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

Dated: **22/05/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **ST/A/52260/2014-CU[DB]** dated **16/05/2014**

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/746/2008	**AHLUWALIA CONTRACTS (I) LTD.,** M-1, SAKET, NEW DELHI. 110017.
		Name and Address of Respondent
1	ST/746/2008	**C.S.T. DELHI** 17-B, I.P. Estate, IAEA House, New Delhi.

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

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

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

COURT NO. I

DATE OF HEARING : 16/05/2014.

Service Tax Appeal No. 746 of 2008

[Arising out of the Order-in-Original No. 64/VKG/2008 dated 31/07/2008 passed by The Commissioner Service Tax, New Delhi.]

For Approval and signature :
Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters 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 Ahluwalia Contracts (I) Ltd. — Appellant

Versus

CST, Delhi — Respondent

Appearance

Shri S.K. Sarwal, Advocate – for the appellant.

Ms. Suchitra Sharma, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : **Hon'ble Shri Justice G. Raghuram, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 52260 /2014 Dated : 16/05/2014

Per. Justice G. Raghuram :-

We have heard the learned counsel Shri S.K. Sarwal for the appellant and learned Jt. CDR for the respondent/Revenue Ms. Suchitra Sharma.

2. Assessee has preferred this appeal against the adjudication order dated 31/07/08 passed by the Commissioner, Service Tax, Delhi confirming service tax demand of Rs. 1,88,18,139/-, Rs. 23,77,324/-; appropriating these two amounts, deposited by the appellant; and confirming levy of interest under Section 75 and penalties under Sections 76 and 78 of the Finance Act, 1994.

3. Proceedings were initiated by show cause notice dated 29/11/07, invoking the extended period of limitation under the proviso to Section 73 (1) of the Act, alleging that the appellant had provided taxable services classified as "commercial or industrial construction" and "construction of complex" services during 12/09/04 to 31/03/07 and 15/06/05 to 31/10/06, for the respective categories of services; that the appellant had remitted service tax after availing abatement of 67% under exemption Notification No. 15/2004-ST dated 10/09/04 as amended by Notification No. 18/2005-ST dated 17/06/05; and that the appellant was disentitled to avail abatement benefits since it failed to disclose the gross consideration received including the value of supplies made free of cost by service recipients to the appellant for incorporation into construction services provided.

4. The Larger Bench of this Tribunal in **Bayana Builders Pvt. Ltd. vs. CST, Delhi** reported in **2013 – TIOL – 1331 – CESTAT – DEL – LB** has decided the issue. On interpretation of relevant exemption Notifications, the Tribunal ruled that for availment of exemption benefits under the relevant Notifications including the one in issue, it is not necessary to include in the taxable value, the value of supply of goods free of cost by a service recipient to a service provider, which are incorporated into constructions during rendition of tenable services. The issue is therefore no longer res-integra, being covered by the decision of the Larger Bench.

5. Following that decision in **Bayana Builders Pvt. Ltd. vs. CST, Delhi** (supra), we allow this appeal and quash the adjudication order No. 64/VKG/2008 dated 31/07/2008 passed by the Service Tax Commissioner, New Delhi.

6. As a consequence, the appellant shall be entitled to refund of the amounts remitted pursuant to the proceedings which culminated in the adjudication order, subject to entitlement for such refund in accordance with law.

(Dictated and pronounced in open court)

(Justice G. Raghuram)
President

(Rakesh Kumar)
Member (Technical)

PK