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: 27/04/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/70404/2017-CU[DB]** dated **24/04/2017**

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/53899/2014	**Baba Construction Pvt Ltd** A-20, Hig Duplex, Sanjay Nagar, Sector 23, GHAZIABAD UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To
3Advocate(s) / Consultant(s).

A. K. Batra & Associates
A-36, Ist Floor,
Rajouri Garden, Ring Road,
New Delhi,

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 & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 1

APPEAL No.ST/53899/2014-CU[DB]

(Arising out of Order-in-Original No. 27-28/Commissioner/ST/GZB/2013-14 dated 17/04/2017 passed by Commissioner of Central Excise & Customs, Ghaziabad)

M/s Baba Construction Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise & S.T., Ghaziabad	**Respondent**

Appearance:

Shri Ruchir Bhatia, Advocate — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), — for Respondent

CORAM:

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

Date of Hearing : 29/09/2016
Date of Decision : 29/09/2016

FINAL ORDER NO 70404/2017..........

Per: Anil Choudhary

The present appeal is filed by the appellant-assessee against Order-in-Original No. 27-28/Commissioner/ST/GZB/2013-14 dated 17/04/2017 passed by Commissioner of Central Excise & Customs, Ghaziabad.

2. The issue in this appeal, filed by the appellant-assessee engaged in providing construction activities mainly non commercial structures, whether service tax have been rightly demanded vide the impugned Order-in-Original amounting to Rs.3,37,11,817/-, pursuant to SCN dated 16th July, 2013 along with equal amount of penalty of Rs.3,46,98,648/- under Section 78 of the Act and further penalty

under Section 76 of the Act and further penalty of Rs.5000/- under Section 77 and imposition of late fee of RS.20,000/- under Rule 7 of STR read with Section 70 of the Act.

3. The appellant is registered with the Service Tax Department and have been discharging their liability and filing the returns. The appellant was under bona-fide belief that service provided to Government Departments like Ghaziabad Development Authority, Agra Development Authority, Noida Authority, Director-General of Married Accommodation (Ministry of Defence), etc are not subject to service tax. Hence, neither the appellant collected nor discharged service tax with regards to such construction services. In the course of investigation, search was conducted in the premises of appellant on 13/10/2010 and also statement was recorded of the accountant Mr. Arun Kumar Shrivastava. Subsequently, the summons were issued requiring the appellant to produce additional documents like Customers/Development authorities, details to whom taxable services under the category of 'Construction of Residential Complex Service' and 'Commercial or Industrial Construction' have been provided up to September, 2010. In the course of investigation the appellant found that on some of the services taxes are payable and they suo-motu deposited Rs.30lakhs by Cheque dated 13/10/2010+Rs.25lakhs vide Cheque dated 28th March 2011+Rs.41,92,428/- vide Cheque dated 27/09/2011, totaling Rs.96,92,428/- which amount was subsequently appropriated in the Order-in-Original. Thereafter, show cause notice dated 09th April, 2012 with respect to period 2006-07 to 2010-11 and

another SCN dated 16/07/2013 with respect to period 1st April, 2011 to 31st March, 2012 were issued alleging that the appellant is liable to discharge service tax liability on services provided in relation to Construction of Residential Complex Service and Construction of Industrial and Commercial Complex Services. Both the show cause notices were adjudicated by the common impugned Order-in-Original dated 17.04.2014, confirming tax Rs.3,46,98,648/- with interest and penalty imposed under Section 76, 77, 70 and Section 78 (equal to tax).

4. Heard the parties.

5. The learned Counsel for the appellant states that the breakup of the demand in dispute is as follows: –

Sl. No.	Project	Service Tax Demand confirmed in O-I-O
1.	Construction of 144 & 72 Multistoried residential unit in Rajendra Nagar (Contract awarded by GDA)	1,24,74,818/-
2.	Construction of 581 Dwelling units at Chadimandir for personal use by Army Personnel. Contract dated 24.05.2006	1,60,50,487/-
3.	Construction under IHSDP scheme of JNNURM in Bilashpur City. Contract dated 05.05.2008	61,73,343/-
	Total	**3,46,98,648/-**
	Demand prior to 01.04.2007 (Rs.1,63,77,441*33%) (works Cont.) Time barred (beyond 5 years from SCN)	54,04,556/-
	Remaining Demand	**2,92,94,092/-**

6. So far construction of 144 and 72 multistoried residential units in Rajendra Nagar with respect to contract awarded by Ghaziabad Development Authority is concerned, it is submitted that there are only six units in a block constructed. For the purpose of taxation under the classification Construction of Residential Complex Service under Section 65 (105) (zzzh), is taxable if 12 or more units are constructed in one single block. This issue is no longer res integra and have been decided by a Coordinate Bench of this Tribunal in the case of Macro Marvel Projects Ltd. Vs Commissioner of Service Tax, Chennai reported at 2008 (12) S.T.R. 603 (Tri.-Chennai). Similarly, it is admitted fact that Construction of 581, Dwelling units at Chadimandir for personal use by Army Personnel, is the work allotted by Lieutenant-General, Directorate of Married accommodation project, Army Headquarter, Kashmir House, New Delhi, the same being not of commercial nature. neither for sale, but for use of Army personnel, it is urged that the same is not taxable under the provisions of Section 65 (105) (zzzh). Further, it is admitted fact in the Order-in-Original that each block contains G+3, that is 4 units and accordingly on this score also the said construction is not taxable under Section 65 (105) (zzzh).

7. The next issue is construction of houses with infrastructure under H.S.D.P. scheme of JNNURM in Bilaspur city, Chhattisgarh. The work was awarded to the appellant by the Hindustan Prefab Limited (main contractor), being work order dated 8th May, 2008. It is admitted fact on record that each block has three units being ground

+2. Accordingly, it is urged that this will also not be taxable under Section 65(105) (zzzh), as confirmed in the impugned order. Accordingly, it is further urged that the whole demand raised vide the impugned order, Rs.33,37,11,817+ Rs.9,86,831/-, totaling Rs.3,46,98,648/-, is unsustainable and fit to be set aside. It is further urged that all the transactions have been duly recorded in books of accounts and there is no case of any deliberate default or suppression of facts made against the appellants. In this view of the matter, the demand for the extended period is also not sustainable.

7. The learned A.R. for revenue has relied on the impugned order.

8. Having considered the rival contentions and the facts on record as noticed herein above, we find that the whole show cause notice is unsustainable and the demand as raised is bad and against the provisions of law. we hold that in respect of all the residential units constructed for Ghaziabad authority, for the Ministry of Defense, and under JNNURM, none of the constructed blocks have got 12 or more units, attracting levy of service tax under Section 65(105) (zzzh).

9. Accordingly, we allow the appeal and set aside the impugned order, the appellant will be entitled to consequential benefits, in accordance with law.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Cerified True Copy
08/05/24
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