

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

**APPEAL No.ST/70687/2016-CU[DB]**

(Arising out of Order-in-Original No.20/COMMR./ST/GZB/2015-16 dated 29/03/2016 passed by Commissioner, Central Excise & Service Tax, Ghaziabad)

**M/s Shree Dhama Infrastructure P. Ltd. ...Appellants**

Vs.

**CST, Ghaziabad ...Respondents**

Appearance:

Shri Rajesh Chibber, (Adv.) for Appellant  
Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR),  
for Respondent

CORAM:

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

Date of Hearing/ Decision : 10/12/2018

FINAL ORDER NO.**72872 / 2018**

**Per: Archana Wadhwa**

After hearing both the sides we find that the appellants are engaged in providing 'Construction Services' for which purpose they were duly registered with the Revenue. The dispute in the present appeal relates to 3-4 issues but as clarified by the learned advocate appearing for the appellant, they are contesting the demand only on free supplied items as also raising the service tax on advance as well as running account bills separately as also for imposition of penalty for delayed payment of service tax.

2. As regards free supplied items, we note that the issue stands decided by the Larger Bench decision of the Tribunal in the case of M/s Bhayana Builders Pvt. Ltd. V/s Commissioner, Service Tax reported at 2013 (32) S.T.R. 49 (Tri.-LB) as upheld by Hon'ble Supreme Court reported as 2018 (10) G.S.T.L. 118 (S.C.). The show cause notice alleged free supply of items by the service recipient, whereas in the impugned order it stands observed that there is no evidence to that effect produced by the assessee and as such abatement cannot be extended.

3. We really fail to understand when it is the Revenue's own case alleging that the value of the free supplied items is required to be added in the assessable value of the service, how the Adjudicating Authority can take a different stand.

4. Further the appellant's grievance is that service tax stands confirmed on the advance taken by the appellants from the service recipient as also on the running account raising bills separately whereas the total amount i.e. the advance as also the running account has to be held as the total consideration for the services. While agreeing with the appellant on the said ground, we are of the view that the facts requires verification.

5. The third issue relates to imposition of penalty in respect of delayed payment of service tax. Learned advocate accepts that the payments were made delayed and they are also liable to pay interest on the same. However, he submits that such late payment was under a *bona-fide* belief that till the amount between the appellants and their customers gets finally settled they are under no obligation to pay tax. As such there is no *mala-fide* in delayed payment and penalty should not have been imposed.

6. The appellant's above stand of bona-fide is required to be examined by the Adjudicating Authority. We, however, observe that payment of interest by itself is penal in nature and in view of the admitted liability of service tax, the issue as to whether mere delay in payments would call for imposition of penalty or not is to be adjudged in the light of the various decision.

7. In view of the forgoing discussion, we set aside the impugned order and remand the matter to the Original Adjudicating Authority for fresh consideration after the examination of the issue in total and in the light of the various precedent decisions, which the appellant may chose to place before him. Needless to say that the

appellant would be given an opportunity to put forth their case.

8. Appeal is allowed by way of remand.

(Pronounced & Dictated in Court)

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

Sd/-  
**(Archana Wadhwa)**  
**Member (Judicial)**

*Nihal*