FAX : 0532-2400152

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

Dated: 13/06/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70559/2017-CU[DB] dated 05/05/2017

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/ROA/70019/2015	ST/55763/2013	GAMBHIR CONSTRUCTION COMAPNY 156,RABINDRAPALLI,FAIZABAD ROAD,LUCKNOW UP
			Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW,UTTAR PRADESH-226001	

Copy To

3Advocate(s) / Consultant(s):

G.S.BISHT,ADVOCATE
BHAGWATI BHAWAN, D-2267,
INDIRA NAGAR,
LUCKNOW,UP
226016

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. I

APPEAL No.ST/55763/2013-CU[DB]

(Arising out of Order-in-Appeal No. 342-ST/LKO/2012 dated 30/07/2012 passed by Commissioner of Central Excise Service Tax & Customs (Appeals), Lucknow)

Gambhir Construction Company **Appellant**

Vs.

C.C.E. & S.T.-Lucknow **Respondent**

Appearance:

Shri Vineet Kumar Singh (Advocate) & shri G.S. Bisht (Advocate) for Appellant

Shri Sandeep Kumar Singh (Dr. Commr.)AR for Respondent

CORAM:

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

Date of Hearing : 05/06/2017
Date of Decision : 05/06/2017

FINAL ORDER NO...70559/2017.......

Per: Anil Choudhary

The issue in this appeal by the appellant-assessee is whether the service tax for the period 2004-05 to 2008-09 have been rightly demanded invoking the extended period under the category of construction service/commercial and industrial construction service under the admitted facts that the appellant have executed a composite work with materials in the nature of works contract.

2. The allegation in the show cause notice dated 21 April, 2010 is that the appellant is engaged in providing construction service and/or commercial and industrial construction service and are providing the services to Bharat Petroleum Corporation Limited, Lucknow. The basis of show cause notice appears to be enquiry conducted by the Department from Bharat Petroleum Corporation Limited who in response by their letters dated 20th April, 2009 and 06 January, 2010 have given certain informations in response to the Department's letters dated 29 September, 2009, 07 October, 2009 and 03 November 2009. It is further alleged that the appellant has been engaged in construction of new buildings, civil structure which is to be used primarily in commerce or industries or intended for commerce or industries like construction of Petrol Bunks, Canopies etc at retail outlets of BPCL. Thus, it appeared that the service rendered by the appellant are classifiable as 'construction service' under Section 65(30a) and 'commercial and industrial construction service' under Section 65(25b) of the Act. As per information received from BPCL-appellant have constructed Petrol Bunks, Canopies at retail outlets and the details of the payments made to the appellants since 2004-05 to 2008-09 were received from BPCL. On the basis of such data on the gross payments received without allowing any deduction for the material component, service tax is demanded amounting to Rs.22,86,777/- along with interest and further penalty was

proposed under Section 70, 70(1) of the Act. In reply to the show cause the appellant stated that the service provided by them are covered in the service tax net, but due to lack of knowledge they have not charged the service tax, against work done during the period 2004-2005 and 2006-2007. It was further stated that they have deposited the tax for the last two years but as their accountant has left the job and not handed over the records, they are unable to present their case properly.

3. The proposed demand was confirmed on contest along with penalty under various sections. Being aggrieved the appellant had preferred the appeal before the learned Commissioner (Appeals), and the said appeal has been dismissed on limitation without going into the merit of the case.

4. Heard the parties.

5. We find that so far the issue of limitation is concerned the appellant had preferred a writ application before Hon'ble Allahabad High Court being MD No. 322 of 2013 wherein the Hon'ble High Court of Allahabad vide order dated 15 January, 2013 had given liberty to the appellant to file an appeal before this Tribunal within a period of one month from the date of its order, with further observation that if in case such appeal is preferred, the Tribunal shall entertain the same and decide

on merits, expeditiously, preferably within a period of 4 months from the date of filing of the appeal. We find that the appellant have filed the present appeal before this tribunal on 12 February, 2013, which is within the time granted by the Hon'ble High Court.

6. So far the merits are concerned the appellant have filed additional documents during the course of hearing which contain their registration certificate under the U.P. Trade Tax Act/Sales Tax and he has also taken us through the copy of work orders, wherein they are required to execute the construction works along with materials. We further find that the contractee namely BPCL have deducted Sales Tax/VAT, on the material component, at source and issued tax deduction certificate under the State Vat Act. In view of these facts it is crystal clear that the appellant have done works contract which was not taxable prior to 1 June, 2007. Further, we find from the show cause notice that there was no proposal to confirm the demand under the category of 'work contract' for the period 1 June 2007 and thereafter. Under these facts, we find that in view of the ruling of Hon'ble Supreme Court in the case of CCE and Customs Kerala vs. Larsen & Toubro Ltd. reported at 2015 (39) STR 913, the work done by the appellant is not classifiable under 'construction service' or 'commercial and industrial construction service'. Accordingly, we find that the show

cause notice is not sustainable. Accordingly, we allow this appeal and set aside the impugned orders. The appellant shall be entitled for the consequential benefits in accordance with the law.

(Dictated and pronounced in Court) , O

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

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

Ankit

प्रमाणित प्रति/Cerified True Copy
16/06/2017
सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
M. G. MARG, ALLAHA...