IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –IV

Service Tax Appeal No.ST/51976/2017 [SM]

[Arising out of Order-in-Appeal No.BHO-EXCUS-001-APP-269-17-18 dated 27.09.2017 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal (M.P.)]

M/s. Star Automobiles …Appellant

Vs.

C.C.E., Jabalpur … Respondent

Present for the Appellant : Mr.A. Srivastava, Advocate &
Mr. Arya Bhatt, Advocate
Present for the Respondent: Mr.K. Podar, D.R.

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

Date of Hearing/Decision: 15/03/2018

FINAL ORDER NO. 51041 /2018

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 27.09.2017 passed by the Commissioner (Appeals), GST, Customs and Central Excise, Bhopal.

2. Brief facts of the case are that the appellant is registered with the Service Tax Department for providing the taxable services of "Authorized Service Station's Service". During the course of audit of records for the period 2011-12 to 2013-14, the Central Excise Officers observed that the appellant availed

cenvat credit amounting to Rs.26,60,967/- on the basis of invoices issued by M/s. Singh Transport, Raipur. The said services were provided by the transporter for transportation of vehicles from factory of the manufacturer of motor vehicles to its showroom. The invoices issued for transportation of vehicles were meant for sale of the vehicles and no way concerned with the output services provided by the appellant. On the basis of such observation, the Department initiated show cause proceedings against the appellant, which culminated in the adjudication order dated 18.12.2016, in confirming the Cenvat demand of Rs.26,60,967/- alongwith interest. Besides, the adjudication order also imposed penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 73 of the Finance Act, 1994. On appeal, the ld. Commissioner (Appeals) has upheld the adjudged demand.

3. Ld. Advocate appearing for the appellant, at the outset, submits that the show cause proceeding initiated by the Department is barred by limitation of time. He submits that the period in dispute is from 2011-12 to 2013-14 and the show cause notice was issued on 05.10.2016, which is after the normal period provided under Section 73 (1) of the Act. To support his contention that the Department was aware about the activities of the appellant regarding taking of cenvat credit on the transportation service, the ld. Advocate has referred to the ST-3 Returns filed by it before the Department for the relevant period. Thus, he submits that since the facts were known to the Department at the time of filing the returns for

the relevant period, the SCN issued beyond the normal period, is barred by limitation of time.

4. On the other hand, the ld. DR appearing for the Revenue submits that the ST-3 returns filed by the appellant, nowhere mentioned that the GTA services were received by the appellant for the trading of motor vehicles. Thus, he submits that there was no scope or occasion on the part of the Department to know availment of cenvat credit for the trading activities. Thus, he submits that since, the Department came to know about the activities of the appellant for the first time, during the course of scrutiny of the records and thereafter, the show cause notice was issued within the normal period, the same is not barred by limitation of time.

5. Heard both sides and perused the records.

6. The fact is not under dispute that the appellant is not entitled to take cenvat credit on the GTA service for transportation of vehicle for trading purpose. The appellant only contents that the show cause proceedings are barred by limitation of time.

7. I find from the ST-3 Returns filed by appellant that nowhere it had stated that input services with regard to disputed GTA service was received by them during the relevant period for the trading activities. Therefore, the Department was not aware about taking of irregular credit by the appellant. Since, the Department acquired the knowledge about taking of irregular credit during the course of audit of books of accounts,

and thereafter the show cause notice was issued within one year from the relevant date, the same is not barred by limitation of time.

8. Therefore, I do not find any merits in the appeal filed by the appellant. Accordingly, the same is dismissed.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita