# 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/51820/2014 [SM]**

[Arising out of Order-in-Appeal No.OIA No.360/OPD/ST/JPR-II/2013 dated 27.12.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur-II]

**M/s.Agarwal Aluminium …Appellant**

**Vs.**

**C.C.E. & S.T., Jaipur … Respondent**

Present for the Appellant : Mr.O.P. Agarwal, C.A.
Present for the Respondent: Ms. Neha Garg, D.R.

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

**Date of Hearing/Decision: 17/10/2017**

**FINAL ORDER NO. 57669/2017**

**PER: S.K. MOHANTY**

This appeal is detected against the impugned order dated 27.12.2013 passed by the Commissioner, Central Excise (Appeals), Jaipur. In this case Service Tax demand was confirmed against the appellant, on the ground that it did not pay service tax on the GTA service during the period 2005-06 to 2007-08.

2. The ld. Consultant appearing for the appellant submits that the appellant paid the Service Tax to the goods transport agencies in respect of the freight charged by them. Thus, he

submits that since the appellant had already reimbursed the Service Tax amount to the service provider, it is not again liable to pay tax under the reverse charge mechanism. He also submits that the proceedings initiated by the Department are barred by limitation of time, inasmuch as, the show cause notice was issued on 15.09.2009, seeking recovery of Service Tax for the period 2005-06 to 2007-08. To show that there is no malafides on the part of the appellant, ld. Consultant has referred to the adjudication order, wherein the benefit of Section 80 of the Finance Act, 1994 has been extended by the original authority. Thus, he submits that in absence of suppression, fraud, misstatement etc. the period of show cause notice should be confined to one year and cannot go beyond such period.

3. On the other hand, ld. D.R. appearing for the respondent reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that the Department has issued the show cause notice under the proviso to Section 73 of the Finance Act, 1994 for recovery of the adjudged demand. For invoking the extended period contained in Section 73 ibid, the primary requirement is to be satisfied is that non-payment of Service Tax by the assessee is due to suppression, fraud etc. In this case, admittedly, there is no suppression on the part of the appellant, which is evident from the adjudication order, wherein benefit of Section 80 ibid has been extended by the adjudicating authority. Further, considering the submissions of

the appellant that it had paid the Service Tax to the service provider i.e. GTA, the bonafides of the appellant are proved that it had no intention to defraud the Government revenue. Therefore, I am of the considered view that the demand should be confined to the normal period and extended period cannot be invoked for confirmation of the demand.

6. Therefore, after setting aside the impugned order, the appeal filed by the appellant is allowed on the ground of limitation alone.

[Dictated and pronounced in the Open Court]

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

Anita