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

Dated: 04/08/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/53024/2014-CU[DB]** dated **23/07/2014**

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/55615/2013	**Capital Builders** J-9 Basement Kailash Colony DELHI DELHI
		Name and Address of Respondent
2		**COMMISSIONER OF Service Tax-Delhi-ii** C R BUILDING, I P ESTATE, DELHI-110109

Copy To
3 Advocate(s) / Consultant(s):

Piyush Kumar,Adv
B-25, Lajpat Nagar - III,
New Delhi
Delhi

4 Bar Association, CESTAT, Delhi
5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Date of Hearing: 23.07.2014

Service Tax Appeal No.ST/55615/2013 –Cu[DB]

[Arising out of Order-in-Appeal No. 205/ST/DII/2012 dated 25.10.2012 passed by the Commissioner (Appeals), Central Excise, Delhi]

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

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. Capital Builders ...Appellant

Vs.

CCE, Delhi-II ... Respondent

Present for the Appellant : Shri Jitendra Singh, Consultant
Present for the Respondent : Shri Devendra singh, AR

FINAL ORDER NO 53024/2014 **DATED:23.07.2014**

PER: R.K. Singh

The appellants filed this appeal against Order-in-Appeal No. 205/ST/DII/2012 dated 25.10.2012 which had up held the Order-in-Original No. 01/JC/1/2011/ dated 14.01.2011.

2. The facts, briefly stated, are as under:

The appellants had entered into contracts for construction of commercial and residential buildings/structures but they had not been paying the service tax nor obtained timely registration. The adjudicating authority confirmed the service tax demand of Rs. 28,78,235/- (on the amounts recovered by them for executing those contracts) along with interest and penalties invoking extended period.

3. The appellants contended that the demand has been computed allowing abatement of 67% after adding the value of material supplied free of cost by the principals. They contended that the value of free supplies was not includible in the gross amount charged for the purpose of availing exemption under Notification No. 15/2004-ST dated 10.09.2004, Notification No. 1/2006-ST dated 01.03.2006 or Notification No. 18/2005-ST dated 07.06.2005.

4. The Ld. AR fairly conceded that the issue of inclusion value of free supply in the gross amount charged [illegible] has been decided by CESTAT Larger Bench in the case of Bhayana Builders Vs. CST: 2013-TIOL-1331-Cestat-Del-LB.

5. We have considered the facts and the submissions. We find that the adjudicating order in its discussion and finding portion has not devoted even a single line to discuss the includibility of the value of free supplies in the assessable value for the purpose of granting 67% abatement under the aforesaid notifications. However, this omission loses its significance considerably as the impugned Order-in-Appeal has discussed this issue.

6. As has been contended by the appellants, in the case Bhayana Builders (supra) it has been held that the value of goods and materials supplied free of cost by service recipient to the service provider would

be outside the taxable value or gross amount charged. This judgment has a direct bearing on the present case as far as the computation of the impugned demand is concerned. It is evident that at the time of adjudication by the original adjudicating authority as well as by the Commissioner (Appeals) the said decision of the CESTAT Larger Bench was not available.

7. In view of the law relating the free supplies having now been settled by the CESTAT Larger Bench in the case of Bhayana Builders, it is deemed appropriate to remand the case to the original adjudicating authority for denovo adjudication. Accordingly we set aside the impugned order and remand the case to the original adjudicating authority for adjudicating the same afresh in view of, and in accordance with the judgment of CESTAT Larger Bench in the case of Bhayana Builders (supra) after giving the appellants an opportunity of being heard.

[Dictated & Pronounced in the open Court].

(Justice G. Raghuram)
President

(R.K. Singh)
Technical Member

Neha