CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 21715 of 2015

(Arising out of Order-in-Original No.COC-EXCUS-000-COM-001-15-16 dated 17.04.2015 passed by the Commissioner of Central Excise and Customs, Cochin.)

M/s. E.M. Mani Constructions (P) Ltd.
36/71, Kottai Canal Road,
Opp. Lissie Hospital,
Cochin – 682 018.
Kerala

Appellant(s)

VERSUS

The Commissioner of Central Excise
C. R. Building, I. S. Press Road,
Cochin – 682 018.

Respondent(s)

APPEARANCE:

Shri Joseph Kodianthara, Sr. Advocate for the Appellant.

Shri Rajashekar B.N.N, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20691 /2026

DATE OF HEARING: 25.05.2026
DATE OF DECISION: 25.05.2026

PER : R. BHAGYA DEVI

Briefly the facts are that the appellant M/s. E.M. Mani Constructions Pvt. Ltd., Kochi are into Works Contract Services and various other services. The Commissioner vide impugned order dated 17.04.2015 holds that the appellant was engaged in construction services and the free issue materials to the extent of Rs.37,49,954/- was claimed as an abatement. However, the

Commissioner confirms the demand of service tax on the free issue materials on the ground that no documents were produced for claiming this benefit. Accordingly, the Commissioner confirms service tax demand including the cost of materials along with interest and penalties. Aggrieved by this, the appellant is in appeal before us.

2. The Learned Sr. Counsel appearing for the appellant submits that the issue is no longer *res integra* in view of the decision in the case of **M/s. Bhayana Builders Pvt. Ltd. Vs. Commissioner of Service Tax, Delhi: 2013 (32) S.T.R. 49 (Tri.-LB)** based on which in the appellant's own case, this Tribunal vide Final Order No. 21247/2015 dated 01.06.2015 had allowed their appeal for the previous period. He also submits the above order was upheld by the Hon'ble Supreme Court as reported at **2018 (10) G.S.T.L. 118 (S.C.)**, hence the impugned order needs to be set aside.

3. The learned Authorised Representative (AR) fairly admits that the issue is settled by the decision of the Hon'ble Supreme Court.

4. Heard both sides. We find that this issue has been settled by the Hon'ble Supreme Court in the case of **Commissioner of Service Tax Versus Bhayana Builders (P) Ltd.: 2018 (10) G.S.T.L. 118 (S.C.)** dated 19.02.2018. The Hon'ble Supreme Court observed as follows:

> "16. In fact, the definition of "gross amount charged" given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term "gross amount charged" to enable the Department to ignore the contract value or the amount actually charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored

and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider."

5. In view of the above, we do not find any justification in the impugned order, the same is set aside.

Appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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