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/52982/2018-ST [SM]

[Arising out of Order-in-Appeal No.32 (RK) ST/JPR/2018-19 dated 14.05.2018 passed by the Commissioner (Appeals) & ADG, DGGSTI, Jaipur]

M/s. Kent Chemicals Private Ltd. ...Appellant

Vs.

Commissioner, CGST, Jaipur ... Respondent

Present for the Appellant : Mr.Pulkit Kapoor, C.A.
Present for the Respondent: Mr.P.R. Gupta, D.R.

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/Decision: 08.03.2019

FINAL ORDER NO. 50396/2019

PER: RACHNA GUPTA

The present adjudication has arisen out of show cause notice No.4304 dated 18.07.2017 vide which the Department has alleged that the appellants have failed to pay the Service Tax amounting to Rs.1,17,478/- on the value of taxable services i.e. 'Goods Transport Service' being provided to the appellants during the period from April 2012 to February, 2013. It was alleged that in view of Rule 2 (1) (b) (v) of Service Tax Rules, 1994, the recipient of 'Goods Transport Agency Service' is liable to pay the Service Tax on the amount of freight paid by him under reverse charge mechanism. Since

the appellant had not paid the same, that the recovery of the aforesaid amount alongwith the interest at the appropriate rate in accordance of Section 75 of the Finance Act read with Rule 14 of Cenvat Credit Rules, 2004 and that of Section 11AA of Central Excise Act, 1944 alongwith the penalties under Section 76, 77 and 78 of Finance Act 11AC of Central Excise Act and Rule 15 of CCR, 2004 were proposed. The entire demand was initially confirmed vide Order-in-Original No.142 dated 29.05.2015. The appeal thereof was rejected vide Order in Original No.32 dated 11.05.2018. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Mr. Pulkit Kapoor, ld. Chartered Accountant for the appellant and Mr. P.R Gupta, ld. D.R. for the Department.

3. It is submitted on behalf of the appellant that the period involved herein is both pre as well as post negative list. The aforesaid provision and the applicability thereof is for the post negative list period and qua the pre negative list period, the appellant was not liable to discharge the Service Tax liability in view of the Circular No.341/18/2004 ARU dated 17.12.2004. In addition, it is submitted that the appellant was informed by the transporter that the impugned service tax liability stands discharged by the transporter as such the appellant/recipient of that service is not required to pay any amount of tax. The emphasis has been paid for the challans of the respective payments and also the certificates given by the transporter to

the effect that the impugned tax liability stands discharged. In the given circumstances, there was no reason for the appellant to deposit the tax as demanded. It is alleged that the adjudicating authorities below have failed to appreciate the settled case law in this respect that when the tax already stands paid for GTA, irrespective by the transporter, the fact of payment is on record and thus subsequent demand will amount to double taxation. The order under challenge is accordingly prayed to be set aside, and appeal is prayed to be allowed.

4. Ld. DR while justifying the order under challenge has impressed upon para 7 thereof and also para 18 of Order-in-Original thereof submitting that the order is in due compliance of the mandatory statutory provisions. No infirmity can be alleged. The adjudicating authorities have relied upon the relevant case laws even of the Hon'ble Apex Court, while confirming the demand. Appeal accordingly, is prayed to be dismissed.

5. After hearing both the parties, I am of the opinion that the issue in the given circumstances is as to:

> Whether the appellant is liable to pay Service Tax on the freight paid by him to a 'Goods Transport Agency' even when the said tax stands paid by the said transporter?

5.1 No doubt the provision as invoked in the show cause notice while proposing the said demand and has been considered by the authorities below while confirming the said demand i.e. Rule 2 (1) (V) (b) of Service Tax Rules, 1994 provides as follows

"(v)	In relation to taxable service provided by a goods transport agency, any person who pay or is liable to pay freight either himself or through his agent would be liable to pay the Service Tax, where the consignor or consignee of goods is one of the following categories:
(a)	any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
(b)	any company established by or under the Companies Act, 1956 (1 of 1956);
(c)	any corporation established by or under any law;
(d)	any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
(e)	any co-operative society established by or under any law;
(f)	any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or
(g)	anybody corporate established, or a partnership firm registered, by or under any law.

5.2 Thus, this provision makes the person paying the freight/ consignor or consignee as liable to pay service tax under reverse charge mechanism. It is also observed that the factum of payment of the impugned liability but by the service provider of GTA services and not by person paying freight was brought to the notice of the adjudicating authorities below. Commissioner (Appeals) in para 10 of the order under challenge has dealt with the same holding that from the

documents as that of invoices, TR-6 Challans in respect of service tax deposited by the transporter, it cannot be established that the transporter so received the freight amount is inclusive of Service tax charged in the invoices. At this stage the invoices and the challans paid by the GTA agencies are perused. Perusal thereof shows that the invoices include the amount of Service Tax and the respective liability thereof stands paid by the transporter. These documents show that appellant has availed services from three transport companies M/s. Balaji Goods Carrier, D.S. Road Lines and Kailash Translines Pvt. Ltd. Respective invoices and challans corroborating the value of those invoices being inclusive of service tax paid by the appellant alongwith the freight are on record. In addition, there have been the certificates of three of these transporters acknowledging the liability qua the GTA services to have been discharged by them. In the given circumstances, the findings of adjudicating authority that the documents are insufficient to prove that the invoices were inclusive of service tax and liability thereof stands discharged though by the service provider are apparently false.

3. Now the only issue to be looked into is as to:

> Whether the payment made against the statutory provision of rule 2 (1) (d) of service tax Rules is still acceptable?

4. I observe that the issue is no more res integra as has earlier been dealt with in the case of **M/s. K.V. Enterprises vs. Commissioner of Central Excise, Allahabad Order No.70041-70041/2018 dated 02.01.2018 (Allahabad – CESTAT), Umasons Auto Compo (P.) Ltd. vs. Commissioner of Central Excise & Customs, Aurangabad reported in [2014] 42 taxmann.com 347 (Mumbai – CESTAT), Commissioner of Central Excise, Kanpur v. Om Tea Company reported in [2012] 22 taxmann.com405 (New Delhi-CESTAT)** wherein it has been held that once there has been no dispute regarding the payment of service tax though by the provider of GTA service the amount of service tax stands accepted by Revenue. The same cannot be demanded from the recipient of the said GTA service. The demand is liable to be set aside.

5. The decision of Hon'ble Apex Court as is impressed upon by the Department to have been relied by the original adjudicating authority i.e. in the case of **Auto Light India Ltd v/s. CCE reported in 2003 (154) ELT 169 (S.C.)** is held not applicable to the given facts and circumstances, because vide the said decision the Apex Court has held that the Revenue neutrality or availability of cenvat credit cannot be a ground for regularization the infraction of law. In the present case, there has been no such infrection except merely of the procedural law. The cenvat credit has been availed only on the amount of the service tax that stands paid to the Government Exchequer though by the provider of the service despite that

the same was to be provided by the recipient. Law has been settled that once the tax stands paid, cenvat credit is still available. I draw my support from the decision of Hon'ble Apex Court in the case of **Jet Airways India Ltd. vs. Commissioner reported in 2017 (07) GSTL 35 (S.C.).**

6. Also from the facts and circumstances on the record specifically the proven discharge of liability by the service provider, the same is opined to be a sufficient cause for the appellant to have a bonafide impression of him to no more be liable to pay the service tax even under reverse charge mechanism. The allegation as that of suppression and misrepresentation of the facts cannot be levelled against the appellant. Resultantly, the extended period of limitation could not be invoked by the Department, nor there arises any reason for imposition of penalty. Consequently, the order confirming demand of penalty amount is liable to be set aside. Above all, the SCN of 18.07.2007 proposing the demand for April 2012 to February, 2013 is barred by time. Seen from the above discussion, the order under challenge is hereby set aside. Appeal stands allowed.

[Dictated and pronounced in the Open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita