IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87551/2018

[Arising out of Order-in-Appeal No: SK/GST (Audit-II) /MUM /65 /Appeals Raigad/2018 dated 22.03.2018 passed by the Commissioner CGST & CX (Audit-II), Mumbai]

Agarsons Container Terminals ***Appellant***

versus

Commissioner of Central Excise, Belapur ***Respondent***

Appearance:

Shri Jay Vora & Rama Rao, Advocates for appellant

Shri S.B.Mane, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of hearing: 09/10/2018
Date of decision: 09/10/2018

ORDER NO: A/87586 / 2018

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 22.03.2018 passed by the Commissioner (Appeals) Service Tax, Mumbai.

2. Brief facts of the case are that the appellant is engaged in the business of providing taxable services under the category of "storage

and warehousing service”, “repair and maintenance”, “cargo handling”, defined under the Finance Act, 1994. The appellant got itself registered with the Service Tax Department for providing such taxable services. During the disputed period, the appellant was also liable to pay service tax on GTA service under reverse charge mechanism, as a recipient of such service. However, the appellant did not pay the service tax attributable to such service. Accordingly, the department initiated show cause proceedings against the appellant, seeking for recovery of the service tax amount on such service. The matter was adjudicated against the appellant vide order dated 06.02.2014, wherein service tax demand of Rs.2,82,526/- was confirmed under the proviso to sub-section (1) of Section 73 of the Act along with interest. Besides, the said order also imposed penalties under Section 77 and 78 of the Act. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 22.03.2018 has upheld the adjudged demand confirmed on the appellant.

3. The Learned Advocate appearing for the appellant submit that during the disputed period, the appellant had deposited the service tax in respect of the services provided by it including the GTA service under reverse charge mechanism. Thus, he submits that there is no question of short payment of service tax and accordingly, the proviso of sub-section (1) of Section 73 cannot be invoked for confirmation of

the adjudged demand beyond the normal period prescribed in the statute. In this context, he submits that books of accounts of the appellant for the disputed period was audited by the department on 27.01.2010 and again on 12.01.2011, whereas the show cause notice was issued on 08.10.2013. Hence he submits that since the show cause notice was issued beyond the normal period of limitation and there is no short payment on non-payment of tax by the appellant on GTA service, the proceedings initiated by the department are barred by limitation of time.

4. On the other hand, the Learned DR appearing for the revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. On perusal of adjudication order dated 06.02.2014, I find that vide paragraph 17 and 18 therein, it has been stated that apart from providing the taxable service under the category of storage and warehousing, the appellant was also required to pay service tax on GTA service under reverse charge mechanism. The said order has also stated that the appellant had paid consolidated service tax amount in respect of both the category of service i.e. storage and warehousing and GTA service. However, the adjudged demand was confirmed on

the appellant on the ground that it did not pay the service tax on GTA service, as per the provisions of Rule 2(1) (d) of the Service Tax Rules, 1994. From the findings recorded in the adjudication order, it transpires that the department has not specifically alleged regarding non-payment or short payment of service tax. Thus the ingredients mentioned in the proviso to sub-section (1) of Section 73 of the Act are absent inasmuch as there is no question of fraud, collusion, suppression, will full misstatement etc., on the part of the appellant, in defrauding the Government revenue. Hence, I am of the considered opinion that the show cause proceedings initiated beyond the normal period, is clearly barred by limitation of time and as such, the adjudged demand confirmed against the appellant cannot be sustained on the ground of limitation alone.

7. Therefore, I do not find any merits in the impugned order, so far as the limitation aspect is concerned. According, by setting aside the same, I allow the appeal in favour of the appellant.

(Pronounced & Dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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