IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. ST/89035/2014

(Arising out of Order-in-Appeal No. AV(76)54/2014 dated 19.5.2014 passed by the Commissioner of Central Excise & Service Tax (Appeals), Aurangabad).

M/s Sairaj Labour Services	Appellant

Vs.

Commissioner of Central Excise & Service Tax, Aurangabad	Respondent

Appearance:

None (Adjn. Request)	for Appellant
Shri M. Suresh, D.C. (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 28.06.2018

Date of Decision: 28.06.2018

ORDER NO. **A/86911 / 2018**

Per: Dr. D.M. Misra

None present for the appellant. Heard the learned AR for the Revenue.

2. This appeal is filed against Order-in-Appeal No. AV(76)54/2014 dated 19.5.2014 passed by the Commissioner of Central Excise & Service Tax (Appeals), Aurangabad.

3. Briefly stated facts of the case are that during the relevant period from 2007-08 to 2009-10, the appellant had been providing taxable services under the taxable category of 'Manpower Recruitment and Supply Agency Service' and short paid Service Tax amount of Rs.1,20,655/- by incorrect determination of the assessable value of the taxable services provided. Consequently, a show-cause notice was issued to them for recovery of the said Service Tax along with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed an appeal before the Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. The learned AR for the Revenue submits that the short issue involved in the present appeal is whether the amounts paid to ESIC and EPF in the course of providing taxable services to the customers under the category of Manpower Recruitment and Supply Agency service be included in the gross taxable value or otherwise. He submits that the issue is no more *res integra* and is covered by the judgment of this Tribunal in the case of *Neelav Jaiswal & Brothers Vs. Commissioner of Central Excise, Allahabad – 2014 (34) STR 225 (Tri-Del).*

5. We find that this Tribunal in the case of *Neelav Jaiswal (supra)* observed that the amount contributed towards EFP in relation to Manpower Recruitment and Supply Agency service is includible in the taxable value of the services rendered. The Tribunal observed as follows: -

> *"**7.** It is admitted that the liability to remit Provident Fund to Provident Fund Authorities is a statutory liability on the appellant, an employer of persons who were deployed to serve the needs of M/s. Hindalco Industries Ltd., towards the taxable 'manpower recruitment or supply agency' service. M/s. Hindalco consideration for such taxable service provided by the appellant had remitted to the appellant not only the amount agreed to between the parties for remunerating the personnel so deployed but also the amount of provident fund payable by the appellant to Provident Fund authorities, in terms of the appellant's statutory obligation. Both these amounts therefore constitute the gross amount charged by the appellant for the taxable service provided to M/s. Hindalco Industries Ltd., since the taxable service was provided for a consideration in money. Both these amounts therefore constitute the gross amount charged by the appellant for having provided the taxable service."*

6. Following the aforesaid precedent, we do not see merit in the appeal. Accordingly, the appeal is dismissed.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha