O/o Chief Commissioner (A.R.) Customs, Excise & Service Tax Appellate Tribunal
08 AUG 2013
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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 30/07/2013

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/57075/2013-CU[DB] dated 22/07/2013

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	ST/Stay/3365/2012	ST/2648/2012	Neelav Jaiswal And Brothers Transport Nagar, Renukoot, Sonebhadra(up)231217
			Name and Address of Respondent
2			Commissioner of Customs, Central Excise and Service Tax-Allahabad 38...M G MARG... CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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3 Advocate(s) / Consultant(s):

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6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 22.7.2013

Stay Application No. 3365 of 2012 and
Service Tax Appeal No.2648 of 2012

Arising out of the Order in Appeal No.96/ST/ALLD/2012 dated 21.5.2012 passed by the Commissioner (Appeals), Central Excise , Allhabad.

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. Sahab Singh, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Neelav Jaiswal & Brothers .. Appellant

Vs.

C.C.E. , Allahabad .. Revenue

Appearance:

Present Shri B.L. Narasimhan, with Ms. Kranti Somani, Advocates for the appellants
Present Shri Govind Dixit, A.R. for the Revenue

Coram: Hon'ble Mr. Justice G.Raghuram, President
Hon'ble Mr. Sahab Singh, Technical Member

Final Order No. 57075/2013

Per Justice G. Raghuram:

At the stage of considering the stay petition No.3365/2012, Counsel for the petitioner/appellant and the ld. A.R. for Revenue agree, having regard to the narrow compass within which the substantive appeal falls for determination that the appeal itself be disposed of. Accepting the request, the appeal is disposed of.

2. The Assistant Commissioner of Central Excise and Service Tax, Mirjapur, Uttar Pradesh by the adjudication order dated 23.3.2012 confirmed service tax demand of Rs.41,037/- apart from interest and penalties as specified, including penalty equivalent to the tax demand confirmed, under Section 78 of the Finance Act (the Act). The assessee's appeal was rejected by the Commissioner (Appeals), Allahabad vide order dated 21.5.2012. Hence this appeal.

3. A scrutiny by Revenue of the record of M/s Hindalco Industries Ltd., Renukoot, revealed that the assessee was engaged in providing the taxable "man-power recruitment or supply agency" service and had received a total amount of Rs.3,47,481/- towards the provident fund contribution in respect of personnel deployed by the assessee to M/s Hindalco Industries Ltd.

4. The appellant failed to deposit service tax of Rs.41,037/- relatable to the amount of provident fund contribution received from Hindalco Industries Ltd., for providing the taxable service aforementioned, during the period April 2005 to March 2010. Proceedings were initiated and after a due process, an adjudication order came to be passed. There is no contest as to any transgression of natural justice requirements in passing the adjudication order. The contention that was disfavoured by the primary and appellate authorities and is reiterated before this Tribunal is that since the provident fund contribution (remittable by the assessee to the credit of provident fund accounts of its employees under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952), was separately paid by M/s Hindalco to the

assessee and not as part of payments meant for providing the taxable service, this amount cannot legitimately be included in the gross value of the taxable service for computation of the taxable value and levy of tax.

5. Shri B. Laxminarasimhan, ld. Counsel for the appellants refers to the decision of the High Court of Delhi in Intercontinental Consultants & Technocrats Pvt. Ltd. vs. UOI reported in 2013 (29) STR 9 (Del.) to support his contention that under Section 67 of the Act the value of a taxable service can only be the gross value received for providing such service and not any amount in excess of the consideration received as *quid pro quo* from the service recipient. We are in respectful agreement and are also bound by the principle delineated in the judgment of the High Court of Delhi but such resonance to this non-derogable principle is not *per-se* dispositive of the issue before us, in the facts and circumstances of this appeal.

6. Section 65(105)(k) enacts the relevant taxable service to mean any service provided or to be provided to any person, by a man-power recruitment or supply agency in relation to the recruitment or supply of man-power, temporarily or otherwise, in any manner. Section 65(68) of the Act defines "man-power recruitment or supply agency' to mean any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person. Section 67 of the Act dealing with valuation of taxable service for charging service tax specifies that where the provision of service is for a consideration in money, the taxable value would be the gross amount charged by the service provider for such service provided or to be provided by him.

7. It is admitted that the liability to remit Provident Fund to Provident Fund Authorities is a statutory liability on the appellant, the an employer of persons who were deployed to serve the needs of M/s Hindalco Industries Ltd., towards the taxable 'manpower recruitment or

supply agency' service. M/s Hindalco consideration for such taxable service provided by the appellant had remitted to the appellant not only the amount agreed to between the parties for remunerating the personnel so deployed but also the amount of provident fund payable by the appellant to Provident Fund authorities, in terms of the appellant's statutory obligation. Both these amounts therefore constitute the gross amount charged by the appellant for the taxable service provided to M/s Hindalco Industries Ltd., since the taxable service was provided for a consideration in money. Both these amounts therefore constitute the gross amount charged by the appellant for having provided the taxable service.

8. On the aforesaid analysis, we find no infirmity in the concurrent findings/conclusions recorded by the adjudicating authority and the appellate Commissioner (Appeals), warranting interference. The appeal is accordingly dismissed, but in the circumstances without costs.

Sd/-
(Justice G.Raghuram)
President

Sd/-
(Sahab Singh)
Member(Technical)

scd/

प्रमाणित प्रति/Certified True Copy
31/7/17
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपीलीय अधिकरण/(C.E.S.T.A.T.)
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