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: 07/04/2017

To

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

Final Order No. ST/A/70324/2017-CU[DB] dated 24/03/2017

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/59671/2013	**Deepak And Company** DI-10,renusagar Colony,p.o.renusagar SONEBHADRA U.P
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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

R. K. Tewari
B-67, FLATTED FACTORY
COMPLEX,
OKHLA PHASE-III,
NEW DELHI,
DELHI
110020

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/59671/2013-CU[DB]

(Arising out of Order-in-Appeal No. 18/ST/Alld./2013 dated 12/06/2013 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad.)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s Deepak & Company **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Shri P.K. Tewari, Advocate, for Appellant
Shri Pawan Kumar Singh, Superintendent, AR, for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 10/10/2016

FINAL ORDER NO....70324/2017

Per: Anil Choudhary

The appellant a service provider under ~~the head~~ 'Maintenance & Repair Services' and 'Man Power Recruitment Agency service' providing Services to M/s Hindalco Industries Ltd. is in appeal against Order-in-Appeal No. 18/ST/Alld./2013 dated 12/06/2013 passed by Commissioner of Central Excise & Customs (Appeals), Allahabad by which the demand of service tax on the reimbursed amount of Provident Fund & Bonus have been confirmed along with penalty under Section 77 & 78 of Finance Act.

2. The brief facts are that the appellant was registered with the services Department and have regularly filed the returns and paid the taxes. Show Cause Notice dated 08/10/2010 was issued as it appeared to Revenue that on the basis of some details received from M/s Hindalco Industries Ltd., the appellant has not paid Service tax on the gross amount received and have declared the amount short resulting into short levy of Service tax as they have not paid Service tax on the reimbursed amount of Provident Fund & Bonus. Accordingly, SCN demanded Service tax of Rs.5,73,798/- including cess along with interest and further penalty was proposed under Sections 75 A read with Section 77, Section

76, 77 & 78 of the Act. The appellant appeared and contested the SCN stating that as the amount of Provident Fund & Bonus are the liability of the principal employer and they have received the same as pure agent and passed on the same to the workers, they are not liable to Service tax on the same. Further urges that the gross amount so received is to be calculated if the same are found to be taxable and further no penalty is exigible as the issue is wholly interpretational. The appellant also offered to deposit the tax and as per the evidence on record deposited the amount of Rs.3,41,055/- by Challan dated 12-05-2011 & 17-06-2011 before passing of the Order-in-Original on 11-08-2011. The SCN was adjudicated and the proposed demand was confirmed with interest and further penalty of Rs.5,000/- was imposed under Section 77 read with Section 70 read with Rule 7 of the rules and equal amount of penalty Rs.5,73,798/- was imposed under Section 78 of the Act. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) stating that Provident Fund was not part of the consideration as the said amount was received on pure agent basis, have been passed on to the workers which admittedly had been done, and as such not liable to Service tax. It was also urged that the matter is wholly interpretational and there is no suppression of the facts etc. of the information from Revenue and also the entire demand is Revenue Neutral, as the receiver of service is entitled to take Cenvat credit of the

Service tax paid by the appellant. The ld. Commissioner (Appeals) was pleased to dismiss the appeal on limitation finding that the same have been filed after more than or over and above prescribed time limit.

3. Being aggrieved the appellant is before this tribunal. In the meantime the Joint Assistant Commissioner had initiated recovery proceedings addressed to M/s Hindalco Industries Ltd. under Section 87 of the Finance Act, 1994, to withhold an amount of Rs. 8,16,691/- and deposit the same with the exchequer. The said amount was accordingly collected being an amount of Rs.8,30,965/- including interest of Rs. 14,274/- vide E-receipt No. 1426635 dated 18-07-2013.

4. The ld. Counsel for the appellant points out that that Service tax on the element of Provident Fund & Bonus had not been paid as the appellant strongly believed that these amounts are by way of reimbursement received by the appellant, as a pure agent, and as such not taxable in their hands. However, in view of the Ruling of the Hon'ble Supreme Court in the case of International Consultants & Technocrats Private Ltd. wherein it has been held that the assessee is a liable to pay Service tax on the amount of reimbursement of Provident Fund & Bonus, the ld. Counsel doesn't contest the taxability of the same. However, he urged that it is evident that the matter is wholly interpretational in nature and there

is no defiance of provisions of law and no suppression of facts on the part of the appellant. Accordingly, he prays for setting aside the penalty imposed and for remand to the Adjudicating Authority for recalculation of duty/Tax payable on cum-tax basis, and to grant the resultant refund, if any, as per rules.

5. The ld. AR for revenue relies on the impugned order.

6. Having considered the rival contentions, we find that the issue of taxability is no longer res-integra in view of the Ruling of the Hon'ble Apex Court in the case of International Consultants & Technocrats Private Ltd. (Supra). We, further, find that the appellant had paid the due taxes and also filed the returns from time to time and as such there is no suppression etc. on their part. As the appellant is not contesting the demand of Service tax, we hold that the appellant is entitled to cum-tax benefit for calculation of Service tax. We remand the matter back to the Adjudicating Authority who shall recalculate the tax payable on cum-tax basis. We also set aside the penalties imposed under Section 77 and 78 of the Act. We also take notice that the appellant have claimed that they have paid an excess amount due to the recovery by special mode, amounting to Rs.8,16,691/-. Accordingly, we direct the Adjudicating Authority to reconcile the amounts paid and/or collected by

the appellant for the period in dispute. Accordingly, on recalculation whatever amount is found to be paid in excess, the same shall be refunded with interest as per rules. Thus, the appeal stands allowed in the aforementioned terms and directions by way of remand.

(Dictated and pronounced in Court)

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

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

Ansari

प्रमाणित प्रति / Certified True Copy
24/04/17
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