REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

To

Dated: **03/08/2015**

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **ST/A/52341/2015-CU[DB]** dated **10/07/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	
1		ST/1075/2010	Name and Address of Appellant **SKYLINE CONTRACTORS PVT. LTD.** B-12, GREATER KAILASH ENCLAVE-I, NEW DELHI-48
2			Name and Address of Respondent -C.S.T. DELHI 17-B, I.P. Estate, IAEA House, New Delhi.

Copy To

3 Advocate(s) / Consultant(s):

S. K. Sarwal & Co.
43, 1ST FLOOR, BHARAT NAGAR,
NEW FRIENDS COLONY,
NEW DELHI,
DELHI

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 10.7.2015

Appeal No. ST/1075/2010-CU(DB)

(Arising out of Order-in-Original No. 12-ST/PKJ/CCE/ADJ/10 dated 20.4.2010 passed by the Commissioner (Adj.), Service Tax, New Delhi)

For Approval & Signature :

Hon'ble Mr. R.K. Singh, Member (Technical)
Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Skyline Contractors Pvt. Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance:

Shri S.K. Sarwal, Advocate - for the Appellant

Shri Amresh Jain, D.R. - for the Respondent

Coram :Hon'ble Mr. R.K. Singh, Member (Technical)
Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)

F. Order No. 52341/2015

Per **R.K. Singh :**

The appeal has been filed against order-in-original dated 20.4.2010 in terms of which service tax demand of Rs.10,62,65,767/-

was confirmed along with interest and penalties. The said demand was confirmed on the ground that the value of material supplied free of cost was not included in the assessable value.

2. The ld. Advocate for the appellant states that in the light of judgement of CESTAT in the case of ***Bhayana Builders Vs. CST, Delhi*** - 2013 (32) STR 49 (Tri.-LB) value of free supply is not includible for the purpose of discharge of duty liability or for the purpose of claiming abatement. The ld. Advocate also stated that from 1.6.2007 service was classified under works contract service in which case, although he was not entitled to 67% abatement, he was entitled to the benefit of Notification No. 12/2003-ST and Rule 2(a) of the Service Tax Determination Rules (Determination of Value) Rules, 2006. He also stated that certain period is overlapping between the Show Cause Notice dated 19.6.2008 issued to the appellant and Show Cause Notice in respect of which the present appeal is filed.

3. The ld. DR, on the other hand agrees that the issue can be remanded to the adjudicating authority in the light of the CESTAT judgement in case of ***Bhayana Builders*** (supra). He however objected to the ground that the service should be classified under works contract from 1.6.2007 in respect of ongoing contracts where the appellant ~~himself~~ paid service tax under Commercial or

Industrial Construction Service after availing abatement as the said ground was not taken at the primary level.

4. We have considered the contentions of both sides. As ~~far as~~ regards the contention that certain period is overlapping in the periods covered by two Show Cause Notices dated 19.6.2008 and 15.12.2008, it is to be noted that mere overlapping of certain period is no evidence that the service tax has been demand on the same transactions. Therefore it will be open for the appellant to take this plea during de novo adjudication to show that there is overlapping of transactions inasmuch as certain transactions have been included in both the show cause notices for charging of service tax. As regards, its ~~their~~ plea that in respect of ongoing contracts under which service tax was paid under CICS after claiming 67% abatement, the classification should have been changed to Works Contract Service with effect from 1.6.207, we note this plea was not taken at the primary level and therefore as rightly pointed out by ld. DR, we are not giving any view thereon. We however clarify that any legal plea can be raised at the time of de novo adjudication. We agree with both sides that this issue is to be remanded to the primary adjudicating authority for de novo adjudication in the light, and following the ratio, of the CESTAT judgement in the case of ***Bhayana Builders*** (supra). Accordingly, we remand the case to the primary adjudicating authority for de novo adjudication taking into account

the ratio of the judgement in the case of ***M/s Bhyana Builders*** (supra) after giving the appellant an opportunity of being heard.

(R.K. Singh)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

RM