

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

Appeal No. ST/48/2010-DB

[Arising out of OIO-18/COMMR/2009 dated 09.10.2009 passed by Commissioner of Central Excise-RAJKOT]

M/s Ishwar Construction Co.

Appellant

Vs.

C.C.E. & S.T.,- Rajkot

Respondent

Represented by:

For Appellant: Shri Aditya Tripathi (Advocate)

For Respondent: Shri A. Mishra (A.R.)

CORAM:

HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Date of Hearing/Decision: 04.12.2018

Final Order No. A / 12801 / 2018

Per: Ramesh Nair

The issue involved in the present case is that whether the appellant is entitle for Exemption Notification No. 15/2004-ST or 01/2006-ST in case where the appellant have not included the value of material namely, Steel, Cement, etc. supplied free of cost by the service recipient in the gross value of Commercial or Industrial Construction Service.

2. Sh. Aditya Tripathi Ld. Counsel appearing on behalf of the appellant at the outset submits that the issue has been settled by Larger Bench in the case of Bhayana Builders Pvt. Ltd reported at 2013 (32) STR 49 (Tri.LB) which has been affirmed by Hon'ble Superme Court reported at M/s Bhayana Builders Pvt. Ltd 2018 (10) GSTL 118 (SC).

3. Sh. A. Mishra Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of submissions made by both the sides and perusal of records, we find that the issue has to be decided in this case is not res-integra as the same has been settled by the Larger Bench in the case of Bhayana Builders Pvt. Ltd. (Supra). The same has been affirmed by the Hon'ble Supreme Court, accordingly, the appellant is entitle for abatement of 67% in terms of Notification No. 15/2004-ST or 01/2006-ST. Accordingly, the demand is not sustainable, impugned order is set aside. Appeal is allowed.

(Dictated & pronounced in the open court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Seema