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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: **09/06/2014**

To

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

Final Order No. **ST/A/52370/2014-CU[DB]** dated **05/06/2014**

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/52/2008	**KRISHNA CONSTRUCTION COMPANY PVT. LTD.** E-92, GREATER KAILASH - 1, NEW DELHI
		Name and Address of Respondent
1	ST/52/2008	**C.S.T. DELHI** 17-B, I.P. Estate, IAEA House, New Delhi.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(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.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 5.6.2014

Service Tax Appeal No.52 of 2008

Arising out of the order in original No.43/VKG/CST/07 dated 25.10.2007 passed by the Commissioner of Service Tax, New Delhi.

For approval and signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	

Krishna Construction Company Pvt. Ltd. .. Appellant

Vs.

C.S.T., New Delhi .... Respondent

Appearance:

Present Shri Jitendra Singh Consultant with Ms. Reena Rawat, Advocate and Shri Piyush Kumar, Advocate for the appellant
Present Shri Govind Dixit, A.R for respondent/Revenue

Coram: Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Technical Member

Final Order No. 52370/2014

Per Justice G. Raghuram:

This appeal is preferred against the adjudication order dated 25.10.2007 passed by the Commissioner of Service Tax, New Delhi confirming service tax liability of Rs.1,17,32,437/-, apart from interest under Section 76 and penalty equivalent to the service tax demand confirmed.

2. Proceedings were initiated by a show cause notice dated 5.7.2006 covering the period 10.9.2004 to 31.3.2006 proposing levy of service tax, interest and penalties on the ground that appellant provided taxable services such as "commercial or industrial construction" and "construction of complex" defined under Sections 65(30a) and 65(91a) respectively , of the Finance Act, 1994. The core and singular dispute pertains to liability to service tax on free supplies by recipients (of services provided by the appellant) for incorporation into the works executed for their benefit. The appellant did remit service tax on the consideration received for the rendition of the taxable services but did not disclose the value of the free supplied in the returns or remit service tax, on this component. Proceedings were initiated on a presumptive value of free supplies.

3. Larger Bench of this Tribunal in ***Bhayana Builders (P) Ltd. vs. C.S.T., Delhi*** - 2013 (32) STR 49 (Tri-LB) has decided this issue and ruled that free supplies could not be considered as part of the gross consideration received for rendition of taxable services; and that an assessee is entitled to benefits under Notification Nos. 15/2004-ST, dated 10.9.2004 and 18/2005-ST dated 7.6.2005, nevertheless. The same issue is involved in this appeal also and this is the only issue . Ld. A.R. for Revenue does not dispute that. The issues present in this appeal are covered by the decision of the Larger Bench referred to above.

4. In view of the aforesaid circumstances, we allow the appeal. *Since the impugned order records that Rs.1,17,32,437/- was already remitted by the appellant before issue of show cause notice and has*

been appropriated in the order towards the confirmed tax liability, appellant is entitled to refund of the amount, in accordance with law.

(Justice G. Raghuram)
President

(R.K. Singh)
Technical Member

scd/