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: **27/02/2014**

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

Final Order No. **ST/A/50715/2014-CU[DB]** dated **21/02/2014**

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
	ST/608/2008	**FIVE STAR CONSTRUCTION COMPANY** Rajendra Prasad Chowk, Kohaka Road, Supela, Bhilai(CG)
		Name and Address of Respondent
	ST/608/2008	**C.C.E. RAIPUR** Central Excise Building, Dhamtari Road, Tikrapara, Raipur 492001.

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

L. P. Asthana & Reena Khair
R - 163, IInd Floor,
Greater Kailash - 1,
New Delhi,
Delhi-110048

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 : 21/02/2014.

Service Tax Appeal No. 608 of 2008

[Arising out of the Order-in-Original No. Commissioner/RPR/47/2008 dated 11/06/2008 passed by The Commissioner of Service Tax and Central Excise, Raipur.]

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 Five Star Construction Company — Appellant

Versus

CCE, Raipur — Respondent

Appearance

Ms. Tuhina Sinha, Advocate – for the appellant.

Shri Govind Dixit, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 50715/2014 Dated : 21/02/2014

Per. Justice G. Raghuram :-

Heard learned Ms. Tuhina Sinha, Advocate, learned counsel for the appellant and Shri Govind Dixit, learned Departmental Representative for the respondent.

2. The Commissioner, Central Excise, Chhattisgarh by the impugned order-in-original No. Commissioner/RPR/ 47/2008 dated 11/06/2008 confirmed service tax demand of Rs. 1,87,63,988/- besides penalty of an equivalent amount, under Section 78 of the Finance Act, 1994. This order is assailed by the assessee.

3. The appellant claimed benefits of abatement in terms of Notification No. 15/2004-ST dated 10/09/2004, whereby 67% tax abatement is provided on the gross value received for providing the taxable commercial or industrial construction service, which is the taxable service in issue. Para 7.1 of the adjudication order records that the appellant had fulfilled all the conditions of the Notification, but however failed to report the taxable value namely the gross amount charged for providing the service, which in the Adjudicating Authority's view should have included the value of material supplied free of cost by the recipient of the service to the appellant for use in the taxable service provided.

4. The issue is no longer res-integra. A full bench of the Tribunal in **Bhayana Builders (P) Ltd. vs. CST, Delhi** reported in **2013 (32) S.T.R. 49 (Tri. – LB)** has concluded the issue and

ruled that the gross amount charged in the circumstances would not include the value of the free supplies of goods which are used in providing commercial and industrial construction service. The very Notification namely 15/2004-ST, was considered in the judgment.

5. In the light of the law declared in **Bhayana Builders (P) Ltd. vs. CST, Delhi** (supra), the impugned adjudication order cannot be sustained and is accordingly quashed. There shall however be no order as costs.

(Dictated and pronounced in open court)

(Justice G. Raghuram)
President

(Rakesh Kumar)
Member (Technical)

PK