IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/1675/2010-CU [DB]

[Arising out of Order-in-Appeal No.IND/171-172/2010 dated 20.07.2010 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Indore]

M/s. Swastik Enterprises …Appellant

Vs.

C.C.E., Indore … Respondent

Present for the Appellant : Mr.Manish Saharan, Advocate
Present for the Respondent: Mr.Sanjay Jain, D.R.

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

Date of Hearing / Decision : 09/11/2017

FINAL ORDER NO. ____58391/2017__

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 20.07.2010 passed by the Commissioner (Appeals), Customs, Central Excise and Service Tax, Indore, upholding the adjudged demand, on the ground that the services provided by the appellant merit classification under the taxable category of cargo handling service, as against the claim of the appellant under GTA service.

2. The ld. Advocate appearing for the appellant submits that the principal activity involved in the contract entered into between the appellant and M/s.KRIBHCO is transportation of goods and cargo handling services are incidental to freight. Thus, he submits that on overall consideration of the agreement entered into between the appellant and M/s.KRIBHCO, the main activity should fall under the GTA service and accordingly, Service Tax cannot be confirmed under the cargo handling service. To support such stand, the ld. Advocate has relied on the decision of this Tribunal in the case of Arvind Singh - 2017 (48) STR 63. The alternate submission of the ld. Advocate is that the proceedings initiated by the Department is barred by limitation of time, inasmuch as, for the disputed period 2003-07, the show cause notice was issued on 31.12.2007, which is beyond the normal period of limitation provided under Section 73 of the Finance Act, 1994.

3. On the other hand, the ld. D.R. appearing for the Revenue submits that the contract entered into between the appellant and M/s.KRIBHCO clearly provides the rate for transportation of goods, as well as, for loading and unloading activities. He further submits that for providing the GTA service, the appellant had separately issued the bill and got the payment for the GTA services. For cargo handling service, it

had raised separate bills and the payments were also made by the service receiver. In this context, the ld. D.R. has referred to the adjudication order at page 29, wherein the original authority has specifically recorded that payments were paid by the service receiver, in respect of two categories of services. Thus, he submits that since the present demand concerns only with cargo handling service, the same is in conformity with the statutory provisions.

4. Heard both sides and examined the case records. We find that the adjudicating authority has specifically recorded the findings that over and above the GTA service, the appellant had provided services relating to loading / unloading of wagons, stacking, de-stacking etc. on behalf of M/s.KRIBHCO and for that purpose, had separately charged for such services provided by it. Since the appellant, in this case, has not specifically objected to the findings of the adjudicating authority that it has not provided two categories of services, we are of the view that the services provided by the appellant should merit consideration as cargo handling service. However, considering the fact that there is no specific mention about the distance covered for transportation of goods and in view of the co-ordinate bench decision on the limitation issue, we are of the view that suppression, misstatement etc. cannot be levelled against the appellant, justifying invocation of the extended period of five years for issuance of the SCN.

Therefore, the service tax demand should be confined to the normal period only.

5. In view of above, while upholding the impugned order on merits, we hold that the demand should be restricted to the normal period of limitation. Accordingly, the original authority is directed to quantify the Service Tax demand payable by the appellant within the normal period of limitation. Considering the overall facts and circumstances of the case and in view of the fact that the appellant entertained the bonafide belief that the services provided by it will fall under the GTA service, we are of the view that the penalty imposed in the impugned order should be viewed in terms of Section 80 of the Finance Act, 1994. Accordingly, the penalty imposed in the impugned order is set aside.

The appeal is disposed of in above terms.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita