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: 21/02/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70187/2017-SM[BR] dated 17/02/2017

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/2260/2012	**Bansal Electric Works** A-116, Sector-19, 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 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 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/2260/2012-CU[SM]

Arising out of O/A No. 117/ST/APPL/Noida/2012 dated 27.04.2012, passed by Commr. (Appeals) of Customs, Central Excise & Service Tax, Noida.

For approval and signature:

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

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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

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Bansal Electric Works ...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax,
Noida.
....RESPONDENT(S)

APPEARANCE

Shri Abhinav Kalra (C.A.), for the Appellant(s)
Shri D.K. Deb Asst.Commr. (AR), for the Department

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 09. 08. 2016

FINAL ORDER NO. 70187 / 2017

Per Mr. Anil Choudhary :

The appellant, a contractor executing laying of cables under or alongside the road doing internal and external electrification, is in appeal against Order-in-Appeal dated 27-04-2012, by which the Order-in-Original was confirmed demanding Service Tax of Rs.24,92,001/- for the extended period October, 2005 to September, 2010, further the penalty was imposed of Rs.10,000/- under Sections 68, 69 & 70 of the Finance Act read with Section 77 of the Act and Rs. 24,92,001/- was imposed as penalty under Section 78 of the Act along with interest at appropriate rate.

2. The brief facts of the case are that as per Show Cause Notice dated 15-04-2011, the appellant is a registered dealer under the provisions of Service Tax and it appeared that they have short paid Service Tax of Rs.24,92,001/- under the category (i) Erection, Commissioning & Installation Service, (ii) works contract service, (iii) Renting of Immoveable Property & (iv) Construction of Residential Complex Service. The enquiry was made from the appellant by the anti-evasion wing calling to furnish details of service tax deposited, copies of contract with NPCL and copies of the balance sheets. The appellant replied that they are engaged in electrification work (electrical wiring) in building etc. and they do not undertake any installation activities and therefore the activities performed by them are not liable to Service Tax. It was also contended that no electrical and electronic devices was installed, nor the wiring is provided for the purpose of any specific device and hence their activity is not excisable to Service Tax. Reliance was placed on C.B.E.C. Circular No.123/05/2010-

TRU dated 24-05-2010, it was also contended that they have obtained registration since 16-09-2005 and have paid Service Tax on the taxable service being 'renting of immoveable property service'. In response to further enquiry and summons the proprietor of the appellant appeared and filed the copies of the balance sheets, copy of returns, copy of work orders etc. In their reply dated 21-10-2010, it was also stated that as per their calculation, Service Tax short paid Rs.41,514/- have been deposited along with interest of Rs.27,305/- for the period April, 2005 to September, 2005.

3. An inspection was done in the premises of the appellant on 14-02-2011, and it appeared to Revenue that the appellant has been providing services to (i) Indian Railway Welfare Organization, (ii) Noida Authority, (iii) Greater Noida Authority etc. The statement of the proprietor was recorded wherein Mr. Dinesh Bansal stated that they are providing electrical services through Noida Authority, Greater Noida Authority, NPCL & Indian Railway Welfare Organization. They have provided services which included erection, commissioning and installation of various electrical equipments and internal and external electrification of residential complexes and also electrical development of residential sectors awarded by the aforementioned bodies. Further, copies of the contract/work order was forwarded/submitted. He stated that all the contract undertaken by him are not covered under the Service Tax net. Further, the appellant submitted the copies of contracts wise and work wise details of payment received along with the copies of T.D.S. certificate issued by the clients. Upon scrutiny of these documents and

details thereof, Show Cause Notice had been issued for a consolidated amount of Rs.24,92,001/- towards Service Tax short paid under the category, (i) Renting of the Immoveable Property Service, (ii) Erection, Commissioning and Installation Service, (iii) Works Contract Service & (iv) Construction of Residential Complex Service, etc. for the period October, 2005 to September,2010 as per details in Annexure-A to the Show Cause Notice.

4. The appellant contested the Show Cause Notice and filed their defence reply wherein it was contended that their principal or contractor is Noida Authority, Greater Noida Authority, Indian Railway Welfare Organization, are not defined as person in the Service Tax Act and accordingly the work awarded by them is not taxable. It was further contended that they have neither constructed any complex either commercial or residential and as such no Service Tax is levialbe under the category of Erection, Commissioning and Installation Service. That reliance was also place on the C.B.E.C. Circular dated 25-04-2010 (supra) and it was contended that as they have not done installation of any transformer or service station independently nor they are laying electrical cables beyond the distribution points of residential or commercial complexes and accordingly work is not taxable, in respect of the same. It is also contended that installation of Street lights and providing electrical connections to them although is taxable, they have not providing any electrical connections as they are not electrical/power distribution agency. Accordingly, the proposed

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demand was disputed and prayer was not made to consider contract wise, and also the tax payments made by them from time to time, as the receipts were in different Financial Years. It was also contended that certain amounts have been received by way of 100% secured advance against cost of materials, dispatched to site. No service tax is involved in these payments. Such amounts are Rs.51,26,000/- + Rs.37,20,615 & Rs.14,98,500/- , received during Financial Year 2005-06. Further, the details of work done contract wise was also explained. Pursuant to personal hearing vide Order-in-Original dated 27-12-2011, the proposed demand was confirmed along with equal amount of penalty under Section 78 and further penalty of Rs.10,000/-, was imposed under Section 77 of the Act along with interest. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order has been pleased to reject the appeal confirming the Order-in-Original.

5. The ld. Counsel for the appellant states that the whole demand in dispute and the impugned order is vitiated as the Revenue have failed to give any break-up of the demand in Show Cause Notice. Secondly, he states, the fact that the tax in dispute can be broadly divided in the following three categories- (i) Work allotted by Noida Power Corporation Ltd. being work of Cabling alongside/under the Road, (ii) Internal & External Electrification of Quarters/ Colony constructed by Noida Authority & (iii) Electrification of Residential Quarters constructed by Indian Railway Welfare Association/Organization. So far the work of cabling alongside/under the

road is done for NPCL is concerned, it is urged that tax in dispute of Rs.15,48599/-, is fit to be set aside as the same is not taxable in view of Board's Circular No. 123/5/2010- TRU, wherein at para 2 – (ii), it has been clarified that under Erection Commissioning or Installation Service, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. machine or equipment that uses electricity to perform some other function) the same is outside purview of taxable service of ECIS. Further, in Para (iii) by C.B.E.C. Circular a table have been given and explaining the tax status of the activities wherein at Serial No. (1) Laying of cables under/alongside road have been stated as not a taxable activity. So far the internal and external electrification done for Noida Authority or Greater Noida Authority, involves disputed tax of Rs. 58,89,91/-. It is urged by the ld. Counsel, that the demand has been raised alleging 'construction of commercial/residential complex'. The said demand is fit to be set aside as there is no finding of any construction of a complex being residential or commercial. It is admitted fact that the appellant have done electrification in the independent duplex houses and has also laid cables under or alongside road and external wiring alongside the road, erected electrical poles both for wiring and street lights and all these work are exempted under Serial No.(2) in para (iii) of the aforementioned C.B.E.C. Circular dated24-05-2010. So far the work related to Indian Railway Welfare Organization is concerned, it is stated that the said work was completed on 30-10-2004, a copy of certificate dated 26-05-2005 issued by Indian Railway Welfare Organization which is annexed in Appeal Book at page 74, states- "It is certified that the work of external electrification including supplying and installing substations, equipment and external lighting system in Shatabdi Rail, Vihar at Sector 62 Noida has been virtually completed on 30-10-2004, valued at Rs.71,26,490/-." Accordingly, he urges that,as the levy of Service Tax under ECIS have come with effect from 01-06-2005, thus, the demand of Rs.3,54,411/- is fit to be set aside on this score.

6. The ld. Counsel further states that it is an admitted fact that they have maintained proper records, all the transaction are through the banking channel and they have disclosed their turnover in the books of accounts which is reflected in their annual statements being profit and loss account and balance sheet and the same was disclosed with various departments like Income tax etc. As such there is no basis for the allegation of suppression of facts. Further, at the very first instance on the date of inspection in the statement of the proprietor recorded, it was stated that tax was not paid on these services under dispute as the proprietor believed that these services are not taxable. The ld. Counsel further stated that the stand of the proprietor is supported by the subsequent circular of the C.B.E.C. referred to hereinabove. Accordingly, the extended period of limitation is not invokable and the demand for the extended period is fit to be set aside.

7. The ld. Counsel also relies on the Ruling of Hon'ble Punjab & Haryana High Court in Commissioner of Central Excise, Chandigarh Vs. Rajeev Electrical works, reported at 2010 (18) S.T.R. 705 (P & H), wherein the assessee had provided erection, commissioning and installation service of electrical fittings and the Revenue claimed that the service of commissioning and installation was brought under the Service Tax payable with effect from 01-07-2003, but the assessee started paying tax with effect from December,2004 and the Show Cause Notice was issued dated 01-11-2006, for the extended period. It was held that Revenue had not been able to prove that the work done by assessee amounted to installation of plant and machinery, further notice was taken of C.B.E.C Circular dated 21-08-2003, which clarified electrical wiring in residential premises is not covered, indicating non-taxability of incidental services, laying pipe in wall/roof/floor or for crossing wires, fixing junction, fixing cable trays to lay cables, digging trays to lay cables and digging earth pits for earthing box not amounting to installation of plant, commissioning of machinery or equipment and hence Service Tax was not leviable. Accordingly, the appellant prays for allowing the appeal with consequential benefits.

8. The ld. A.R. for Revenue relies on the impugned order. Further, referring from para 4, of impugned order, he states that some of the work in the nature of – External Electrical Development of Sector, the work relating to supply and erection and fabrication of poles, supply and erection of overhead lines, supply and fabrication of fencing, providing street lights on

major roads , providing 16 Meter semi-high Mast fitting in film city sector in Noida, construction of 11/0.4 KV & 400 KVA Sub-station, installation of 250 KVA DG Set, will be taxable under ECIS.

9. Having considered the rival contentions, I find that the Show Cause Notice is vague as it does not state the premises on the basis of which demand have been proposed under 'erection, commissioning and installation service'. Without there being a finding of erection of any such commercial flats/residential complex. The Show Cause Notice is also vague on account of not giving bifurcation of the demand year wise and category wise. I also hold that so far demand of Rs. 15,48,599/- is concerned the same relates to laying of cables or electrical wires including poles for the same alongside or under the road and such work was not taxable to Service Tax in view of Circular dated 24-05-2010(supra). Similarly, the demand of Rs.5,88,991/- with respect to work done in the nature of internal and external wiring in the residential houses/duplexes, there is no element of any construction of a commercial/residential complex as defined under the provisions of the Service Tax Act. Accordingly, demand of Rs.5,88,991/-, is also set aside. So far the disputed amount of Rs. 3,54,411/-, was for work done for Indian Railway Welfare Organization, in view of the fact that the work had been completed before 30-10-2004, there is no question of levy of any tax for the same under ECIS, which have become taxable with effect from 01-06-2005. I also hold that there is no element of suppression, fraud or any mala-fide on the part of the appellant and they have not concealed information or made

any misstatement of facts before the Revenue. At the very first instance, the proprietor of the appellant has deposited the admitted tax liability and the issue being wholly interpretational. I hold that extended period of limitation is not attracted in the facts and circumstances of the case. Thus, the impugned order is set aside. The appeal is allowed with consequential benefits to the appellant.

(Dictated & pronounced in the open Court)

Sd/-

(Ansari)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

प्रमाणित प्रति / Certified True Copy
22/02/17
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