IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:17.01.2017

ST/250/2012-CU(DB)

[Arising out of Order No.252/ST/DLH/2011 dated 20.10.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-I]

M/s.Harkaran Dass Vedpal Appellants

Vs.

CST, Delhi Respondent

Appearance:

Rep. by none for the appellant.
Rep. by Ms. Neha Garg, DR for the respondent.

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No.50435/2017

Per B. Ravichandran:

The appeal is against order dated 20.10.2011 of the Commissioner (Appeals),Delhi-I. The appellants are registered with Service Tax Department under the category of "Goods Transport Agency" Service to discharge tax liability on reverse charge basis. They have paid service tax after availing the benefit of Notification No.32/2004-ST dated 3.12.2004 during the period April, 2005 to September, 2005.

2. Proceedings were initiated against the appellant to deny the concession under the said notification as they have not fulfilled the conditions mentioned therein. The Original Authority confirmed service tax liability of Rs.63,855/- and also imposed equal amount of penalty under Section 76 of the

Finance Act, 1994 and a further penalty under Section 77 of Finance Act, 1994. On appeal, the Commissioner (Appeals) vide the impugned order upheld the original order.

3. The appellant in their appeals submitted that the Original Authority travelled beyond the scope of show cause notice. The denial of exemption was sought to be made only on the ground that the exemption contained in the said notification is available only to GTA whereas the Original Authority held that the exemption is not available to the appellant as they have failed to produce the required declarations.

4. We have heard ld. AR for the respondent. None appeared on behalf of the appellant. However, ld. Advocate for the appellant vide his letter dated 21.02.2016 requested for deciding the case on merits. We find that the appellant as a recipient of GTA services was liable to pay service tax. The claim for concessional tax under notification no.32/04 was denied by the lower authorities on the ground that they have not produced supporting documentary evidence regarding non-availment of cenvat credit by GTA. We find that the denial of exemption was subject matter of show cause notice. The lower authorities held that the appellant will be eligible for exemption only on fulfillment of the conditions therein. We find no legal infirmity in the findings by the lower authorities. Even in the present appeal the appellant did not produce any evidence regarding fulfillment of the conditions under the said notification. However, considering the fact that the appellant was recipient of service and the required declaration sought to be obtained from the GTA and also examining the question of interpretation of law involved, we find imposition of penalty of equivalent amount is not justified.

Accordingly, invoking the provisions of Section 80 of the Act, we set aside the penalty imposed under Section 76 on the appellant. Except for this modification, the appeal is dismissed.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.