CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70511 of 2019

(Arising out of Order-in-Original No.LKO/EXCUS/000/COM/ST/039/2016-17 dated 02/02/2017 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Vani Systems (Pvt.) Ltd., ...Appellant
(Luxmi Bhawan, 16, Vidhan Sabha Marg, Hazratganj, Lucknow)

VERSUS

Commissioner of Central Excise &

Service Tax, Lucknow ....Respondent

(Commissionerate, Lucknow)

APPEARANCE:

Shri Rajeev Shukla, Managing Director for the Appellant
Shri Sarweshwar T. Khairnar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70267/2023

DATE OF HEARING : 28 November, 2023
DATE OF DECISION : 28 November, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.LKO/EXCUS/000/COM/ST/039/2016-17 dated 02/02/2017 passed by Commissioner of Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

ORDER

1. *I hereby confirm the demand of service tax to the tune of Rs 2,82,63,236/- (Rs two crore, eighty two lacs, sixty three thousand, two hundred and thirty six) including Education Cess and Higher Education Cess under Section*

73(2) of the Finance Act, 1994 along with appropriate rates of interest under Section 75 of the Act ibid.

2. *I, impose penalty of Rs 2,82,63,236/- (Rs two crore, cighty two lacs, sixty three thousand, two hundred and thirty six) under section 78 of the Finance Act, 1994 for nonpayment of service tax.*
3. *I also impose penalty of Rs 1,30,400/- under Section 70 of the Act ibid read with Rule 7C of the Service Tax Rules, 1994 for delay/non filing of ST-3 returns."*

2.1 Appellants were engaged in providing services classifiable under the category of 'Manpower Recruitment Service'. On the basis of information that appellant was not paying service tax under the said category, inquiries were made against them. Statement of Shri Rajiv Shukla, Director of the Company was recorded on 04.09.2013 wherein he stated as follows:-

- *That his company is engaged in trading of computer and also supplies manpower to Agricultural department Meerut & IWMP, Bihar.*
- *That his company is registered with the department vide registration no.AABCV8657NSD001.*
- *That he has submitted copy of balance sheet for the financial year 2011-12 & 2012-13 and copies of GAR-7 challans.*

2.2 On the scrutiny of the documents and 26-AS statement of the appellant, it was observed that appellant has provided services to various government organizations such as U.P. Road Transport Corporation, Govt. Agriculture School Campus, Bulandshahr, Basic Shiksha Adhikari, Hamirpur, Water and Sanitation Support Organization, Bhoomi Sanrakshan Adhikari, Aligarh and various Regional Offices of UPSRTC. However, in respect of the services provided, appellant have not paid the service tax from the balance sheet of the appellant it was informed that appellant have shown receipts under various heads of balance sheet as follows:-

F/Y	Receipts heads as shown in the balance Sheet			
	Sales & Services	Service charges	Other Income	Total
2011-12	3,10,31,466.00	9,13,460.00	-	3,19,44,926.00
2012-13	5,54,18,941.00	11,41,020.00	-	5,65,59,961.00
2013-14	5,83,55,126.00	19,78,122.00	1,09,34,507.00	7,12,67,755.00
2014-15	31,18,554.00	11,29,22,097.00	-	11,60,40,651.00
Total	**14,79,24,087.00**	**11,69,54,699.0**	**1,09,34,507.0**	**27,58,13,293.0**

and service tax leviable on the said services has been service tax short paid in respect of such receipt is calculated as per the table bellow:-

F/Y	Total Receipts as per Balance sheet.	Taxable value Rate as per section of 67(2) of the Act,	Rate of Servic e Tax (%)	Service tax payable	Service tax paid during F / Y	Service Tax Short paid.
2011-12	31944926.00	28961855.0	10.30	2983071.00	518041.00	2465030.00
2012-13	56559961.00	50338164.0	12.36	6221797.00	159243.00	6062554.00
2013-14	71267755.00	63428048.0	12.36	7839707.00	470079.00	7369628.00
2014-15	116040651.0	103275766.	12.36	12764885.0	135820.00	12629065.0
						28526277.0

2.3 Show cause notice dated 06.06.2016 was issued to the appellant asking them to show cause as to why:-

(i) *The Service tax amounting Rs. 2,85,26,277.00 (Two Crores Eight Five Lakhs Twenty Six Thousand Two Hundred and Seventy Seven only) including Education Cess and Secondary & Higher Education Cess should not be demanded and recovered from them under Sec 73(1) of the Finance Act, 1994.*

(ii) *Interest on the said amount of Rs. 2,85,26,277.00 should not be demanded and recovered from them under the provisions of Section 75 of the Finance Act, 1994;*

(iii) *Penalty should not be imposed upon them under Section 78 of the Finance Act 1994 for failure to pay service tax & suppressing the facts and value of taxable service with intent to evade payment of service tax.*

(iv) *Penalty should not be imposed upon them under Section 77of the Finance Act, 1994 for non filing of*

ST-3 return correctly and not depositing service tax properly.

(v) Late fee should not be imposed for non filing of returns under rule 7C of the service tax Rules 1994."

2.4 This show cause notice has been adjudicated as per the impugned order above. Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Rajeev Shukla, Managing Director of the appellant and Shri Sarveshwar T. Khairnar learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned representative submits that-

- the appellant is providing 'Manpower Recruitment Services' to various Government Departments. The work orders placed by the Government Departments to appellant through open tenders on minimum service charges in financial bids and the service charges is only source of income of the appellant. All such orders executed are with service charges between 0.01% to 2%. On all work orders it is specifically mentioned that service tax on service charge at prevailing rates were charged. As is evident from various work orders, the service tax calculated by them on these service charges has been paid by them.
- The remaining amount which is there in terms of the invoice and 26AS statement is in respect of the total contract value including the amount paid by them to the manpower provided as wages EPF, ESIC, which in any case are in nature of reimbursable expenses and no services tax in respect of these amounts was to be paid.
- As per para-8 of the Notification No.30/2012-ST dated 20th July, 2012 and Notification No.7/2015 dated 01st March, 2015, 75% service tax should have been collected from the recipient of service and liability was only to the extent of 25%. However, even without issuance of any notice to the recipient of the services, impugned order has

confirmed entire liability against the appellant contrary to the above provisions of the notification.

- In similar situation appeals have been allowed in the orders as detailed bellow:-
    - Dhariwal Industies Ltd. [Final Order No.A/12248/2023 dated 11.10.2023]
    - Mahanadi Coal fields Ltd. [2020 (43) GSTL 263 (Tri-Kolkata)]
    - Elkos Pens Ltd. [2019 (24) GSTL 652 (Tri-Kolkata)]
    - Umasons Auto Compo Pvt. Ltd. [2016 (46) STR (Tri. Mumbai)]
    - Transpek Silox Industries Pvt. Ltd. [2018 (17) GSTL 434 (Tri- Ahmd.)]
    - Zyeta Interiors Pvt. Ltd. [2022 (58) GSTL 151 (Kar.)]
    - Nagraja Printing Mills [2010 (19) STR 828 (Tri.-Chennai)]
    - General Manager, J.K. Sugar Ltd. [2016 (43) STR 292 (Tri.-All)]
    - Geeta Industries Pvt. Ltd.[2011 (22) STR 293 (Tri.-Del.)]
    - Angiplast Pvt. Ltd. [2013 (32) STR 628 (Tri-Ahmd.)]
    - Reliance Securities Ltd. [2019 (20) GSTL 265 (Tri. Mumbai)]
    - Ralson India Ltd. [2008 (10) STR 505 (P & H)]
    - SACI Allied Products Ltd. [2005 (183) ELT 225 (S.C.)]
    - Toyo Engineering India Ltd. [2006 (201) ELT 513 (S.C.)]
    - Reckitt & Colman of India Ltd [1996 (88) ELT 641 (SC)]
    - Prince Khadi Woollen Handloom Prod. Coop. Indl. Society [1996 (88) ELT 637 (SC)]
    - Shital International [2010 (259) ELT 165 (SC)]
    - HMM Limited [1995 (76) ELT 497 (SC)]
    - Vasavadutta Cements Ltd [2018 (11) GSTL 3 (SC)]

- The appeal be allowed.

3.3 Arguing for the revenue learned Authorised Representative reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 In the impugned order Commissioner has recorded as follows:-

> *"Documents available on record shows that party has not provided any service relating to agriculture or agricultural produce by way of agricultural operations directly related to agricultural produce [Section 66D(d)(i)] or services relating to agriculture or agricultural produce by way of application of scientific research & knowledge to agricultural practices through farmer education or training. On the contrary, I find that party has entered into agreements with the agriculture department to provide manpower services. Accordingly party has provided services of manpower for the work in the name & style of Block technical manager, Computer programmer, soil analyst, computer operator, Technical Assistant, Lab attendant & subject matter specialist, for the basic amount of Rs 15000, 12000, 10000, 9500, 8000, 5000 & Rs 5000 per month respectively. Details available on record shows that service tax at the applicable rate 10.3/ 12.36 % has been charged & paid on the said amount apart from service charge @ 2%.*
>
> *I find that contract for supply of manpower cannot be treated as contract for work. For better understanding of difference between contract for supply of manpower and contract for work following judgments of Tribunals are very helpful.*
>
> *In Jivanbhai Makwana Vs CCE[2010]24STT85(Ahd.-CESTAT) the assessee entered into a contract with a company to provide labour as per company's requirement for housekeeping work, for loading and unloading purpose,*

etc. Payment to be made by said company was related to number of labourers supplied during a specified period and not related to quantum of work carried out. It was held that above contract was nothing but supply of manpower and was covered by definition of 'Manpower recruitment or supply agency's service'.

In K. Damodarareddy Vs CCE[2010] 25 STT 69(Bang. -CESTATO under a contract with a cement company, assessee carried out activities of loading of cement bags into closed wagons, cleaning, sealing and riveting, etc., wagon door complete spillage recovery of total quantity, drawing of bags to stenciling floor, and wagon door opening/wagon cleaning. It was compensated for different items of work at separate rates prescribed in contract. It did not supply manpower of charge for labour provided on man-day basis or man-hour basis and carried out work as a contractor employing its own labour. It was held that activities of assessee were not classifiable as 'manpower recruitment of supply agency's services'.

In view of above it is very clear that party is liable to pay service tax for supply of manpower services. Even if for the sake of discussion we consider the services provided by the party to agricultural department as non taxable, party is liable to pay service tax as per provisions of Section 73A of the Finance Act, 1994, as service tax has been collected by the party from the service recipient i.e. Agricultural department.

On the 2nd issue party has claimed exemption for the service provided to Jal Nigam under Entry No. 25 of Notification No. 25/2012-ST dated 20.06.2012 which exempts taxable services specified under different Entries of Notifications from whole of the service tax leviable thereon under Section 66B of the Act. Entry No. 25 of Notification No. 25/2012 dated 20.06.2012 reads as under.

25. Services provided to Government, a local authority or a Governmental authority by way of (a) carrying out any activity in relation to any function ordinarily in entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation;

I find that w.e.f. 11.07.2014 vide Notification No. 6/2014- ST dated 11.07.2014 clause (a) of Entry No. 25 of Notification No. 25/12 has been substituted as under-

(a) Water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation;

I found that Jal Nigam is Governmental authority created for water supply and the same is not under dispute. Amendment made in entry No. 25(a) of Notification No. 25/12 w.e.f. 11.07.2014 has made exemption in respect of services provided to Govt. or local authority or Government authority, more specific. Earlier any activity in relation to any function ordinarily entrusted to a municipality in relation of water supply,……. was exempted by virtue of this entry. But w.e.f. 11.07.2014 services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement & up-gradation remain exempted but the exemption would not be extendable to other services not directly connected with these specified services, such as testing, consultancy and man power supply etc.

As per agreement dated 26.12.2011 made between party & U.P. Jal Nigam party has provided services of chemist & laboratory Assistant w.e.f. 01.01.2012 falling under the category of "supply of man power services". In view of above I find that exemption from service tax is available to the services provided by the party to U.P. Jal Nigam during the period 01.07.2012 to 10.07.2014 by virtue of entry No. 25 of Notification 25/2012. But on *perusal of tender acceptance order dated 10.03.2015 issued by U.P. Jal Nigam for the tender Notice dated 21.06.2014, 1 found that the first term and condition is on the subject of service tax and states that service tax at the rate of 12.36% or as prevalent will be paid extra. From this it is evident that service tax has been charged by the party and has been paid by the Jal Nigam to the party. Therefore party is liable to pay service tax as per provisions of Section 73A(2) of the Finance Act, 1994 on the services provided by the party to U.P. Jal Nigam.*

On the third issue, I found that during the course of investigation party contested that cleaning of bus is not taxable but in defense reply party has accepted leviability of service tax and has claimed abatement of 30% on the ground that in the cleaning and washing of buses some material is used. In this regard I found that Rule2A of service tax (Determination of value) Rules 2006 prescribes manner of determination of value of service portion in the execution of a work contract.

I found that during the activity of bus cleaning no transfer of property in goods is involved, whatever detergent or cleaning agents are used in the process are consumed and washed out. Therefore service of bus cleaning cannot be classified under the category of works contract and accordingly abatement in value as per provisions of Rule2A(ii)B(i)is not available to the party. Therefore as per provisions of Section 67 of the Finance Act, 1994 gross amount charged by the party form UPSRTC is taxable.

On the fourth issue I found that party is also engaged in trading of some goods. Activity of trading is not only in the exclusion clause of definition of service as provided under Section 66B (44) but also in negative list of services as per Section 66D(e) of the Act. Therefore receipt on account of *sales of the goods should be deducted from the total income in calculation of service tax payable.*

Party has produced copies of returns filed before commercial tax department in support of their sales value, which has been shown as under.

F.Y.	*Sale Value*
14-15	*Nil*
13-14	*2,26,899.96/-*
12-13	*1,60,001.36*
11-12	*23,61,072.00*

In view of above discussions and submission of the party service tax liability is recalculated as under:-

F/Y	Total Receipts as per Balance sheet.	Receipts on account of sales	Total receipt on account of services provided col No.[2-3]	Taxable value Rate as per section of 67(2) of the Act,	Rate of Service Tax (%)	Service tax payable	Service tax paid during F / Y	Service Tax Short paid col. No.[7-8]
1	2	3	4	5	6	7	8	9
2011-12	31944926	2361072	29583854	26821263.83	10.30	2762590.2	518041	2244549.2
2012-13	56559961	16001.36	56399959.64	50195763.3	12.36	6204196.3	159243	6044953.3
2013-14	71267755	226899.96	71040855.04	63226108.08	12.36	7814747	470079	7344668
2014-15	116040651	0	116040651	103275766.3	12.36	12764885	135820	12629065
Total								28263236

I found that party has charged & collected the service tax from agriculture department, Jal Nigam etc and agreement with UPSRTC, shows that rates are inclusive of service tax (Para 1.2 of work order dated 23.05.2012), but has not paid to the Govt. exchequer. Therefore, there is no scope for any doubt on willful suppression of facts with intend to evade service tax. Accordingly, party is liable to penalty under section 78 of the Act and interest is recoverable from them under Section 75 of the Act.

4.3 From perusal of the impugned order, we find that Commissioner has totally mis-directed himself for examining the issue under the category of Works Contract Service and confirming the demand by holding that the services provided cannot be held as Work Contract Service. There is no dispute in respect of the facts that the services provided by the appellant fall under the category of 'Manpower Recruitment Service'. Some of the agreements between the appellants and their clients are reproduced below:-

52 5

उत्तर प्रदेश UTTAR PRADESH AA 595450

AGREEMENT

(For Providing Services of Chemist & Laboratory Assistant in State/District/ Subdivision Level Laboratories)

This AGREEMENT (hereinafter called the "Agreement") is made the 26th Day of the month of December 2011, between, on the one part M/S VANI System Pvt. Ltd, 16, Vidhan Sabha Marg, Above Andhra Bank, Lucknow, which expression where the context so admits or implies be deemed to include their heirs executors or administrators of the ONE PART (hereinafter called the "Service Provider") and, on the other part, UP Jal Nigam Through the Joint Director, Community Participation Unit, U.P. Jal Nigam, 6-Rana Pratap Marg, Lucknow -226 001. (hereinafter called the "Engineer").

WHEREAS

(A) U.P.JAL NIGAM has engaged M/S VANI System Pvt. Ltd, 16, Vidhan Sabha Marg, Above Andhra Bank, Lucknow, the SRVICE PROVIDER For Providing Services of Chemist & Laboratory Assistant in State/District/ Subdivision Level Laboratories., as per specification mentioned in Tender document, (hereinafter called the "Work");

(B) The SRVICE PROVIDER, have agreed to carry out the work at the rates set forth in Schedule-A here to attached and in the manner set forth in the conditions of this agreement.

NOW THIS INDENTURE WITNESSTH AS FOLLOWS:

In con[illegible] of the covenant for the payment by and on behalf of the said Engineer hereinafter contained the Service P[illegible]y covenants with the Engineer that he will provide Services of Laboratory Chemist and Laboratory Assistant for one year from 01.01.2012 in a sound manner as set out in the said specification and schedule of rates hereto attached signed by the Service Provider and in accordance in every respect with the requirement stipulation and conditions hereto attached.

PEDENTURE 52

For VANI SYSTEMS (P) LTD
(Rajiv Shukla)

53

उत्तर प्रदेश UTTAR PRADESH AA 595449

IN consideration of the covenant by the Service Provider hereinafter contained the said Engineer hereby covenant with the Service Provider to pay to him for Providing Services of Chemist & Laboratory Assistant in State/District/ Subdivision Level Laboratories as aforesaid according to the rates hereto given in the schedule of rates hereto attached and at the time and in the manner and subject to the conditions set out and declared in the said condition hereto attached.

IT is hereby agreed and declared that all provisions of conditions specifications and schedule of rates hereto attached shall be as binding upon Service Provider and upon the said Engineer as it the same has been repeated herein and shall be read as part of these presents.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

FOR AND ON BEHALF OF U.P. JAL NIGAM

Joint Director
Community Participation Unit
U.P. Jal Nigam, Lucknow

By Joint Director, C.P. Unit, U.P. Jal Nigam, Lucknow

Deputy Director

Witness ON BEHALF OF U.P. JAL NIGAM:

Place : 6, Rana Pratap Marg, Lucknow
U.P. Jal Nigam, Lucknow

FOR AND ON BEHALF OF SRVICE PROVIDER

Vani Systems (P) Ltd.

By Authorized Representative
(Pankaj Pandey)
General Manager

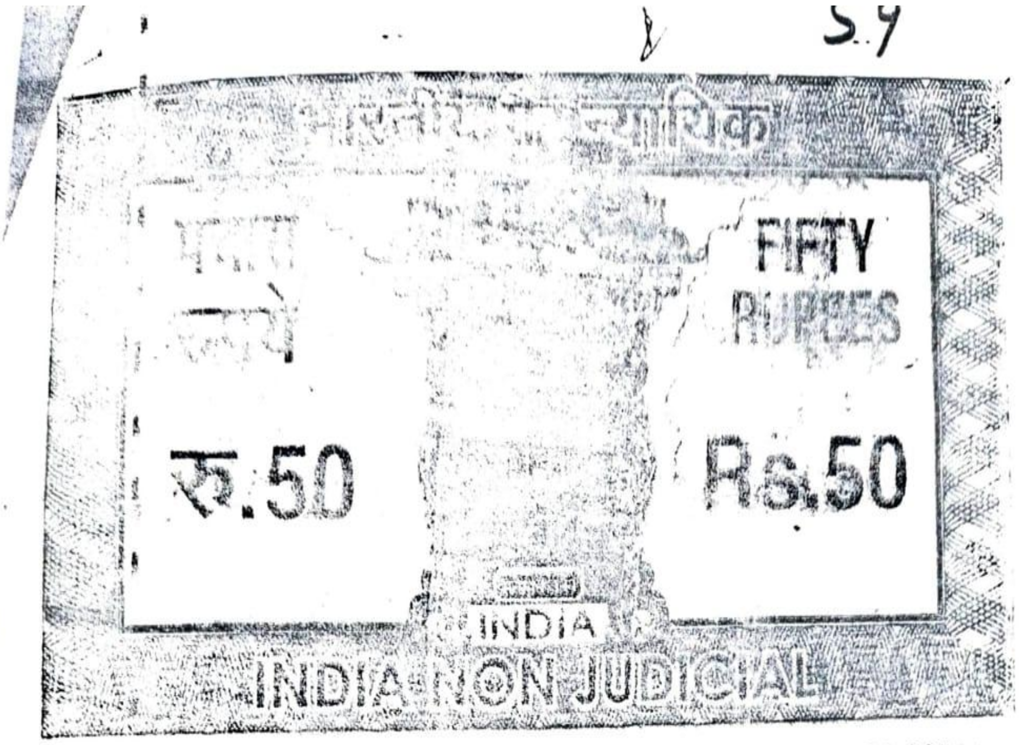
Witness ON BEHALF OF SRVICE PROVIDER :

53

For VANI SYSTEMS (P) LTD.

(Rajiv Shukla)
Managing Director

5.9



BB 920

उत्तर प्रदेश UTTAR PRADESH

AGREEMENT

(For Providing Services of Skilled and experienced manpower of different categories for offices and Laboratories of U P Jal Nigam in various districts of Uttar Pradesh)

This AGREEMENT (hereinafter called the "Agreement") is made the 27th Day of the month of April 2015, between, on the one part M/S VANI System Pvt. Ltd, 16, Vidhan Sabha Marg, above Andhra Bank, Lucknow, which expression where the context so admits or implies be deemed to include their heirs executors or administrators of the one part (hereinafter called the "Service Provider") and, on the other part, UP Jal Nigam Through the Joint Director, Community Participation Unit, U.P. Jal Nigam, 6-Rana Pratap Marg, Lucknow - 226001 (hereinafter called the "Engineer").

WHEREAS

(A) U.P JAL NIGAM has engaged M/S VANI System Pvt. Ltd, 16, Vidhan Sabha Marg, above Andhra Bank, Lucknow, the SERVICE PROVIDER For Providing Services of Skilled and experienced manpower of different categories for offices and Laboratories of U.P. Jal Nigam in various districts of Uttar Pradesh, as per specification mentioned in Tender document, (hereinafter called the "Work");

(B) The SERVICE PROVIDER, have agreed to carry out the work at the rates set forth in Schedule-A here to attached and in the manner set forth in the conditions of this agreement.

(C) U.P JAL NIGAM and SERVICE PROVIDER shall make payment regarding PF and ESI as per the relevant rules applicable for manpower to be engaged to carry out the said work during the period of agreement.

NOW THEREFORE the parties hereto hereby agree as follows:

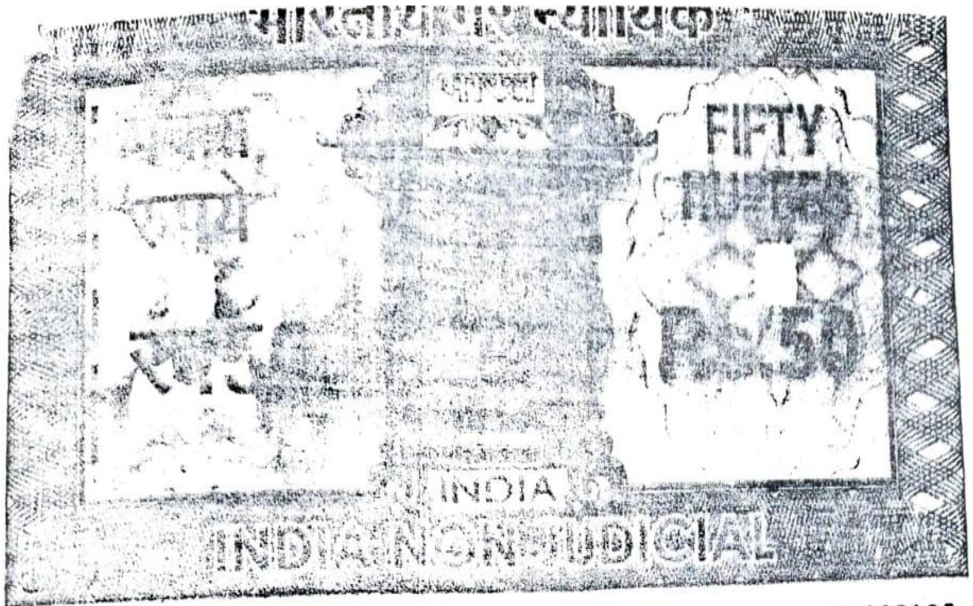
1. The ebid form, schedule of requirement of manpower, format for progress report Schedule-A (rates); attached hereto shall be deemed to form an integral part of his Agreement;
2. The mutual rights and obligations of the U.P.JAL NIGAM and SERVICE PROVIDER shall be as set forth in the Agreement; in particular:

(a) SERVICE PROVIDER shall carry out the Services in accordance with the provisions of Agreement;

(b) U P.JAL NIGAM shall make payments to the SERVICE PROVIDER in accordance with the provisions of Agreement

For VANI SYSTEMS (P) LTD.

Managing Director



BB 920185

उत्तर प्रदेश UTTAR PRADESH

NOW THIS INDENTURE WITNESSTH AS FOLLOWS:

In consideration of the covenant for the payment by and on behalf of the said Engineer hereinafter contained the Service Provider hereby covenants with the Engineer that he will provide Services of Skilled and experienced manpower of different categories for one year from 01.04.2015 in a sound manner as set out in the said specification and schedule of rates hereto attached signed by the Service Provider and in accordance in every respect with the requirement stipulation and conditions hereto attached.

IN consideration of the covenant by the Service Provider hereinafter contained the said Engineer hereby covenant with the Service Provider to pay to him for Providing Services of Skilled and experienced manpower of different categories as aforesaid according to the rates hereto given in the schedule of rates hereto attached and at the time and in the manner and subject to the conditions set out and declared in the said condition hereto attached.

IT is hereby agreed and declared that all provisions of conditions specifications and schedule of rates hereto attached shall be as binding upon Service Provider and upon the said Engineer as if the same has been repeated herein and shall be read as part of these presents.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

FOR AND ON BEHALF OF U.P. JAL NIGAM

By Joint Director, C.P.U., Jal Nigam, Lucknow

Joint Director
Community Participation Unit
U.P. Jal Nigam, Lucknow

Witness ON BEHALF OF U.P. JAL NIGAM:

Place : 6, Rana Pratap Marg, Lucknow

FOR AND ON BEHALF OF VANI Systems

By Authorized Representative

27/04/15

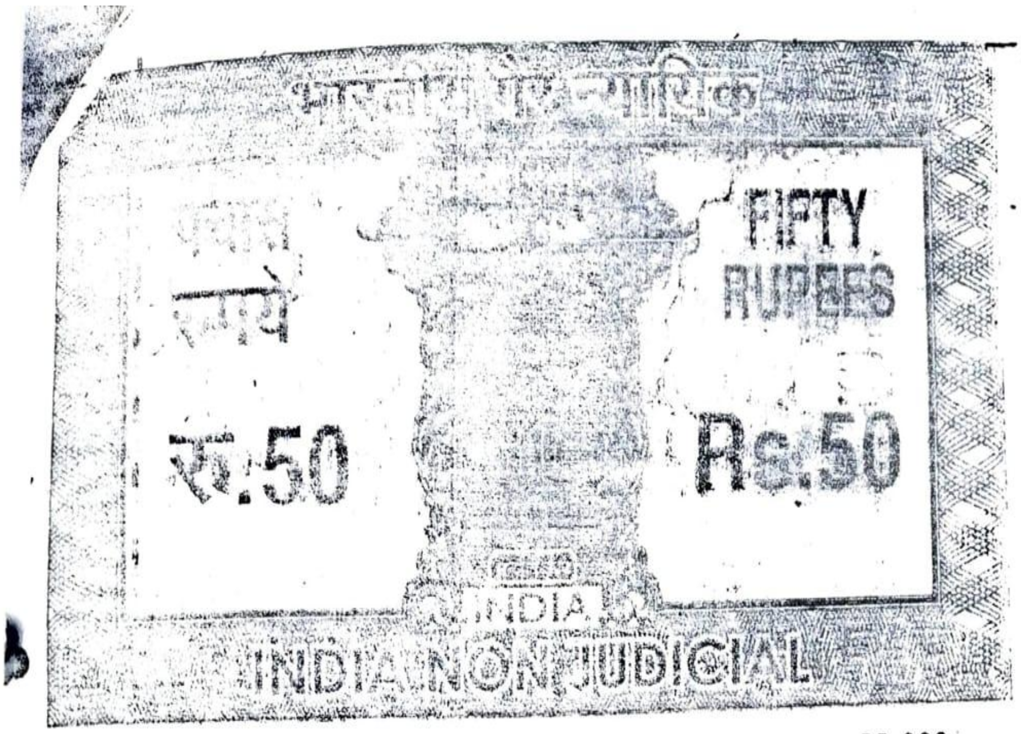
Witness ON BEHALF OF SERVICE PROVIDER:

27.04.2015

Naveen Shukla
Sector I, E-3, 798
Indra Vihar Aliganj
Scheme Lucknow.

For VANI SYSTEMS (P) LTD.

(Rajiv Shukla)
Managing Director



उत्तर प्रदेश UTTAR PRADESH

BB 92

NOW THIS INDENTURE WITNESSTH AS FOLLOWS:

In consideration of the covenant for the payment by and on behalf of the said Engineer hereinafter contained the Service Provider hereby covenants with the Engineer that he will provide Services of Skilled and experienced manpower of different categories for one year from 01.04.2015 in a sound manner as set out in the said specification and schedule of rates hereto attached signed by the Service Provider and in accordance in every respect with the requirement stipulation and conditions hereto attached.

IN consideration of the covenant by the Service Provider hereinafter contained the said Engineer hereby covenant with the Service Provider to pay to him for Providing Services of Skilled and experienced manpower of different categories as aforesaid according to the rates hereto given in the schedule of rates hereto attached and at the time and in the manner and subject to the conditions set out and declared in the said condition hereto attached.

IT is hereby agreed and declared that all provisions of conditions specifications and schedule of rates hereto attached shall be as binding upon Service Provider and upon the said Engineer as if the same has been repeated herein and shall be read as part of these presents.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

FOR AND ON BEHALF OF U.P. JAL NIGAM

By Joint Director, Cdm Unit, U.P. Jal Nigam, Lucknow

Joint Director
Community Participation Unit
U.P. Jal Nigam, Lucknow

Witness ON BEHALF OF U.P. JAL NIGAM:

Place : 6, Rana Pratap Marg, Lucknow

FOR AND ON BEHALF OF VANI Systems

By Authorized Representative

27/04/15

Witness ON BEHALF OF SERVICE PROVIDER:

27.04.2015

Naveen Shukla
Sector I, E-3 798

For VANI SYSTEMS (P) LTD.

(Rajiv Shukla)
Managing Director

INDIA NON JUDICIAL

ONE THOUSAND RUPEES

Rs.1000

बिहार BIHAR

P 120097

19 OCT 2016

Agreement of Contract

CONTRACT FOR: Man Power Requirement in 88 Municipal Panchayats

CONTRACT NUMBER:

THIS CONTRACT is made BETWEEN : *Urban Development & Housing Department, GoB* (hereinafter referred to as "the Client")

AND

Vani Systems Pvt Ltd. 16 Vidhan Sabha Margh, Lucknow Through its Director Sh Pankaj Panday (hereinafter referred to as "the Consultant")

WHEREAS:

A. the Employer has requested the Consultants to provide certain consulting services as defined in the General Conditions attached to this Contract (hereinafter called the "Services"); and

B. The Consultants, having represented to the Employer that they have the required professional skills, personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract.

NOW THEREFORE the parties hereto hereby agree as follows:

1. Documents

This Contract shall be comprised of the following documents:

Section 1	Form of Contract
Section 2	General Conditions
Section 3	Special Conditions
Section 4	Terms of Reference

For VANI SYSTEMS (P) LTD

(Rajiv Shukla)
Managing Director

For Vani Systems (P) Ltd.

4.4 On perusal of the above agreements and by applying the dominant nature test as laid down by the Hon'ble Apex Court in case of BSNL [2006 (2) STR 161 (SC)] we are of the view the services rendered by the appellant are more appropriately classifiable under the category of Manpower Recruitment Agency Services and not under the category of "Work Contracts Service" as has been held in the impugned order. Hon'ble Apex Court has observed as follows:

> *"43. …... The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. We will, for the want of a better phrase, call this the dominant nature test."*

4.5 The appellant gets only a part amount towards the service charges and fixed amount towards the wages/remuneration which for the manpower provided. In case of these amounts received by the appellant towards wages/remuneration are in terms of these agreements payable to the concern person who have been provided by the appellant to the concern Government Department. These are in nature of reimbursable expenses and could not have levied to service tax in terms of decision of Hon'ble Supreme Court in case of Intercontinental Consultants And Technocrats Pvt. Ltd [2018 (10) G.S.T.L. 401 (S.C.)] wherein following has been held:-

> *"24. In this hue, the expression 'such' occurring in Section 67 of the Act assumes importance. In other words, valuation of taxable services for charging service tax, the authorities are to find what is the gross amount charged for providing 'such' taxable services. As a fortiori, any other amount which is calculated not for providing such taxable service cannot a part of that valuation as that*

amount is not calculated for providing such 'taxable service'. That according to us is the plain meaning which is to be attached to Section 67 (unamended, i.e., prior to May 1, 2006) or after its amendment, with effect from, May 1, 2006. Once this interpretation is to be given to Section 67, it hardly needs to be emphasised that Rule 5 of the Rules went much beyond the mandate of Section 67. We, therefore, find that High Court was right in interpreting Sections 66 and 67 to say that in the valuation of taxable service, the value of taxable service shall be the gross amount charged by the service provider 'for such service' and the valuation of tax service cannot be anything more or less than the consideration paid as quid pro qua for rendering such a service.

25. This position did not change even in the amended Section 67 which was inserted on May 1, 2006. Sub-section (4) of Section 67 empowers the rule making authority to lay down the manner in which value of taxable service is to be determined. However, Section 67(4) is expressly made subject to the provisions of sub-section (1). Mandate of sub-section (1) of Section 67 is manifest, as noted above, viz., the service tax is to be paid only on the services actually provided by the service provider.

26. It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner :

"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."

27. The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule which comes in conflict with *the main enactment has to give way to the provisions of the Act.*

28. It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in Taj Mahal Hotel :

"the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."

29. In the present case, the aforesaid view gets strengthened from the manner in which the Legislature itself acted. Realising that Section 67, dealing with valuation of taxable services, does not include reimbursable expenses for providing such service, the Legislature amended by Finance Act, 2015 with effect from May 14, 2015, whereby Clause (a) which deals with 'consideration' is suitably amended to include reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service. Thus, only with effect from May 14, 2015, by virtue of provisions of Section 67 itself, such reimbursable expenditure or cost would also form part of valuation of taxable services for charging service tax. Though, it was not argued by the Learned Counsel for the Department that Section 67 is a declaratory provision, nor could it be argued so, as we find that this is a substantive change brought about with the amendment to Section 67 and, therefore, has to be prospective in nature. On this aspect of the matter, we may usefully refer to the Constitution Bench judgment in the case of Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited [(2015) 1 SCC 1] wherein it was observed as under :

"27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity

in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statutes". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon

Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

30. As a result, we do not find any merit in any of those appeals which are accordingly dismissed."

In the present case entire period of demand is before the amendments made in Section 67 of the Finance Act, 1994 by the Finance Act, 2015 as a consequence of Hon'ble Delhi High Court decision on the matter reported at [2013 (29) S.T.R. 9 (Del.)]. On this ground alone by applying the principles laid down in the above judgment of Hon'ble Apex Court we find no merits in the impugned order.

4.6 Notification No.30/2012-ST dated 20th June, 2012 as amended by Notification No.7/2015 dated 1st March, 2015 clearly provides as under:-

Sl No.	Description of Services	Percentage of Service Tax payable by the person providing Service.	Percentage of Service Tax payable the Service.
	In respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75%

In terms of the above notification appellant was required to pay service tax only of 25% of the value of service tax leviable on the taxable value of the services provided and 75% was required to be collected from the recipient of the service under reverse charge mechanism. There is nothing on record to show that any demands have been made from the service recepients.

4.7 Further, we find that the Tribunal has in the case of Dhariwal Industries Ltd. Final Order No. A/12248/2023 dated 11.10.2023 wherein it has been held as follows:-

> *4.2 In view of the above judgments it has been settled that once the service provider discharged the service tax where the service recipient is liable to pay the service tax, demand of service tax on the same service from the service recipient shall not sustain on the ground that the particular service which already suffered the service tax cannot be suffer the service tax twice on the same service. Accordingly, the service tax paid by the transport agency in the facts of the present case is the payment of service tax and not deposit. Therefore, no demand can be raised from the appellant, for the same reason once the amount paid by the transport agency being service tax amount, the appellant is eligible for cenvat credit.*
>
> *5. Accordingly, on both the count the impugned order is not sustainable. Hence, the same is set aside. Appeal is allowed.*

Tribunal in the case of Mahatma Gandhi University of Medical Sciences dated 08.09.2021 held as follows:-

> *"Appellant has admitted his liability of paying Service Tax for receiving manpower recruitment and supply agency service to the extent of 75% on the gross value of service received under reverse charge mechanism. There is no dispute about the discharge of the liability to the said extend by the appellant. There is also no dispute that this liability was in terms of the Notification No.30/2012 dated 20.06.2012 which stands amended vide Notification No.7/2015 –ST dated 01.03.2015 requiring such service recipient to pay tax on 100% value of service received. There is also no dispute about the fact that the period in dispute is exactly from the date of coming into affect of said amendment i.e. 01.04.2015 till the end of the said Financial Year i.e. March, 2016 unawareness of the*

appellant to such a sudden change to be implemented in so proximity of time of its coming into effect cannot be ruled out. Consequently, I am of the opinion that nonpayment by the appellant for the said period is merely due to his bonafide belief of his liability to the extent of paying the service tax at 75% of the service value. Once there is no apparent malafide on part of the appellant and in view of the aforesaid bonafide belief of the appellant, fastening the allegations as that of concealment fraud and suppression are held to be highly unjustified.

7. Hon'ble Supreme Court in the case of ***Pushpam Pharmaceuticals Co. Vs. Collector of Central Excise, Bombay reported in 1995 (78) ELT 401 (S.C.)*** *has held that word and phrase as that of "suppression of facts" as used in proviso to section 11A (1) of Central Excise Act, 1944 are to be interpreted strictly because of its use with the strong words like fraud collusion or willful default. It has been held that mere omission to disclose a correct information is not a suppression of fact unless it was deliberate to escape from paymen5t of duty. The Hon'ble Apex Court in another decision n the case of* ***Continental Foundation Jt. Venture vs. CCE, Chandigarh reported in 2007 (216) ELT 177 (SC)*** *has held that when the Revenue invokes the extended period of limitation under Section 11A, the burden is cast upon it to prove the suppression of fact as far as fraud and collusion are concerned, it is evident that intent to evade duty is built into these very words so far as misstatement or suppression or facts are concerned, they are clearly qualified by the word "willful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words" with intent to evade payment of duty". Therefore, there cannot be suppression or misstatement of fact which is not willful.*

8. In the present case, the above observations are sufficient for me to hold that the alleged non-payment cannot be called as willful or intentional act of the appellant to evade the payment of duty. Otherwise also, there is no denial on part of the Department that the balance service tax on 25% value of the service has already been paid by the service provider. The Department, thus, has received 100% tax amount on the impugned transaction. Confirming such liability again under the pretext of the amendment of the applicable Notification will be nothing but will amount to receiving tax twice for the same transaction. Without going into the other merits of the status of appellant as to whether it is a business entity or a body Corporate or a charitable trust, the above discussion makes it clear that the appellants liabilities stands already discharged. The demand should not have been confirmed. Commissioner (Appeals) in para 7.4 has acknowledged that the Journal Vouchers, cash memo bill, salary details of housekeeping having reference of the amount of Rs.63,072/- against service tax were very much available. The demand confirmed in the present case is of said Rs.63,072/- only. The findings of Commissioner (Appeals) that there is no documentary evidence to prove the payment of service tax twice in support of appellants contention is therefore, not at all sustainable. Accordingly, the findings are liable to set aside. Above all, the Department was not entitled to invoke the extended period of limitation for no willful suppression on part of appellant that too with intent to not to pay duty (full duty already stands paid). Show Cause Notice of the year 2018 alleging recovery for the period 2015-16 is definitely beyond the normal period of one year. The Show Cause Notice is therefore held being barred by time. The demand for the normal period is also not sustainable in view of above discussion.

9. In view of entire above findings, the order under challenge is hereby ordered to be set aside. Appeal consequently stands allowed."

4.8 In the case of Security Guards Board For Greater Bom. & Thane Dist.[2017 (51) S.T.R. 51 (Tri. - Mumbai)] following has been observed:

4.1 Further, under section 6 of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Act, 1981, following has been provided :-

6. Constitution of Board. - …

……Clause 31 of the Maharashtra Private Security Guards (Regulation of Employment & Welfare) Scheme, 2002 provides as follows :-

"31. Disbursement of wages and other allowances to registered Security Guards of the Board. - The wage and other allowances payable to the registered Security Guards of the Board every month by the registered principal employer shall be remitted by the registered principal employers by cheque to Secretary, of the Board, within such time after the end of the month, as may be specified by the Board. The Secretary thereupon shall arrange to disburse the wages and other dues, if any to the registered Security Guards of the Board on specified days every month subject to deductions, if any, recoverable from them under the Scheme; Provided that the Board may, if it thinks fit, and subject to such conditions as may be laid down by it, allow a registered principal employer to pay directly to the Security Guards the wages and other allowances after making such deductions as may be authorized and recoverable from them under the Scheme, within such time and in such manner as may be specified by the Board."

From the above clause, it is apparent that the wages and allowances are collected by the Board as an Agency for *payment to the concerned persons/authorities. Therefore, the wages and allowances are excludible from the value of service tax. Thus, the taxable value for the purpose of levy needs to exclude these charges. The demand is modified to that extent."*

4.9 In case of M.P. Security Force [2020 (43) G.S.T.L. 253 (Tri. - Del.)], Delhi Bench has observed as follows:

"11.*We, accordingly, hold that the appellant is entitled for the abatement towards the payment made on account of contribution towards ESI, EPF and PF and also towards wages and salaries while computing the assessable value in terms of Section 67 of the Act for the payment of service tax."*

4.10 In the case of Gurubani Security Pvt. Ltd. [2021 (51) G.S.T.L. 404 (Tri. - Del.)] Delhi bench observed as follows:

"10. It is on record that the appellant has provided the services of manpower supply and security agency to various educational institutes and has been collected service tax during the relevant period i.e. from 2009 to Feb., 2014. The appellant has agreed to the fact that they have not deposited the service tax collected from the educational institute which was not required to be collected in terms of the exemption notification mentioned above. As far as the contribution made towards EPF, ESI and salary, the same stand settled in favour of the appellant in view of the decision of Hon'ble High Court of Allahabad and Tribunal's decision in case of Security Guards Board for Greater Bombay and Thane District v. Commissioner of Central Excise, Thane - 2017 (51) S.T.R. 51 (Tri. - Mumbai). The relevant portion of the two judgments is extracted as under :

"9. In view of above, the contributions made towards EPF and ESI are not liable to be included for the computation of gross amount under Section 67(1) of the Act. We also find that the similar issue had been come up for consideration

before this Tribunal in case of Young Brothers Transporters and Contractors v. CCE, Meerut-I - 2017 (6) G.S.T.L. 513 (Tri. - Del.), wherein it is held that employer contribution towards PF, EPF, ESI into Central Govt. account is not required to be included for the purpose of a computation of gross amount for discharge of service tax liability. Paragraph 6 of the order which is relevant is reproduced as under :

"6. The Employees Provident Fund & Miscellaneous Provisions Act, 1952 and the Employees State Insurance Act, 1948 created the liability upon the principal employer to contribute to the respective funds, an amount equal to employees contribution. Thus, in compliance of the said provisions, the service receiver M/s. HNGIL had contributed to such funds, the amount towards the workmen deployed by the appellant. The fact is not under dispute that such contributed amount was never given by such service receiver to the appellant. Thus, the gross value for the computation of service tax liability in the hands of the appellant will not take into consideration the amount of contribution made by the service receiver M/s. HNGIL directly into the respective heads of account. Therefore, in our considered view, service tax demand cannot be confirmed on the employer's contributed amount towards P.F., E.P.F. and E.S.I."

In this order the decision of Hon'ble Tribunal in case of Neerv Jaisawal was also considered, which is referred in the impugned order and held to be inapplicable. In this regard, we also find that the Hon'ble Allahabad High Court in the case of Security Services v. Union of India, 16 (399) in Civil Writ Petition No. 437 of 1998 held that the respondent shall be entitled to charge service tax on the gross except after giving the abatement in respect of statutory levy and the tax is and if the same as the direct *relation with the services rendered by the client and charged specifically in the bill.*

10. As far as the abatement towards deduction of wages and salaries paid to the personal employees by the appellant is concerned, the same is covered by the decision of Mumbai Bench of this Tribunal in case of Security Guards for Greater Bom. & Thane Dist. v. CCE, Thane-II - 2017 (51) S.T.R. 51 (Tri. - Mum.), wherein it is held that wages and allowance including salary and administrative charge collected from its client is excludible from the gross value of taxable service in terms of Section 67 of the Act. The relevant paragraph of order is reproduced hereinafter :

"4.1 ....."

Following the same, we are of the view that the demand confirmed by the impugned order is required to be re-quantified after giving abatement towards the salary and wages and the contribution made towards EPF and ESI. We also find in this case the appellant is collected service tax which was not required to be collected by him which is unconditionally exempted in terms of Notification No. 25/2012. In the circumstances, we find that the entire amount of the duty of service tax collected is required to be deposited with service tax department which appears to have been done in terms of the submissions made on behalf of the appellant. Regarding the imposition of penalty, we find that the same is settled in favour of appellant by the decision of Hon'ble Punjab & Haryana High Court in the case of Ajay Kumar Gupta (supra). We also find that the decision of Hon'ble Delhi High Court in case of Intercontinental Consultants (supra) has held that for arriving at the gross amount to be charged under Section 67 of the Act, only such amount is required to be included which is attributable towards the services rendered by the appellant, any other element, which is *reimbursable in nature, is not required to be included for the purpose of computation of assessable value under Section 67 of the Act, as this decision has been upheld by the Supreme Court, we are of the view that the various statutory deduction the payment made towards salary and wages are, therefore, required to be deducted from the total amount charged by the appellant from the service recipient for the rendition of the service. Thus, the charges attributable to the service element can only to be considered in the gross amount charged. It is, therefore, held that the demand, as confirmed in the impugned order, is required to be re-worked out in view of the findings as indicated above. We also hold that in the given circumstances that there is no justification of imposition of penalty on the appellant"*

4.11 Following the ratio of the above judgments this demand cannot be sustained and the impugned order is set aside.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp