FAX : 011-26108426

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: **20/07/2015**

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

Final Order No. **ST/A/52249/2015-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	Name and Address of Appellant
1	ST/391/2012	**SKYLINE INFRATECH PVT LTD** B-12,Greatar Kailash Enclave-I, N Delhi.

Name and Address of Respondent

2 -C.S.T. DELHI
17-B, I.P. Estate, IAEA House,
New Delhi.

Copy To
3Advocate(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 : 10.7.2015

Appeal No. ST/391/2012-CU(DB)

(Arising out of Order-in-Original No. 458/S.Tax/APPL/D-II/2010/4261 dated 28.12.2011 passed by the Commissioner, 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. 52249/2015

Per **R.K. Singh :**

Appeal has been filed against order-in-appeal dated 28.12.2011 which upheld the order-in-original dated 10.3.2011 in terms of which the amount of interest of Rs.16,37,293/.- was confirmed under Section 75 of the Finance Act, 1994 along with penalty of Rs.6,09,700/- under Section 76 and Rs.4,000/- under Section 77 of the 1994 Act ibid.

2. The ld. Consultant for the appellant argues that they had paid service tax under commercial or industrial construction service and it included value of free supplies also in the assessable value and paid service tax thereon. He pleaded that in the wake of the CESTAT judgement in the case of ***M/s Bhayana Builders Pvt. Ltd. Vs. CCE*** - 2013 (32) STR 49 (Tri.-LB) holding that the value of free supplies was not includible in the assessable value of CICS for the purpose of paying service tax or for claiming abatement under Notification No. 15/2004-ST / 1/2006-ST and therefore the service tax paid by them is already ~~paid~~ a lot in excess than what was payable and as a result there will be no liability of interest or penalties, inasmuch as the liability to interest has been worked out on the ground that they paid service tax on the value of free supplies later than the due dates on which the same was to be paid.

3. The ld. DR fairly concedes that the issue needs to be remanded to the primary adjudicating authority for de novo adjudication in the light of judgement of ***M/s Bhyana Builders.***

4. In the light of the contention of both parties and having regard to the fact that the judgement of ***M/s Bhayana Builders*** was not available to the primary adjudicating authority, we remand the case to the primary adjudicating authority for de novo adjudication applying the ratio of the judgement in the case of ***M/s Bhayana Builders*** for the purpose of arriving at the liability to interest, if any, and also penalties, if any.

(R.K. Singh)
Member (Technical)

Sulekha Beevi

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

RM