

Under manpower services – Provident fund and bonus paid shall be included in taxable service and service tax shall be charged .

Section 67 of the Finance Act, 1994- Valuation of Services

In case of “Laxmi Construction v Commissioner in CESTAT Allahabad” 2016 STR561, Tribunal Allahabad

It is decided that provident fund, statutory payable by appellant for taxable services provided to client and bonus amount paid to them as incentive , though not pre-fixed as periodicity and quantum , constitute additional remuneration received and includable in total consideration received for service tax purpose .

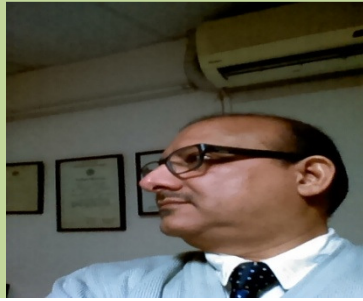
Fact of the Case

1. PF consist of contribution made by employee and employer. Employer contribution has been received from Hindalco industries and fully paid to the PF Commissioner. It is not wages or salary , hence not part of consideration for services rendered.
2. The bonus payment are incentive for workers. It is not fixed amount and as such can not be added to taxable consideration.
3. The Hon'ble High Court of Delhi in case of Intercontinental Consultants and Technocrats P Ltd. held that the expenditure or cost incurred for service provided can not be considered as gross amount charged for such services.
4. The amendment has been made in Section 67 of the Finance Act,1995 through Finance Act,2015 to the effect that the gross consideration for taxable services shall include all reimbursable expenditure or cost incurred and charged by the service provider. Though CBEC letter dated 28.02.2015 stated that the amendment is to give effect to the intention of the legislature that such inclusion are always to be made, such intention can not be ground for giving to the same prior to such amendment;
5. Ld. AR of the revenue reiterated the finding of the lower Appellate Authority.
6. We have heard both the side and examined appeal records. The short points for decision is the correctness of inclusion of PF and bonus in the gross consideration for service tax . We find that the Ld. Commissioner Appeal already waived the penalties imposed on the appellants invoking the provision of Section 80 of the Finance Act,1994.
7. We find the similar issue came up for consideration by the tribunal in case of Neelav Jaiswal and brother v Commissioner of Central Excise , Allahabad-2014(34 STR 225

8. The above decision of the tribunal was also referred to by the Hon'ble High Court of Allahabad in case of HM Singh and Co. V Commissioner of Custom, Central Excise and Service Tax-2015
9. Considering the above discussion , we found no merit in the present appeal and accordingly dismiss the same.

About the Author:

Author is practicing chartered accountant in Gurgaon and having specialisation in Service Tax and Haryana VAT. He can be reached at ca.sanjeevkumar@hotmail.com. Phone : 0124-4271552.



Sanjeev Kavish

Sanjeev Kavish and Associates