CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 06.02.2017

Service Tax Appeal No. 56159 of 2013

(Arising out of order-in-appeal No. 232/BPL/2012 dated 03.12.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal).

M/s Om Construction Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Shri Narendra Singhvi, Advocate the appellant
Ms. Neha Garg, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50697/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-appeal No. 232/BPL/2012 dated 03.12.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal 2.

2. Brief facts of the case are that the appellant is working for the Madhya Pradesh Electricity Board for providing erection, commissioning & installation of the electricity transmission towers being supplied by the electricity recipient. The appellant are paying service tax on the said activity. The department has treated the cost of the tower supplied by the Electricity Board as required to be added in the assessable value of the

service, so the proceedings were initiated and demand was made. Being aggrieved, the present appeal is filed by the appellant.

3. With this background, we heard Shri Narendra Singhvi, ld. Counsel for the assessee and Ms. Neha Garg, ld. AR for the Revenue.

4. From the record, it appears that appellant was paying service tax about 33% of the value in terms of Notification No. 15/2004-ST and Notification No. 1/2006-ST dated 01.03.2006.

5. after hearing both the parties, it is evident that the issue is squarely covered by the larger Bench decision of the Tribunal in favour of the appellant in the case of ***Bhayana Builders Pvt. Ltd. vs. CST, Delhi – 2013 (32) STR 49*** where it was held that the value of the goods and material supplied free of cost by a service recipient to the provider of the taxable service, being neither monetary or non-monetary consideration paid or flowing from the service recipient, accruing to the benefit of the service provider, would be outside the taxable value of the goods amount charged under the said notification. The relevant portion of the order is extracted as under:

> "15. From the several aids to interpretation, referred to (supra) we are compelled to conclude that goods and materials, supplied/ provided/ used by the service provider for incorporation in the construction, which belong to the provider and for which the service recipient is charged towards the value of such supply/ provision/ use and the corresponding value whereof was received by the service provider, to accrue to his benefit, whether independently specified as attributable to the specific material/ goods incorporated or otherwise, would alone constitute the gross amount charged. This is not to say that an exemption Notification cannot enjoin a condition that the value of free supplies must also go into the gross amount charged for valuation of the taxable service. If such intention is to be effectuated the phraseology must be specific and denuded of ambiguity."

6. By following the ratio (supra), we find no merit in the impugned order, the same is set-aside.

7. In the result, the appeal filed by the appellant is allowed with consequential relief.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant