IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 26/10/2018.
DATE OF DECISION : 26/10/2018.

Service Tax Appeal No. 51497 of 2014 with ROM Application No. 50645 of 2018

[Arising out of the Order-in-Appeal No. 211/ST-Tax/D-II/13 dated 11/12/2013 passed by The Commissioner (Appeals), Service Tax, Delhi – II, Faridabad.]

M/s B.S. Tomar Electric Works Appellant

Versus

CST, New Delhi Respondent

Appearance

Shri B.L. Mittal, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Justice Dilip Gupta, President**
Hon'ble Shri C.L. Mahar, Member (Technical)

Final Order No. 53309/2018 Dated : 26/10/2018

Per. C.L. Mahar :-

The appellant in this case has filed the Rectification of mistake application in the final order No. ST/A/51681/2018 – CU (DB) dated 03/05/2018 in service tax appeal of the appellant, as mentioned above. The appellant have pleaded that this Tribunal has failed to take into account the work order dated October 13, 2008, wherein the Annexure I mentions the scope of the work as follows :

S. No.	Description	Unit	Rate (Rs.)	Amount
1	Providing and fixing of Electric point wiring complete in all respect but excluding the cost of light fixtures, switches and boxes which shall be supplied by client free of cost. The actual areas will be measured and paid.	Sft	95/-	

2. It has been the contention of the appellant that an error apparent from the record has occurred in the order of this Tribunal dated 03/05/2018 by not considering the above-mentioned scope of the work and has held that :-

> "7. On perusal of the said work order, we find that there is no reference of any material, which should be supplied by the appellant. Further, we also find from the ledger account annexed in the appeal memorandum that the appellant had received its payment for providing the job work charges only and there is no reference of any material component. Since, there is no documentary evidence available in the case records to show that for execution of the assigned job, the appellant had also used the material, we are of the view that the benefit of abatement provided under notification dated 10/09/204 readwith notification dated 01/03/2006 should not be available to the appellant".

3. Accordingly, it has been prayed that necessary rectification may kindly be made in the above-mentioned final order of this Tribunal considering the fact that the above work order dated

13th October, 2008 has not been considered by this Tribunal in its letter and spirit and thereby a mistake apparent from record has occurred.

4. We have heard both the sides. The work order for providing the service from the appellant side has scope of work as ; "providing and fixing of Electric point wiring complete in all respect but excluding the cost of light fixtures, switches and boxes which shall be supplied by client free of cost. The actual areas will be measured and paid". On perusal of the work order, as mentioned above, it appears that from electric point to electric point the scope of work also included material i.e. wiring and other material etc.; which were to be provided by the appellant. The above fact was not noted in the previous order. We are of the view that had the above scope of work order when considered in its letter and spirit would entitle the appellant for necessary abatement of 66% from the taxable value of service and hence may not be under the service tax net.

5. Considering the above facts, we are convinced that an error apparent on the face of the record has crept in this case and, therefore, we recall the earlier order No. 51681/2018 dated 03/05/2018 and remand the matter for denovo adjudication to the original Adjudicating Authority which shall take into consideration the scope of work, as mentioned above, and, thereafter, adjudicate the matter considering that the appellant's contract included the value of material. This would mean that the

scope of work was inclusive of both material and labour cost and, accordingly, it is directed that Adjudicating Authority should re-determine the tax liability of the appellant as per the relevant provisions of service tax law prevailing at the relevant time.

6. The ROM application is allowed to the extent indicated above and the final order No. ST/A/51681 of 2018 – CU dated 03/05/2018 is recalled. The appeal stands allowed by way of remand.

(Operative part of the order pronounced in the open court.)

(Justice Dilip Gupta)
President

(C.L. Mahar)
Member (Technical)

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