CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. 4

Service Tax Appeal No. 50090 of 2014-DB

[Arising out of Order-in-Appeal No. MRT-EXCUS-002-APP/11513-14 dated 11/09/2013 passed by the Commissioner(Appeals) Customs, Central Excise & Service Tax-Meerut-II]

M/s Nagpal Traders ....**Appellant**
Bareilly Road-Haldwani-263139,
Distt. Nainital
Uttrakhand

Versus

Commissioner Central Excise, Meerut-II ....**Respondent**
Commissioner, Customs Central Excise
& Service Tax, Commissionerate, Meerut-II
Opposite Shaheed Smarak, Delhi-Meerut Road,
Meerut(UP)

Appearance
Shri Rakshit Verman, Advocate for the appellant
Shri R K Manjhi, Authorized Representative for the respondent

CORAM:
Hon'ble Mr. Bijay Kumar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing/Decision: 25.06.2019

FINAL ORDER NO. 50841 /2019

Per Rachna Gupta:

1. The appeal has been preferred against the Order-in-Appeal No. 002 dated 11/09/2013 vide which the demand of Rs. 3,84,547/- for the period from 2005-06 to 2009-10, has been confirmed along with interest and the penalty.
2. The relevant facts are that the appellants are registered for providing the services under the category of 'Authorised

Service Station'. The Department during the audit, noticed that the appellants had not paid the service tax on the amount of rate paid by them during the period 2005-06 to 2009-10 and on the rental income received by them during period. Accordingly, a Show Cause Notice No. V (30) dated 18/05/2011 was issued upon the appellant proposing the recovery of service tax amounting to Rs. 3,94,829/- along with interest and the proportionate penalties. The said proposal was confirmed vide the Order-in-Original No. 1106 dated 31/03/13 except for the tax liability qua 'Renting of immovable property services' for the period prior 2006-07. Appeal thereof has been rejected vide the order under challenge.

3. We have heard Shri Rakshit Verman, Learned Advocate for the appellant and Shri R K Manjhi, Learned DR for respondent.

4. It is submitted on behalf of the appellant that the demand has been raised against the appellant on two counts- one is under reversed charged mechanism for receiving the goods transport Agency Service (GTA) another for providing 'Renting of immovable services'. With respect to GTA service it is submitted that the services were not received from a goods transport agency never any consignment was issued in favour of the appellant. The Services received were merely of transportation, the appellant cannot make liable under the reversed charge mechanism for the same. Ld. Counsel has relied upon the decision of Mumbai CESTAT

Bench in case of **Commissioner of Central Excise, Raigad vs. JWC Logistics Pvt. Ltd. [2019 (22) GSTL 237(Tri.-Mum)]** and**,** accordingly, has prayed for dropping of the liability as far as GTA services are concerned.

5. With respect of 'Renting of Immovable Property Services', it is submitted that the taxability was for the first time introduced in the year 2007 vide a Notification. Subsequently, in the year 2010 and amendment in the Finance Act in this respect was introduced. However, with retrospective effect since 2007. It is impressed upon that because of this, there was ample confusion prevalent with respect to the liability *qua* the 'Renting of Immovable Property Services' during the said period. Ld. Counsel has requested for benefit of that confusion to be extended in their favour and the Department is prayed to be denied entitled for invoking the extended period of limitation. The demand confirmed is, accordingly, prayed to be dropped as being barred by time. Ld. Counsel has relied upon in **Thadi Satya Ramalinga Reddy, vs. CCE, ST & CUS, Visakhapatnam-II** reported as **[2017 (4) GSTL 421 (Tri-Hydb)].** With the submissions the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

6. While rebutting these arguments Ld. DR has submitted that the demand with respect of GTA services has been raised based upon the balance sheet as were noticed by the Department during the audit, wherein the appellant has

specifically mentioned the amounts of freight paid for receiving the transportation services. It is impressed upon that, in view of the said being the nature of payment that the appellant cannot deny the liability under reversed charge mechanism for receiving GTA services. The case law relied upon is denied to be applicable to given facts and circumstances.

7. With respect to the liability *qua* 'Renting of Immovable property Services', it is submitted that service was brought into the tax net in the year 2007 itself. The non-compliance thereof was with intent to evade the payment of tax hence the Department had righty invoked the extended period of limitation. Finally, it is submitted that the appellant could not produce any document to proof their pleaded *bonafide* because of an incidence of fire being broke out in their premises. It is also impressed upon that liability *qua* 'Renting of immovable property services' has otherwise not being challenged by the appellant before Commissioner (Appeals) as is apparent from the order under challenge. Thus, there is no infirmity in the order. Appeal is, accordingly, prayed to be rejected.

8. After hearing both the parties and perusing the entire records, we observe and hold as follows;

9. With respect of liability *qua* receiving GTA service. This service has been defined in the Finance Act, 1994 vide Section 65 (50b) which reads as under;

> **(50b) ‘ goods transport agency’ means any person who provides service in relation to transport of goods by road and issues consignment note by whatever name called.**

10. Perusal thereof clarifies that liability to pay the service tax under reversed charged mechanism arises only when the services are received from the goods transport agency that to when such agency has issued a consignment note. In the present case, admittedly and apparently, there is no consignment note. The liability has been confirmed on the basis of mention of charges being paid by the appellant as freight as per their balance sheet. No question arises for considering as to whether mere payment of freight to a transporter amounts to receiving a goods ‘transport agency service’ when the aforesaid definition clearly specifies that such service has to be received from a transport agency only and not merely from the transporter. The issuance of consignment note is also mandatory for the purpose. The statue also specifically speaks about the said consignment note as per Rule 4(b) of the Service Tax Rules , 1994. Accordingly, we are of the opinion that mere payment of freight to a transporter who is otherwise not an agency does not amount to receiving goods transport agency services. Accordingly, the appellant cannot be made liable under reversed charged mechanism to pay the service tax for receiving the transportation services. We draw out support

from the decision of **JWC Logistics (supra),** wherein the Tribunal has held;

> **" 8. It is not the transportation of goods by road that is subject to tax but the services rendered by a goods transport agency in relation to the transportation of goods by road and road transport agency tasked with responsibilities that others connected with road transport are not, with consignment note being the point of difference. There is also no doubt that Rule 4B of the Service Tax Rules, 1994 lays down the contents of a consignment note."**

11. In view thereof , we are of the opinion that liability under reversed charged mechanism for receiving the GTA services by the appellant has wrongly been confirmed by the Adjudicating Authority the order to that extent it is , therefore, held liable to be set aside.

12. Now coming to the issue of liability *qua* providing 'Renting of immovable property services'. The period in demand admittedly is with effect from 2005-06 to 2009-10. The Adjudicating Authority below committed no error while dropping this demand for the period prior to year 2007 as this service was brought into the tax net vide a Notification of the year 2007. With respect to the remaining period the demand has been challenged for the Show Cause Notice being barred by time.

13. We observe that the taxability was introduced for the first time in the year 2007 that too by way of issuance of mere Notification. The amendment in Finance Act was

brought into effect only in the year 2010, though with retrospective effect. There was a subsequent amendment by introducing sub-Section 2 to Section 80 of the Finance Act by which the assessee would given a chance to clear arrears of service tax of RIPS pursuant to the retrospective amendment.

14. In the given circumstances, we are of the opinion that the prevent confusion cannot be ruled out to be the ground of non payment of tax. There has to be same positive evidence to prove the alleged intent to evade the tax. But we observe that there is no such evidence produced by the Department. Thus, we hold that the confirmation of demand by invoking the extended period of limitation was highly irregular. We draw our support from the decision of Hon'ble Allahabad High Court in case of **Commisioner, CST, vs. Greater Noida Development Authority,** Tribunal Hyderbad also held in **Thadi Satya case (Supra)** case also as held as follows;

> **"Renting of Immovable Property Services, Non payment of tax for issue being contentious during relevant period and amendment making same taxable retrospectively from 1-06-2007 onwards- However, sub-Section (2) of Section 80 of Finance Act, 1944 giving chance to assessee to clear arrears along with interest while introducing amendment retrospectively-Show Cause Notice, dated 18.04.2013, covering period from 2007-08 to 2011-12, completely beyond normal period."**

15. In view of entire above discussion, we are of the opinion that though the appellants were liable to pay service tax for rendering the services of 'Renting of immovable property' but because of the prevalent confusion as discussed above, no *malafide* can be attributed to the appellants for not paying the same during the relevant period. Accordingly, we hold that Department has committed an error while permitting the invokablity of extended period for time for issuance of the Show Cause Notice for the period 2005-06 to 2009-10 on 19th May, 2011. However, this demand for the period with effect from May, 2009 till 2010 is sustainable as a liability of the appellant. We also observe that the appellant has already deposit the Rs. 30,628/-, accordingly, order for adjustment for appropriation of the said amount for the said liability for the year 2009-10.

16. In view of the said discussion, we are of the opinion that there was no reason for the Department to impose penalty on the appellant.

17. In view of the entire above discussion, we hereby partly allow the appeal with consequential benefit, if any, to be given to the appellant.

(Dictated and pronounced in open court)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

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