

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

**APPEAL No. ST/50053/2015-CU[DB]**

(Arising out of Order-in-Original No.08/COMMR./LKO/ST/2013-14 dated 23/09/2014 passed by Commissioner of Central Excise & Service Tax, Lucknow)

**M/s Vidya Erectors and Engineers Pvt. Ltd.** **Appellant**

Vs.

**Commissioner of Customs, Central Excise  
& Service Tax, Lucknow**

**Respondent**

Appearance:

Shri Dharmendra Srivastava (C.A.)  
Shri Mohd. Altaf (Asstt. Commr.) AR

for Appellant  
for Respondent

**CORAM:**

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

Date of Hearing : 04/12/2018  
Date of Decision : 04/12/2018

FINAL ORDER NO. - **72811/2018**

**Per: Archana Wadhwa**

After hearing both the sides, we note that the appellant was engaged in providing "Construction of Residential Complex Services" and was duly registered with the Service Tax Department. During the period October, 2006 to March, 2007, they discharged their service tax liability by claiming the abatement of 67% in

terms of Notification No.01/2006-ST dated 01/03/2006. Revenue sought to deny the said abatement on the ground that they were required to pay service tax on the gross value received by them from their client including the value of the free supplied items.

2. During the course of adjudication proceedings, the appellant placed reliance on the Larger Bench decision of the Tribunal in the case of Bhayana Builders (P) Ltd. 2013 (32) S.T.R. 49 (Tri.-LB). However, while agreeing that the dispute stand decided in favour of the assessee by the said Larger Bench decision of the Tribunal, he did not follow the same by observing as under:-

*“37. Various case laws including the stay order passed by the Hon’ble Tribunal in case of Agrim Associates Pvt. Ltd. [2012 (25) S.T.R. 30 (Tri.-Del.)] have been relied on by the party in support of their contention that value of the materials supplied free of cost is not includible in the gross amount charged in terms of SI.No.10 of Notification No.01/2006-ST. The above case is not a final order of Tribunal. In addition to that, at the time of PH, the party has submitted a copy of interim order dated 06.09.2013 of the Larger Bench of Hon’ble CESTAT in case of Bhayana Builders (P) Ltd., [2013 (32) S.T.R. 49 (Tri.-LB)] in support of their contention. In this case the Hon’ble Larger Bench has observed that the free supplies to construction service providers are outside*

*the taxable value or gross amount charged, within the meaning of 'explanation' in Section 67 of the Finance Act, 1994. I agree that this decision of Larger Bench of the Hon'ble Tribunal supports the contention of the party. But, this decision of the Hon'ble CESTAT (LB) is not a good law now because Hon'ble High Court of Delhi in case of G.D. Builders vs. U.O.I. [2013 (32) S.T.R. 673 (Del.)] has taken contrary view on the issue which supports the department's contention that value of free supplies should be added in the gross amount charged for availing abatement of 67% under Notification No.01/2006-ST. The Hon'ble High Court has passed this decision on 13.11.2013 i.e. after the decision of Larger Bench of Hon'ble CESTAT. Principle of judicial discipline requires that the decision of the superior court has to be followed in its letter and spirit. Accordingly, I have no option but to follow the decision of the Hon'ble High Court of Delhi passed in case of G.D. Builders referred supra."*

3. As is seen from the above, the Adjudicating Authority though agreed that the Larger Bench decision support the contention of the party, the same was not followed on the ground that the Hon'ble Delhi High Court in the case of G.D. Builders has taken a contrary view, supporting the Revenue's contention. At this stage, we note that the said decision of the Larger Bench in the case of Bhayana Builders Pvt. Ltd. was appealed against by the Revenue before the Hon'ble Supreme Court and

vide its judgment reported as Commissioner of Service Tax vs. Bhayana Builders (P) Ltd. 2018 (10) G.S.T.L. 118 (S.C.), the same stand approved by the Hon'ble Supreme Court and Revenue's appeal stands dismissed.

4. In view of the foregoing, we set aside the impugned order and allow the appeal filed by the assessee with consequential relief to them.

(Pronounced in Court)

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

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

*Lks*