

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. IV

DATE OF HEARING : 26/02/2018.
DATE OF DECISION : 26/02/2018.

Service Tax Appeal No. 57266 of 2013

[Arising out of the Order-in-Appeal No. 30 (RDN)/ST/JPR-II/2013 dated 28/01/2013 passed by The Commissioner (Appeals – II), Customs & Central Excise, Jaipur.]

M/s Miracle Carriers & Trading Co.

Appellant

Versus

CCE & ST, Jaipur – I

Respondent

Appearance

Shri Ankit Totuka, Advocate – for the appellant.

Shri Ranjan Khanna, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50943/2018 Dated : 26/02/2018

Per. S.K. Mohanty :-

Heard both sides.

2. The learned Advocate appearing for the appellant, at the outset, submits that the show cause notice dated 20/04/2011 issued by the Department, sought to levy service tax under the category of cargo handling service and in the adjudication order,

the demand was also confirmed under that category of service. However, he submits that while passing the impugned order, the learned Commissioner (Appeals) has changed the classification of service and upheld the demand under GTA service. Thus, he submits that the Commissioner (Appeals) has travelled beyond the scope of show cause notice and the adjudication order for confirming the demand against the appellant.

3. On perusal of the show cause notice and the adjudication order, we find that the demand has been proposed and confirmed under the cargo handling service. But, the learned Commissioner (Appeals) vide the impugned order, has upheld the demand under GTA service. It is evident that the Commissioner (Appeals) has travelled beyond the show cause notice and the adjudication order. Thus, on this ground alone, the impugned order is not sustainable.

4. Therefore, after setting aside the impugned order, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in the open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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