IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/50342/2015-CU[DB]

(Arising out of Order-in-Appeal No.168-ST/LKO/2014 dated 10.10.2014 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Lucknow.)

M/s. S.S.V. Construction

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Lucknow

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Kumar (C.A.) for the Appellant (s)
Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 24.08.2018

FINAL ORDER NO.72101/2018

Per Mrs.Archana Wadhwa :

After hearing both sides we find that the Service Tax demand stands confirmed against the appellant under the category of "Industrial or Commercial Construction Services". Even while quantifying the demand the benefit of abatement does not stand extended to the appellant, in terms of Notification No.1/2006-ST on the ground that the service recipient has provided free of cost material in the shape of cement and iron. It is seen that though the appellant strongly relied upon larger Bench decision of the Tribunal in the case of

Bhayana Builders Pvt.Ltd. v. CST reported as 2013 (32) S.T.R. 49 (Tri.-LB), the appellate authority has artificially distinguished the same and has not followed it.

2. Apart from the fact that the Revenue has confirmed the demand under the category of "Commercial or Industrial Construction", the appellants have taken a stand even before the original adjudicating authority that such construction activity undertaken by them was for construction of residential flats for the employees of M/s.Guleria Chini Mills and as such were properly classifiable under the category of "Construction of Residential Complex". He has further submitted that inasmuch as that the flats constructed by them were not meant for any commercial activity, but the same were for residential purposes of the employees of M/s.Guleria Chini Mills, the same would get covered by the exclusion clause of the definition of "Construction of Residential Complex". He submits that though the above issues were raised before the original adjudicating authority, there is no finding on the same.

3. In the light of the above submissions, we set aside the impugned orders and remand the matter to original adjudicating authority for *de novo* adjudication. Needless to say that the adjudicating authority would deal with and give a finding on each and every submission of the appellant, for which purpose they would be given an opportunity. Even if the authorities below consider the activity as falling under "Commercial or Industrial Construction", the appellant's duty liability would be adjudged in accordance with law declared by larger Bench in the case of Bhayana Builders Pvt.Ltd. referred (supra). With these

observations we set aside the impugned order and remand the matter to the original adjudicating authority, without expressing any opinion on the merits of the case.

(Dictated and pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

sm