IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision: 3.10.2017

Service Tax Appeal No.50700/2014-DB

[Arising out of Order-in-Appeal No.165(VC)/ST/JPR-I/2013 dated 24.10.2013 passed by the Commissioner (Appeals), Central Excise, Jaipur-I]

M/s.GAB Associates Appellants

Vs.

CCE, Jaipur-I Respondent

Appearance:

Rep. by Shri S.C. Kamra, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

Coram: Hon’ble Mr. Ashok Jindal, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Final Order no.57041/2017

Per B. Ravichandran:

The appeal is against order dated 24.10.2013 of Commissioner (Appeals-I), Jaipur. The appellants are engaged in providing erection, commissioning and installation services. The dispute in the present appeal relates to service tax liability of the appellant for the period 2005-2006 to 2009-2010. The lower authorities confirmed the service tax liability of Rs.7,13,098/- along with penalties against the appellant.

2. Ld. Counsel submitted that on two main points: first it was submitted that for the latter period, on similar set of facts, the Tribunal allowed the appeal filed by the appellants vide Final Order No.55499 of 2017 dated 19.07.2017. The Tribunal

held that the value of free supply materials need not be included in the taxable value for service tax. Reliance was placed on the decision of the Tribunal in the case of **Bhayana Builders – 2013 (32) STR 49 (Tribunal-LB)**. Secondly, the ld. Counsel submitted that quantification of tax liability has not been made correctly. The lower authorities relied on the income tax details of the appellant rather than the actual receipt of the consideration by them. Relying on the decision of the Tribunal in the case of **Alpa Management Consultants Pvt. Ltd. – 2007 (6) STR 188 (Tribunal-Bangalore),** the ld. Counsel contested the finding on quantification of tax liability.

3. Ld. Counsel submitted that the amount mentioned in the income tax returns cannot form basis to arrive at taxable value under Finance Act, 1994. The service tax is liable to be paid on the actual amount realised during the material period.

4. Ld. AR reiterated the findings of the lower authorities.

5. We have heard both the sides and perused the appeal records.

6. With reference to inclusion or otherwise of value of free supply materials supplied by the client, in the gross value for the purpose of computing abated taxable value, we note that in the appellant's own case for the period 2010-2011, the Tribunal vide final order dated 19.07.2017 allowed the appeal accepting the contention of the appellant. As already noted, the Tribunal relied on the decision in the case of **Bhayana Builders** (supra).Regarding quantification of tax liability, we note that the Original Authority should re-examine the quantum of consideration as per the records submitted by the appellant. The particulars in the income tax return cannot be automatically taken up for tax liability under Finance Act, 1994. For this

purpose, the matter is remanded back to the Original Authority for re-quantification. The appellants shall be given adequate opportunity to submit the required documents in support of their defence. The Original Authority shall re-quantify the tax liability accordingly.

7. In view of the facts, as discussed above, the penalties imposed on the appellants are set aside. The appeal is disposed of in the above terms.

[Operative portion of the order already pronounced in open court]

(B. Ravichandran)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

Ckp.