Complete text of the judgment on the aforesaid issue argued by APRA & Associates LLP is reproduced below: -

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

Appeal No. ST/50808/2015

SANT ROADLINES

VERSUS

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, PANCHUKLA

APPEARANCE:

Shri Atul Gupta, Chartered Accountant for the Appellant.

Shri Rajeev Gupta & Shri M.S. Dhindsa, ARs for the Respondent.

CORAM:

MR. ASHOK JINDAL, MEMBER (JUDICIAL)

MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 60183/2020

Per Ashok Jindal:

1. The appellant is in appeal against the impugned order wherein the demand of service tax has been confirmed against them under the category of 'Supply of tangible goods' for the period 01.10.2008 to 30.06.2012 and thereafter under negative list up to 31.03.2013 by invoking extended period of limitation.

2. The facts of the case are that the appellant is a proprietor and owner of the trucks who is providing trucks on hire basis to various logistics services for transportation of goods from one place to another and receiving the remuneration on Kilometre basis. For the same, the appellant entered into various agreements with the different parties and as per the agreements, the main service to be provided by the appellant is transportation of goods on behalf of the service recipient from one place to another for which appellant is being paid on Kilometre basis and the appellant did not issue any Goods Receipt (GR) for transportation of goods. The revenue is of the view that the said activity undertaken by the appellant is having merit classification under the category of 'Supply of tangible goods' services. Therefore, investigation was started and on the basis of investigation, a show cause notice dt.21.04.2014 was issued to demand service tax for the period 01.10.2008 to 31.03.2013 by invoking extended period of limitation. The matter was adjudicated and demand of service tax was confirmed by invoking extended period of limitation. Against the said order, the appellant is before us.

3. Learned consultant appearing on behalf of the appellant submits that the appellant is not liable to pay service tax under the category of 'supply of tangible goods' services as the appellant is providing truck to various logistics services provided on Kilometre basis and the drivers of the vehicles carry builty raised by the logistics service provider and no copy of builty remains with the appellant. The trucks are not provided to the courier companies to ply absolutely at their respective disposal i.e., for any destination at any time of their desire during the period truck was given on hire, rather trucks are to ply only on the route and destination as decided at the time of booking for transportation of cargo, trucks are not identified with a particular company and can be used for providing service to others also. There is no contract for providing transportation services using the trucks owned by the appellant. It is his alternative submission that if service is to be taxed, the same should be taxed under the category of 'Goods Transport Agency' service and the appellant was not issuing any transportation receipt/GR. Therefore, they are not liable to pay service tax under GTA service also. He also drew our attention to the budget speech delivered by the Hon'ble Finance Minister while presenting the Budget for the year 2004-05 where it is clarified that “I may clarify that there is no intention to levy service tax on truck owners or truck operators”.

4. He further submits that w.e.f. 01.07.2012 the activity undertaken by the appellant is not taxable in terms of section 66D of the Finance Act, 1994 wherein it has been specified that service by way of transportation of goods by road except service of goods transport agency or courier agency, which means that they are not liable to pay service tax.

5. He also relied on the decision of Birla Ready Mix [2013 (30) STR 99 (Tri-Delhi)] and also relied on the notification No. 29/2008-ST dt.26.06.2008. Therefore, he prayed that the impugned order is to be set aside. He also submitted that the whole demand is barred by limitation and hence, no penalty is imposable.

6. On the other hand, learned AR supported the impugned order.

7. Heard both parties and considered their submissions.

8. Ongoing through the definition in terms of section 65(105)(zzzzj) of the Finance Act, 1994 "the taxable service means any service provided or to be provided to any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances is supply of tangible goods for use service".

9. We are of the view that, as the right of possession of the vehicle has been in control of the appellant, therefore, they are liable to pay service tax under the said category but the appellant was under bonafide belief that they were engaged in the activity of transportation of goods on behalf of the service recipient and the said service is not taxable in the hands of the appellant. The said understanding of the appellant has been evidenced by various agreements between the appellant and the service recipient which clearly shows that the main activity of the appellant is transportation of goods on behalf of the service recipient.

10. In these circumstances, we are of the view that the appellant was under bonafide belief that they are not liable to pay service tax on the activity undertaken by them. Therefore, the extended period of limitation is not invokable. As it is seen that the whole of the demand has been confirmed against the appellant by invoking extended period of limitation, therefore, we hold that the whole of the demand is barred by limitation and consequently, no penalty is imposable on the appellant.

In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in the Open court on 13.02.2020)