakhs, to avail exemption under this notification, in relation to taxable services provided by GTA, the payment received towards the gross amount charged by such GTA under Section 67 of the Finance Act, for which the person liable for paying service tax is specified under Sub-section (2) of Section 68 read with Service Tax Rules, shall not include the value charged in the invoice, which is exempt from the whole of service tax leviable thereon.

6. Accordingly, I hold that the appellant is entitled to service tax exemption benefit under the aforementioned exemption notification, and are not liable to pay service tax for the period under dispute.

7. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefit, in accordance with law.

(Dictated and pronounced in open Court)

(Anil Choudhary)
Member (Judicial)

Ckp