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: 29/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/71699/2017-CU[DB] dated 27/11/2017

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/2590/2012	Vijay Kumar Rajeshwar Dayal Gupta Mr. Vijay Kumar Gupta, Prop. Sanjay Nagar, Ward No. 07, Dibiyapur, Auraiya, (u.p.)

Name and Address of Respondent

2 C.C.E. & S.T.-Kanpur
117/7...SARVODYA NAGAR,
KANPUR, (UP)-208005

Copy To

3 Advocate(s) / Consultant(s):

SUNIL KUMAR
R/O.384,AVAS VIKASH
COLONEY-2,JHUNSI,
ALLAHABAD, (UP)

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

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

S. T. Appeal No.2590/2012

(Arising out of order in appeal No. IND/CEX/000APP/238 & 239/12 dated 08.08.2012 passed by the CCE&ST (Appeals-I), Indore).

DATE OF HEARING & DECISION : 27.11.2017

Vijay Kumar Rajeshwar Dayal Gupta Appellant(s)

VERSUS

CCE&ST, Kanpur Respondent(s)

APPEARANCE
Sh. Sunil Kumar, Advocate for the Appellant (s)
Shri Mohd. Altaf, Asst. Commissioner (D.R.) for the Department

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar (Technical)

Final Order No. 71699/2017

Per Ms. Archana Wadhwa :

After hearing both the sides duly represented by Sh. Sunil Kumar, ld. Counsel for the appellant and Sh. Mohd. Altaf, ld. DR for the Revenue, we find that service tax to the tune of Rs. 24,56,897/- stands confirmed against the appellant under the category of 'Manpower Supply Services', which as per their balance sheet, stands provided to M/s Simplex Infrastructure Limited. The said M/s Simplex Infrastructure Limited were providing construction services to M/s Grasim Industries Limited and the manpower supplied by the appellant stands utilized by them in providing the construction services.

2. Ld. Advocate appearing for the appellant has not disputed that the said supply of manpower is a taxable service but has simplicitor submitted that the service tax was being ~~provided~~ paid by the service recipient. However, we note that the same plea was taken by the appellant before the Commissioner (Appeals), who has dealt with the same by observing that-

> *"On the issue of taxability of the services, I am of the opinion that since the service has been provided by the appellant and is taxable under the provisions of Section 65(68) and 65(105)(k) of the Act, the plea of the appellant that it is not payable by them as the same has been paid by the service-receiver is not sustainable in view of the provisions of section 68 of the Act under which responsibility of payment of service tax has been casted upon the service-provider. Further, on perusal of the letter 02/AC/Sub/001/Vol.1/252997 dated 21.02.2012 from the Simplex Infrastructure Limited (Service-Receiver) it is revealed that they have provided the service of construction to M/s Grasim Industries Ltd. and have discharged the service tax liability on construction service and that service tax has not been paid as the same was not charged in the bills. This makes it explicit that no service tax has been paid by the service provider in respect of the services of Man Power supply provided by the appellant. Accordingly, I hold that the appellant is liable to pay the service tax as confirmed in the impugned Order-in-Original".*

3. As is seen from the above, the appellate authority has examined the various invoices issued by M/s Simplex Infrastructure Limited and have categorically concluded that they have provided only construction services to M/s Grasim Industries Limited and the 'Manpower Supply Services' cannot be considered to be a sub-contract of the construction services. No service tax stands paid by the said M/s Simplex Infrastructure Limited.

As against the finding of the Commissioner (Appeals), ld. Advocate for the appellant has not been able to show any evidence contrary to the above factual finding arrived at by the appellate authority. He has simplicitor reiterated his stand that the appellant was a sub-contractor of the principal contractor and the principal contractor has paid the entire service tax.

4. After hearing the ld. DR for the Revenue, we find that admittedly 'Manpower Supply Services' cannot be considered to be either as a part of the construction services or sub-contract of the main contractor of civil construction services. Neither any evidence has been shown to us to substantiate the plea that the main contractor has discharged service tax liability in respect of the said 'Manpower Supply Services' provided by the appellant. As such, we find no merits in the present appeal. The same is accordingly rejected.

(Dictated and pronounced in the open Court)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

Pant

प्रमाणित प्रति/Certified True Copy
03/01/18
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