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: 28/02/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. ST/A/70434/2018-CU[DB] dated 19/02/2018

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/514/2009	**Ms Bhardwaj Security Services Pvt Ltd** 33, 2nd Floor, Palika Bazar, G.T. Road 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):

RAHUL AGARWAL ADVOCATE
C-308,BLOCK 2,3RD FLOOR,LOTUS APARTMENT,39-A,TASHKHAND MARG,CIVIL LINES,ALLAHABAD

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,Ist 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

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/514/2009-CU[DB]

(Arising out of Order-in-Appeal No. 93-CE/GZB/2009 dated 31/03/2009 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Ghaziabad)

M/s Bhardwaj Security Services Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Ghaziabad **Respondent**

Appearance:

Shri Rahul Agarwal (Advocate) for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 19/02/2018
Date of Decision : 19/02/2018

FINAL ORDER NO...70434/2018.........

Per: Anil Choudhary

The issue in this appeal is whether the appellant is liable to pay service tax on the amount of EPF and ESI contribution which are reimbursed to them in the course of providing security agency services to their clients.

2. The brief facts as per the show cause notice dated 21st April, 2006, relating to the period from 01 October, 2004 to 31st March, 2005 is that the appellant is engaged in providing services related to security within the meaning of Section 65(105)(w) of the Finance Act, 1994. By their letter dated 22nd

February, 2001, appellant had informed the Supt. Range Officer that they were raising bills to their clients as per the following details: –

(i) Amount of salary/wages paid to the security guards/supervisors/officers on the basis of minimum wages payable multiplied by number of days.

(ii) One sixth relieving charges calculated on the amount mentioned at point No. (i) above.

(iii) Administrative charges as settled with the clients on the total amount comprising of the amount charged at point No. (i) and (ii) above.

(iv) PF and ESI contribution made towards employer's contribution, has been charged from the clients.

The said letter further clarified that service tax were being paid on the amount re-presenting the administrative charges only. The said letter also clarified that the taxable amount shown in ST-3 returns was not 10% of the gross value, rather it varied from 5% to 15% being the administrative charges received. The remaining amount being the cost directly related to the services rendered (as pure agent), were deductible in view of the decision dated 16th March, 1999, of the Honb'le Allahabad High Court, in Writ Petition No. 437 of 1998.

3. It appeared to Revenue that the amount of PF and ESI or minimum wages do not fall within the category of statutory taxes as such contribution or benefit falls directly within

entries 23 and 24 of List III of the Constitution of India and they did not appear to be eligible for any abatement on this account from the cost or gross amount charged and realized. Accordingly, the show cause notice proposed to levy service tax on the amount of EPF and ESI contributions which were shown separately in the bills for the service charges.

4. The SCN was adjudicated on contest vide Order-in-Original dated 18 December, 2008 and the proposed demand was confirmed with equal amount of penalty under Section 78 and further penalty also levied under Section 76 alongwith interest. Being aggrieved the appellant preferred appeal before Commissioner (Appeals) who vide the impugned order was pleased to set aside the penalty under Section 78 but however, confirmed the demand of service tax alongwith interest. The penalty under section 76 of the Act was reduced to Rs.50,000/-.

5. Being aggrieved the appellant is before this Tribunal. The learned counsel states that the very circular on which the entire case of Revenue is based on, the said same Circular No. MF/DR/TRU – B – 11 March 1998, TRU dated 07 October, 1998 was the subject matter of litigation in the appellant's own case before Hon'ble Allahabad High Court in Writ Petition No. 437 of 1998. And after hearing the parties and considering the Circular the Hon'ble High Court had clarified that Revenue shall be entitled to charge service tax on the gross, except after giving the abatement in respect of

Ar

statutory levy and taxes and if the same has direct relation with the services rendered by the client and charged specifically in the bill.

6. Accordingly, it is stated that the impugned order is directly in conflict with the order of the Hon'ble High Court and accordingly fit to be set aside. The learned counsel also points out that in spite of the categorical stand taken in February 2001, the show cause notice has been issued in April 2006. Further it is pointed out that the said order of Hon'ble High Court attained finality and Revenue have not preferred any further appeal against the aforementioned order. The learned counsel have also brought to our notice the ruling of Hon'ble Delhi High Court in the case of Intercontinental Consultants & Technocrats Pvt. Ltd. vs. Union of India reported at 2013 (29) S.T.R. 9 (Del.) and the decision of the Division Bench of this Tribunal in the case of Laxmi Construction vs. Commissioner of Central Excise, Customs & Service Tax, Allahabad reported at 2016 (42) S.T.R. 561 (Tri. – All.).

7. The learned AR for Revenue have relied on the impugned order.

8. Having considered the rival contentions we are satisfied that the impugned order is in conflict with the law, as clarified by Hon'ble Allahabad High Court in appellant's own case being Writ Petition No. 437 of 1998 order dated 16 March, 1999. Following this clarification of Hon'ble High

Court, we hold that the PF and ESI contributions are statutory contributions and/or statutory levy and the same are deductible under the provisions of Section 67(3) of the Finance Act, 1994. We find that the ruling of this Tribunal in Laxmi Construction (supra) is directly in conflict with the law as explained by the Hon'ble High Court in appellant's own case as noted hereinabove. Accordingly, the said judgment stands expressly distinguished and ipso facto over ruled by the ruling of Hon'ble High Court.

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

(Dictated and pronounced in Court)

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

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

Ankit

प्रमाणित प्रति True Copy
13/03/18
(C.E.S.T.A.T.)
38, M. G. MARG ALLAHABAD-211001