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: 05/09/2017

To

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

Final Order No. A/70851/2017-SM[BR] dated 08/03/2017

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/70739/2016	**Sudhir Chand Jain** R-14/127,raj Nagar 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):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
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, 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/70739/2016-ST[SM]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-0031-16-17 dated 26/04/2016 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Sudhir Chand Jain **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate, for Appellant
Shri D. K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision: 08/03/2017

FINAL ORDER NO. 70851/2017

Per: Anil Choudhary

The issue in this appeal by the appellant-assessee, a contracter, who has rendered services unit in the capacity of a Sub-contractor in the nature of civil construction in the Noida-SEZ, Noida under the main contractor, where the civil construction work was allotted to NBCC by the Deputy Commissioner of SEZ, whether the appellant is entitled to exemption from Service tax in terms of Notification No. 4/2004-ST read with Notification No. 9/2009-ST as amended by Notification number 15/2009-ST which provided for exemption to the provider of service if such services are provided for utilization fully in the SEZ.

2. The brief facts of the case are that the appellant is registered with the Service of Department for taxable services like Commercial or Industrial Construction, Construction of Residential Complex & Business Auxiliary Service. Vide Show Cause Notice dated 15/04/2014 for the extended period 2008-09 to 2010-11, among others, Revenue noticed that the appellant have provided construction services to the NSEZ, as a Sub-contractor through, M/s Anurag Enterprises. It appeared to Revenue that the appellant was required to pay Service tax on the payments received for provision of services of construction, civil construction work for the reason that service provided by them in relation to construction of Standard Design Factory (SDF) Block-L, at NSEZ, Noida though exempted vide notification subject to fulfilment of condition that work undertaken by the developer/unit of the NSEZ should have been approved by the Board of Approval of NSEZ and services provided should have been approved under the list of authorized operations of developer/unit of approval committee of NSEZ. Since appellant failed to produce any such documentary evidence to the effect that the said work by developer/unit of NSEZ had been approved by the board of approval of NSEZ and services provided by the service provider-appellant were included in duly approved list of authorized operations and actually have been wholly

consumed within the NSEZ. It, further, appeared that the appellant is not entitled for the exemption in respect of the aforementioned service provided at NSEZ under the notification and were liable to service tax on the payments received from M/s Anurag Enterprises for the period 2008-09, 2009-10 & 2010-11. It is further mentioned in the Show Cause Notice that the construction work of Standard Design Factory, (SDF) Block-L, at NSEZ, Noida subcontracted by M/s Anurag Enterprises (original contract given by NBCC Ltd.) to M/s Anurag Enterprises vide Contract No. NBCC/GM-RBG (E & I)/NSEZ/Noida/2008/4385 dated 22/10/2008. Accordingly, alongwith other demands it was proposed to disallow an amount of Rs.17,51,124/- leviable and payable on the amount received against taxable services under the head 'commercial or industrial construction' rendered by the appellant during the period 2008-09 to 2010-11 to the NSEZ, with further proposal of interest and penalty.

3. The Show Cause Notice was adjudicated on contest and vide Order-in-Original dated 15/06/2015, the proposed demand was confirmed with interest and further equal amount of penalty was imposed under Section 78 of the Finance Act, 1994 and further penalty of Rs.10,000/- under Section 77 of the Finance Act, 1994 along with other demands. Being aggrieved the appellant preferred appeal before ld. Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal.

4. Being aggrieved the appellant is before this Tribunal. The ld. Counsel for the appellant have taken me through the main contract document, which have been referred in the Show Cause Notice by the Revenue, wherein the terms and conditions of the contract granted to NBCC by the Deputy Commissioner of NSEZ for construction of work 'Standard Design Factory, (SDF) Block-L, at NSEZ, Noida' under which NBCC have been appointed the operating agency by NSEZ Authority. Clause 17 of the terms and conditions states- NBCC is operating agency and further appropriate agency in agreement means; any consultant or specialist appointed by NBCC Ltd., in consultation with the DC, NSEZ. Further, Clause 18 states - NBCC will charge 9% of the actual cost of the project to be constructed/supervision as agency charges. In addition to above 2% of the project cost will be payable as the fee of the consultant for design and drawing of the work. Thus, NBCC under the provision of the cost plus contract, wherein they have been appointed as operating agency have granted work to M/s Anurag Enterprises under the main contract construction of SDF Block - L, at NSEZ, Noida vide Contract No. NBCC/GM-RBG (E & I)/NSEZ/Noida/2008/4385 dated 22/10/2008. Thereafter, M/s Anurag Enterprises gave subcontract to the present appellant for the said work. The ld. Counsel further, states that there is no dispute that the work done by the appellant herein, is for the Deputy Commissioner, NSEZ, Noida, who is

the principal under the facts and circumstances. He, further, states that the work may be either done by the main contractor or by the sub-contractor, but the transfer of property in the goods or the service accrues to the principal. It is not the case that there are separate services and transfer of property taking place, from the sub-contractor to the main contractor, main contractor to the operating agency and from the operating agency to the principal. He, further, points out that the condition in the notification that the developer/units of SEZ shall get the list of services specified in Clause 105 of Section 65 of the Finance Act, 1994, as required in relation to the authorized operation in the SEZ, approval from the approval committee (hereinafter referred to as the 'specified services'). He further explains that approval from the approval of committee is required in case of a unit in the SEZ, consuming the 'specified services.' Where the service is being consumed for the development of the SEZ in the course of work allotted by the Deputy Commissioner of the SEZ, no further approval committee is required. Accordingly, he prays for allowing the appeal and setting aside the impugned order to the extent, it has confirmed the demand of duty for the services supplied to the Deputy Commissioner of the SEZ through their contractor M/s Anurag Enterprises and setting aside all the penalties including the penalty where tax and interest was paid before Show Cause Notice.

5. The ld. A. R. for Revenue relies on the impugned order. He, further, draws my attention to Para six of the SCN, wherein it is stated that the work done by a service provider in the SEZ is exempted in terms of Notification No. 4/2004-ST from payment of whole Service tax for taxable service of any description, provided to a developer of SEZ or a unit (including a unit under construction) of SEZ by any service provider for consumption of the services within such SEZ, subject to the condition, namely,

(i) the developer has been approved by the Board of Approval to develop, operate and maintain the SEZ;

(ii) the unit of the SEZ has been approved by the developer Commissioner or, as the case may be, to establish the unit in the SEZ;

(iii) the developer or unit of a SEZ shall maintain proper account of receipt and utilization of the said taxable service.

The ld. A. R. further emphasizes that in absence of an approval from the Approval Committee the benefit of exemption have been rightly refused.

6. Having considered the rival contentions I hold that the appellant as subcontractor have provided service through their contractor M/s Anurag Enterprises for construction of SDF, Block L at NSEZ for to the Deputy Commissioner of the SEZ. This proposition has been affirmed by the Hon'ble Supreme Court in the case of Imagic Creative and also by Hon'ble Patna High Court in the case of Hindustan Dorr

Oliver Ltd. *Versus* State of Bihar. Further, I find that the approval should be either by the Deputy Commissioner and/or Board of approvals as the case case may be. Here, admittedly the work order has been issued by Deputy Commissioner, SEZ. Hence it amounts to providing and consuming service to SEZ and/or allotted through NBCC, as the operating agency to the appellant with regard to other demand of Service Tax which already stands paid alongwith interest before SCN and not being contested by the appellant as regard taxability. Thus, there is ipso facto approval of the Deputy Commissioner of the SEZ. Thus, I hold that no further approval of the Approval Committee is required under the facts and circumstances. Accordingly, the appeal is allowed and the demand of Rs.17,51,124/- is set aside. I also find that there is no suppression of facts or contumacious conduct on the part of the appellant. Accordingly, the penalty under Section 78 & Section 77 of the Finance Act, 1994 is also set aside. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

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

Ansari

प्रमाणित प्रति/Certified True Copy
07/09/17
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