IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Service Tax Appeal No.ST/53550/2014 [SM]

[Arising out of Order-in-Appeal No.36-ST/MRT-I/2013 dated 27.12.2013 passed by the Commissioner of Central Excise (Appeals), Meerut]

M/s.Aero Club …Appellant

Vs.

C.C.E, Meerut-I … Respondent

Present for the Appellant : Mr.V.R. Sethi, Advocate
Present for the Respondent: Mr. G.R. Singh, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/Decision: 13/06/2017

FINAL ORDER NO. _54069/2017_

PER: S.K. MOHANTY

Confirmation of demand of Service Tax under reverse charge mechanism is the subject matter of present dispute.

2. Heard both sides and perused the case records.

3. The appellant herein is a manufacturer of excisable goods. The appellant is also registered under the Service Tax Department in the capacity of recipient of "transport of goods by road service". During the disputed period, the appellant did not pay the service tax on GTA service under reverse charge mechanism, owing to the fact that the Service Tax liability attributable to such service was discharged by the

transporters, who are registered with the Service Tax Department. However, the benefit of deposition of Service Tax by the transporter was not extended to the appellant, holding that the appellant in the capacity of recipient of GTA service is liable to pay service tax under the reverse charge mechanism. The issue as to whether, once the tax paid on the same transaction, can be confirmed again, was the subject matter of dispute before the Tribunal, which was resolved by this Tribunal in the case of Navyug Alloy Pvt. Ltd. vs. Commissioner of Central Excise & Customs, Vadodara-II -2009 (13) S.T.R. 421 (Tri.- Ahmd.) holding as under:-

> ***"2.*** *Once tax already paid on the services, it was not open to the Department to confirm the same against the appellant, in respect of the same services. I accordingly set aside the impugned order and allow the appeal with consequential relief to the appellant."*

4. In view of the settled position of law that service tax demand cannot be fastened again on the same transaction, I am of the view that the appeal filed by the appellant can be allowed on this ground alone. Therefore, after setting aside the impugned order, I allow the appeal in favour of the appellant, with consequential benefit, if any, as per law.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita