CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 30/12/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70118/2015 dated 18/12/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar/SPS

Application	Appeal	Name and Address of Appellant
	ST/52795/2015	LAXMI CONSTRUCTION SR-29, RENUSAGAR COLONY RENUSAGR, DISTT-SONEBHADRA UP 231217
	Name and Address of Respondent	CCE, ALLAHABAD 38 M.G.MARG, CIVIL LINES ALLAHABAD

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s): SH S.B.SHUKLA,ADV
117-A, ALOPI BAGH
ALLALHABAD-211006

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Cemax 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

12 Mark Professional Services Pvt. Ltd., 106, Everest Block, Aditya Enclave, Hyderabad – 38

13 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar/SPS
Regional Bench, Allahabad

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

S.T. Appeal No.52795/15

Arising out of O/A No.92/ST/ALLD/2015 dt.08.05.2015 passed by Commr. of Central Excise, Customs & Service Tax, Allahabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

---

M/s Laxmi Construction

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Customs & S. Tax, Allahabad

RESPONDENT (S)

APPEARANCE

Shri S. B. Shukla, Adv. for the Appellant (s)
Shri Kamal Duggal, Asstt.Commr. (D.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

DATE OF HEARING ....: 10.12.2015

DATE OF PRONOUNCEMENT : 18.12.2015

FINAL/ORDER NO. 70118/2015

Per Mr. B.Ravichandran :

This appeal is against order dated 08.05.2015 of Commissioner (Appeals), Allahabad. Appellants are engaged in providing taxable services like, man power supply service etc. Proceedings were initiated against them for short payment of service tax in respect of services rendered to M/s Hindalco Industries. The issue is relating to non-inclusion of PF contribution and bonus for man power supplied to the client in the taxable value for discharging service tax. After due process, the original authority confirmed a demand of Rs.4,96,691/- and imposed equal penalty. On appeal, the Commissioner (Appeals) upheld the original order except for allowing re-calculation of tax liability on cum-duty basis and setting aside the penalty on the appellants. Aggrieved by this order, the appellants are before us.

2. The ld.Counsel for the appellants, Shri S. B. Shukla submitted that

(a) The Provident Fund consist of contributions made by the employee and his employer. The employer's contribution has been received from M/s Hindalco Industries and fully paid to the Regional Provident Fund Commissioner. No amount is retained by the appellant. It is not a wage or salary and as such not a consideration for service rendered ;

(b) The bonus payments are incentives for workers. It is not a fixed amount and as such cannot be added to the taxable consideration ;

(c) The Hon'ble High Court of Delhi in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. : 2012 (12)

TMI-150 (Delhi-HC), held that expenditure or costs incurred by the service provider in the course of providing the taxable service cannot be considered as gross amount charged for such service ;

(d) the Amendment has been made in Section 67 of the Finance Act, 1994 through Finance Act, 2015 to the effect that gross consideration for a taxable service 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 inclusions are always to be made, such intention alone cannot be ground for giving to the same prior to such amendment ;

(e) There is no suppression of fact or intention to evade payment of service tax. Hence, the demand for extended period is not sustainable.

3. The ld.A.R. for the Revenue, reiterated the findings of the lower Appellate Authority.

4. We have heard both the sides and examined appeal records. The short point for decision is the correctness of inclusion of PF amount and bonus in the gross consideration for service tax purpose. We find that the ld.Commissioner (Appeals) already waived the penalties imposed on the appellants invoking provisions of Section 80 of the Finance Act, 1994.

5. We find that similar issue came up for consideration by the Tribunal in the case of M/s Neelav Jaiswal & Brothers Vs. Commr. of Central Excise, Allahabad : 2014 (34) STR 225 (Tri.-Del.). The Tribunal also took note of the decision of the Hon'ble Delhi High Court

in the case of Intercontinenntal Consultants and Technocrats Pvt. Ltd. (supra). It was held

> "7. *It is admitted that the liability to remit Provident Fund to Provident Fund Authorities is a statutory liability on the appellant, 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.*"

6. The above decision of the Tribunal was also referred to by the Hon'ble High Court of Allahabad in the case of H. M. Singh & Co. Vs. Commr. of Customs, Central Excise & Service Tax : 2015 (37) STR 172 (All.).

7. The bonus amount paid as incentive to the personnel deployed by the appellant is also rightly includable in the total consideration for service tax purposes. These are additional remunerations though not as per prefixed periodicity and quantum.

8. Considering the above discussion, we find no merit in the present appeal and accordingly, dismiss the same.

(Pronounced in the open Court on 18.12.15)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

सत्यापित प्रति / Certified True Copy
19.1.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M.G. MARG, ALLAHABAD-211001