FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 11/04/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70342/2017-CU[DB] dated 06/03/2017

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

Application	Appeal	Name and Address of Appellant
1	ST/1727/2012	**Panzer Division Security And Allied Services** A-6, 2nd Floor, Sector-10, Noida.

	Name and Address of Respondent
2	C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To

3Advocate(s) / Consultant(s):

Abhinav Kalra, C.A
G-15,SECTOR-3,
NOIDA,
UTTAR PRADESH
201301

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

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

Appeal No. ST/1727/2012-CU[DB]

Arising out of O/O No.40/Commr./Noida/2011-12 dated 22.03.2012 passed by Commissioner of Customs & Central Excise, Noida.

Panzer Division Security & Allied Services ...APPELLANT

VERSUS

Commissioner of Central Excise & Service .Tax, Noida ...RESPONDENT

APPEARANCE

Shri Abhinav Kalra, C.A. for the Appellant
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 06. 03. 2017

FINAL ORDER NO.-70342/2017

Per Mr. Anil Choudhary :

The appellant, an individual (ex serviceman) proprietor of 'Panzer Division Security & Allied Services, Noida' is in appeal against the impugned OIO dated 22.03.2012 passed by the Commissioner, Customs & Central Excise, Noida. Vide the impugned Order, Service Tax of Rs. 2,05,17,129/- have been demanded giving benefit of appropriation of Service Tax already paid Rs. 1,69,12,274/- with interest. Further observing that an amount of Rs. 52,02,901/- have already been deposited towards interest and further equal amount of penalty Rs. 2,05,17,129/- have been imposed under Section 78 of the Act and further penalty of Rs. 10,000/- imposed under Section 77 of the Act.

2. The brief facts as per the show cause notice are that the appellant was registered with the Service Tax Department since the year 2000, engaged in providing taxable services under the category 'security agency' and 'manpower recruitment and supply agency'. It appeared to Revenue that the appellant have not paid Service Tax for the period April, 2006 to September, 2010 and accordingly have contravened the provisions of the Act and the Rules thus evading Service Tax payment by willfully suppressing the value of taxable services provided by him. A search and seizure operation had taken place by the officers of the Revenue on 28th of October, 2010 in the premises of the appellant and certain records were examined and resumed, as well as the computer hard disk and some other records resumed for further investigation. On the date of search one Mr. N.K. Arora, General Manager (Operations) of the appellant stated that he is looking after the field operation and not concerned with the Service Tax assessment and/or accounts. One Mr. R.C. Srivastava, Deputy Manager (Accounts) was also present, stated that they are engaged in providing 'security service' and 'manpower recruitment and supply service' since 2000. He is the person who prepares bills, maintains ledger accounts, prepares balance sheets, maintains bank accounts etc. pertaining to the accounts section. So for the apparent difference of turnover as per balance sheet and as per their ST-3 Returns, he

stated that the proprietor Guru Mehta will be able to explain. He further admitted that they maintain two set of invoices. One set of invoices for Service Tax purposes and another for own business purposes.

3. Thereafter in the course of investigation the proprietor appeared before the Authority and his statement was recorded on 13th April, 2011 wherein he stated that as regards the difference of the turnover being as per ST-3 Returns, as compared with the bank statement, during the period 2006-07 to 2010-11 (upto September, 2010), the turnover as per ST-3 Returns was Rs. 12,78,07,837/- whereas the turnover as per the bank statement appear to be 38, 20, 27, 616. On being questioning he stated that he will have to check the entries and after preparing a re-conciliation only, can revert back. So far the two set of invoices found dated 30th April, 2009 issued to M/s. International Recreation Parks (P) Ltd for Rs.1,99,533/-, and for Rs. 32,287/- issued to M/s. Max Standard Stores (P) Ltd. wherein the serial number in both the cases remained same, he explained that the invoice issued to International Recreation Parks is correct for which payment have been received while the invoice issued to Max Standard Stores is meant for internal calculation and payment of Service Tax as per availability of funds. It was seen that he was maintaining five current accounts and having one pension account maintained with the State Bank of India. He further stated that the payments received against Service Tax have been accounted for in the books of accounts and Service Tax is paid and there may be some variation. He further

stated that he has never received any payment in cash against the service provided and invoices raised, which is evident from the invoices on which it is mentioned that all payments must be made by account payee cheque/draft only in the name of the firm. He further stated that he had obtained Service Tax registration from the very beginning and have deposited the returns regularly and paying the taxes. He further stated in the statement recorded on 19th May, 2011, that the receipts, as per bank statement includes, amounts towards cancellation of cheques, reversal of salary, receiving of fixed deposit maturity amounts, deposits against the sale of property, loans, interbank transaction through cheques and interbank cash transactions also which are not taxable receipts. In his further statement on the same day, he categorically stated that Service Tax liability will be on taxable receipt as per the bank statement excluding the non-taxable receipts including T.D.S. (Income Tax). He did not agree to the Service Tax liability on cash deposits in respect of his client Estate Today Properties Pvt. Ltd. and from one M/s. Amrapali Sapphire Developers Pvt. Ltd., so far the amount shown in cash towards payment to him, it was replied that these cash receipts are only occasional ones which were not received by his firm directly but the said amounts were paid to the guards as their salary by the clients on behalf of his firm. He further stated that all receipts from the clients for services provided are received through cheques after deduction of TDS–Income Tax at source. Thereafter as alleged, a show cause notice also was issued to pay Service Tax of Rs.3,45,76,169/- on taxable gross receipts of Rs.33,90,92,288/-, for the period April, 2006 to September, 2010 against which he has paid Service Tax of Rs.1,40,59,040/- as per the ST-3 Returns and the Service Tax short paid to the tune of Rs.2,05,17,129/-.

4. The SCN was adjudicated on contest and the proposed demand confirmed with penalty as stated hereinabove. Being aggrieved the appellant is in appeal before this Tribunal.

5. The learned counsel urges that the show cause notice is vague as there is no basis for the impugned demand. The calculation of gross turnover by Revenue at Rs.33,90,92,288/- as per Annexure-A to the SCN is vague as having no co-rrelation with the books of accounts and vouchers maintained by him. The appellant maintains regular books of accounts which are duly audited by a Chartered Accountant, as required under the provisions of the Income Tax Act. The turnover achieved by the appellant for a particular accounting year is easily workable from the T.D.S. certificates issued to the appellant by the service receiver, and also by the Service Tax Authority on the basis of Form 26AS which is available on the website of the Income Tax Department, for a particular assessee. In spite of categorical statement by the appellant during investigation that all the receipts were by cheque and they do not receive anything in cash and such receipts are subject to deduction of Income Tax at source, the Authority have not cared to make any investigation from the receivers of the service. Further no evidence is brought on record by the Revenue regarding taxable nature of the other receipts in the bank accounts, in spite of the fact that the appellant had led sufficient

evidence at the time of investigation pointing out several receipts to be of non-taxable nature. The impugned order is passed on the basis of assumptions and presumptions and on the basis of the vague show cause notice and is fit to be set aside. He further urges that the learned Commissioner have wrongly confirmed the demand on the cash deposits in the bank accounts of the appellant without ascertaining the taxable nature of the same and further urges that the learned Commissioner have erred in not giving the benefit of Cenvat credit, which the appellant was entitled and which was duly claimed in the returns filed with the Revenue. The learned counsel also relied on the ruling of a Single Member Bench of this Tribunal in ***Batra Motors & Travels Vs. Commissioner of Central Excise, Delhi-III*** reported at ***2013(30) STR 478*** wherein this Tribunal have held that so far calculation of value of services is concerned, confirmation of duty by treating entire amount in bank as consideration for providing service to clients is not tenable. Revenue is required to produce evidence to show money receipts are relatable to service provided.

6. The learned A.R. for Revenue relies on the impugned order.

7. Having considered the rival contentions we find that the learned Commissioner have failed to investigate as to the taxable nature of the cash receipts and/or contra transactions in the bank accounts. It is admitted fact that the appellant have five bank accounts during the relevant period. Further, the facts stated at the time of investigation in reply to show cause that various amounts are by way of contra entries, like cancellation of cheques, reversal of salary, receiving of

fixed deposits on maturity in the bank accounts, deposit against sale of property, deposit of loan sanctioned by the bank etc. interbank transactions in the bank account which are contra in nature, interbank cash transaction that is withdrawal of money from one account from different bank, the amount remaining unutilised money deposited in different account with a different bank etc. We further find that the books of accounts maintained by the appellant and the audited financial statements produced before the authority below have not been rejected. The explanation(s) given at the time of investigations and averments made in reply to show cause notice, were not found untrue. In this view of the matter we find that the demand raised is vague, having no proper basis. In this view of the matter we hold that the show cause notice to be untenable. Accordingly, we set aside the impugned order, with further directions that the appellant will be entitled to benefit of Cenvat credit as stated by them to be Rs.6,07,633/-, properly accounted for in their books of accounts and duly claimed in the returns, and will be further entitled to credit of any Challan which was not received earlier, particularly the Challan for Rs.15,09,739/- which has been stated to be paid during investigation. Thus, appeal stands allowed with consequential benefits to the appellant.

(Dictated and pronounced in the open Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

patel/-

प्रमाणित प्रति / Certified True Copy
25/04/2017

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001