IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/3577/2012-CU[DB]

(Arising out of Order-in-Appeal No.238-ST/APPL/KNP/2012 dated 09/08/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur)

M/s Mago Construction Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise &

Service Tax, Kanpur **Respondent**

Appearance:

Shri Nitin Singh (C.A.) for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 21/06/2018
Date of Decision : 21/06/2018

FINAL ORDER NO. – 71224/2018

Per: Archana Wadhwa

After rejecting the request for adjournment, we proceed to decide the appeal itself inasmuch as a short issue is involved.

2. The appellant is engaged in providing commercial construction services. The dispute relates as to whether the free supply items by contractee to the contractor for use in the execution of civil construction, contract are

liable to added in the assessable value of the services or not. The appellant have placed strong reliance on the Larger Bench decision of the Tribunal in the case of Bhayana Builders Pvt. Ltd. Vs. Commissioner of Service Tax 2013 (32) S.T.R. 49 (Tr.-LB) and confirmed by the Hon'ble Supreme Court on 19/02/2018 in Appeal No.1335-1358/2015 reported as 2018 SCC OnLine SC 141.

3. Inasmuch as the above decoration of law by the Larger Bench as confirmed by the Hon'ble Supreme Court were not before the Adjudicating Authority and have not been passed subsequently, we deem it fit to set aside the impugned order and remand the matter to the Adjudicating Authority for fresh decision in the light of law declared as above, after examining the applicability of the same to the facts of the present case. Appeal is thus allowed by way of remand.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks