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

Dated: **09/06/2014**

To

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

Final Order No. **ST/A/52369/2014-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/119/2008	**MILLENNIUM CONSTRUCTIONS PVT. LTD.** 104, SOUTH CITY ARCADE,SOUTH CITY I GURGAON

		Name and Address of Respondent
1	ST/119/2008	**C.S.T. DELHI** 17-B, I.P. Estate, IAEA House, New Delhi.

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Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

S. K. Pahwa
Marwah & Pahwa, 45,
Aradhana Sector 13, R. K. Puram,
New Delhi-110066

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.119 of 2008

Arising out of the order in original No.51/VKG/CST/07 dated 28.11.2007 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?	

Millennium Constructions Pvt. Ltd. .. Appellant

Vs.

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

Appearance:

Present Shri S.K. Pahwa, 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. 52369/2014

Per Justice G. Raghuram:

This appeal is preferred against the adjudication order by the Commissioner of Service Tax, New Delhi confirming service tax demand of Rs.1,11,02,564/- , apart from interest and penalties, pursuant to a show cause notice dated 10.7.2006, covering the period 10.9.2004 to 31.3.2006. During this period, appellant provided "construction" service which later on was renamed and redefined as "Commercial or Industrial Construction" service; and "construction of complex" service. During rendition of these taxable services, petitioner received certain materials from recipients of the respective taxable services , free of cost for incorporation into works executed for their benefit. The appellant remitted service tax on the consideration received for rendition of these services. It did not however disclose in the returns filed the presumptive value of the free supplies nor remitted tax on such value. The appellant availed benefits of Notification Nos.15/2004-ST, dated 10.9.2004 and 18/2005-ST dated 7.6.2005, while remitting tax on the consideration disclosed.

2. The impugned adjudication order confirms the demand indicated above on the basis that the presumptive value of the free supplies is also a consideration received for the rendition of the services and that this component and non-disclosure of this component disentitles availment of the benefits of Notification Nos.15/2004-ST, dated 10.9.2004 and 18/2005-ST dated 7.6.2005.

3. This issue is covered by the decision of the Larger Bench of this Tribunal in ***Bhayana Builders (P) Ltd. vs. C.S.T., Delhi*** - 2013 (32) STR 49 (Tri-LB). This legal position is not contested by the ld. A.R. for Revenue. No other issue fall for consideration is also admitted.

4. In the circumstances, the impugned adjudication order is unsustainable and is quashed. This order records that the appellant had already deposited the tax demand, of Rs.1,11,02,264/- and this amount is appropriated. In the circumstances, as the appeal is allowed, the appellant shall be entitled to the refund of the amount of tax already remitted, in accordance with law.

(Justice G. Raghuram)
President

(R.K. Singh)
Technical Member

scd/