

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 11649 of 2013- DB

(Arising out of OIA-SRP-558-VDR-11-2013 dated 13/03/2013 passed Central Excise,
CUSTOMS (Adjudication)-VADODARA-11)

Smp Constructions Pvt Ltd

P-156, Phase-il,
Gide, Bholav, Gidc,
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-ii

1st Floor... Room No.101,
New Central Excise Building)
Vadodara, Gujarat- 390023

.....Respondent

APPEARANCE:

Shri Vinay Kansara, Advocate for the Appellant

Shri Vijay G. Iyengar, Assistant Commissioner (AR) for the Appellant

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/ 11305 /2023

DATE OF HEARING: 23.02.2023

DATE OF DECISION: 21.06.2023

RAMESH NAIR

The issue involved in the present case is that for availing the abatement under Notification No. 01/2006-ST dated 01.03.2006 whether cost of the material provided by the service recipient required to be included in the gross value of construction service.

2. Shri Vinay Kansara, Learned counsel at the outset submits that the issue is no longer res integra as this tribunal in the appellant's own case vide final order no A/12818-12819/2018 dated 26.11.2018 decided in favour of the appellant. Therefore, the appeal to be allowed

3. Shri Vijay G, Iyengar, Learned assistance commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the Impugned order.

4. We have considered the submission made by both side and perused the records. We find that the issue is no longer res-integra as the same has been settled in favour of the appellant as per the Hon'ble supreme court judgment in the case M/S Bhayana Builders Pvt. Ltd reported at 2018 (10) GSTL 118 (SC) whereby the larger bench decision of this Tribunal was upheld by dismissing the Revenue's appeal. This Tribunal in the appellant's own case vide order dated 26.11.2018 passed the order in their favour which is reproduced below:-

"4. We have carefully considered the submission made by both the sides and the sides and perused the records, we find that the whole dispute arisen due to the explanation given in the notification No.15/2004 as well as Notificatjon No . 01/2006-ST that whether the value of free supply material need to be added in the gross value of commercial or Industrial Construction service for the purpose of allowing the said exemption. The issue has been dealt with by the Larger Bench of this Tribunal in M/S Bhanya Builders Pvt .LTD (Supra) wherein it was held that the value of free supply material need to be added . On the interpretation of explanation given in notification 15/2004 as well as Notification No.01/2006-ST, the judgement of M/s Bhayana Builders the ratio of the judgement of M/s Bhayana Builders Pvt.LTD (supra), the demand is not sustainable. Impugned orders are set aside. Appeals are allowed."

In view of above settled position the impugned order is not sustainable hence, the same is set aside. Appeal is allowed

(Pronounced in the open court on 21.06.2023)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**C.L.MAHAR
MEMBER (TECHNICAL)**