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

Dated: 27/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71924/2017-SM[BR] dated 21/09/2017

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

Application	Appeal	Name and Address of Appellant
1	E/70280/2017	**Ms Dynamic Industries** Village Narsinghpur Po Kherki Daula GURGOAN HARYANA
		Name and Address of Respondent
2		C E & ST-Noida Ii OFFICE OF THE COMMISSIONER CENTRAL EXCISEHOTEL FORMULE 1, WEGMANS BUSINESS PARK, KP-III, GREATER NOIDA GOTAM BUDH NAGAR U.P.-

Copy To

3 Advocate(s) / Consultant(s):

Ram Chander Choudhary
1610, Sector-4, Urban Estate,
Gurgaon,
Haryana
122001

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, Opp ICICI Bank of Defence Colony 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 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No: E/70280/2017-EX[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-0961-16-17 dated 03/01/2017 passed by Commissioner (Appeals-II) Central Excise & Customs, Noida)

M/s Dynamic Industries **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Noida-II **Respondent**

Appearance:

Shri Ram Chander Choudhary (Adv.) for Appellant
Shri Pradeep Kumar Dubey (Supdt.) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 21/09/2017
Date of Decision : 21/09/2017

FINAL ORDER NO. 71324/2017

Per: Anil Choudhary

The issue in this appeal is whether Cenvat credit have been rightly denied on the transportation expenses of employees/workers engaged, through the manpower service provider.

2. The appellant is a manufacturer of Refrigeration Parts, Plastic Cap, Motor Vehicle Parts, Articles for Cap, Scrap, etc. The appellant entered into agreement with Manpower Service Provider, namely, GPN Resource Corporation, agreement dated 01/04/2011 for supply of all type of labour required for manufacturing work. The

said agreement further provides that the service provider will supply all labour, namely helpers, masons, labourers, water carriers and other necessary workers required for the work of the owner/manufacturer at site as requisition made. The labour shall be paid the prevailing market rate or minimum wages as specified by U.P. Government. The rates for labour charges are payable ~~available~~ as per mutual consent and keeping in view the minimum wages fixed by the Government. It was further agreed that the contractor will raise bills for manpower supply & transportation expenses made on them separately on monthly basis and they will be charged the service tax as per the rate prescribed from time to time in both bills. It further provided that the contractor will be entitled to a commission of 8% on the total disbursement made to the labour supplied by them. The said commission shall be payable to the contractors every month on their bills and they will also be entitled to a commission of 4% on the total expenses made on transportation of manpower during the month.

3. SCN dated 18/03/2015 was issued for the period 2011-12 to 2014-15 as it appeared to Revenue that the appellant have received the Rent-A-Cab Service. The SCN was adjudicated on contest and input service

Rs.6,24,476/- was disallowed as availed on Rent-A-Cab Service.

4. Being aggrieved the appellant preferred appeal before Learned Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal.

5. Being aggrieved the appellant is before this Tribunal. The Learned counsel for the appellant have taken me through the agreement and also through the bills raised by the service provider for manpower, who as per agreement for each month have raised separate bill as follows: -

(a) Wages for the month

Add PF charges

Add ESI charges

Add Service charges

Total

Add Service Tax.

Grand total

(b) Transport charges for the month,

Add service charges 4%

sub-total

Add service tax.

Grand total.

6. The Learned counsel urges that for the sake of control and convenience, the appellant assessee have directed the service provider to raise separate bills for the wages and the transport charges for the workers from the supply centre or office of the service provider to the factory of the appellant. The Learned counsel further explained that the service provider has provided actually only manpower recruitment service and they transport expenses of workers is incidental to the manpower service. Accordingly, there is no separate existence of receipt of transport service being incidental to manpower service. The Learned counsel also relies on the guidance notes issued by CBEC dated 20/06/2012, wherein Revenue provided that where the service provider provides a bundle of services, It is the main or major service which is to be considered for classification of service and not the insignificant or minor service or the services incidental to the major service. Accordingly prays for allowing the appeal.

7. The Learned AR for Revenue have relied on the impugned order.

8. Having considered the rival contentions I find that the transport charges raised by the service provider for manpower service is related to the transport/conveyance

expenses of the workers provided to the appellant manufacturer. Such transport expenses are incidental to providing of manpower service. Accordingly I hold that the transport expenses incurred are nothing but part of the amount paid for manpower service. Accordingly I hold that the appellant is entitled to Cenvat credit for transportation of manpower also being incidental to providing of manpower service. Thus the appeal is allowed and the impugned order is set aside, so far as it disallowed the service tax on transport expenses incurred for supply of manpower. The appellant shall be entitled for consequential benefits in accordance with law.

(Dictated & Pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks