APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO II

Appeal No.ST/50118/2014-CU(DB)

[Arising out of the common Order-in-Appeal No.RPR-Excus-000-COM-104-13-14 dated 30-09-2013 passed by the Commissioner of CE & ST, Raipur.

Bhola Singh Jai Prakash Construction Ltd … **Appellant**

Vs

C.C.E. & S.T. Raipur … **Respondent**

Appearance:

S/Sh G.Natrajan, Kartik Jindal & Joseph K. Antoms, ld Advocates for the Appellant

Sh Sanjay Jain, ld DR for the respondent

CORAM:

Hon'ble Mr S.K.Mohanty, Member(Judicial)
Hon'ble Mr Ashok K. Arya, Member(Technical)

Final Order No. 52105/2017

Date of Hearing 28.02.2017

Per Ashok K. Arya

M/s Bhola Singh Jai Prakash Constructiuon Ltd is in appeal against Order-in-Original number 104/2013 dated 30.09.2013 passed by Commissioner, Raipur whereunder *inter alia* demand of service tax of Rs.2,05,86,468.00 along with interest and imposition of equivalent penalty has been confirmed. The period covered is from 1.1.2007 to 31.03.2011. The demand has been confirmed under the category of 'commercial or industrial construction service'.

2. The appellant has been represented by ld advocates S/Shri G.Nattrajan, Kartik Jindal and Joseph K.Antoms and Revenue has been represented by ld DR Shri Sanjay Jain.

3. The ld advocates for the appellant *inter alia* submit as under:

i) This demand has been made without granting the benefit of abatement under Notification 1/2006.

ii) The appellant claimed exclusion of value of materials involved in the contract, to the tune of Rs.1,21,81,930.00 from the value, under notification 12/2003, which has been disallowed on the ground that the invoices did not show the material value separately, though other evidences in the form of VAT returns are furnished.

iii) As an alternative, the benefit of abatement under Notification 1/2006 ST dated 01.03.2016 is being claimed by the appellant. As held by the larger bench of the Hon'ble Tribunal in the case of Bhayana Builders Pvt Ltd, the benefit of said abatement would apply, even if the materials are supplied by the customer, M/s NTPC.

iv) Further, the appellant wish to rely on the following decisions, wherein it has been held that the benefit of exemption can be claimed even at appellate stage.

Tambrabarani Container Pvt Ltd Vs CCE – 2005(187) ELT 276 Tri-Chennai.

Technocrats India Vs CCE – 2012(279) ELT 268 Tri-Mum.*Sahni*

Video Movies Vs CCE – 2011(23) STR 299 Tri-Chennai

4. The learned AR reiterates the findings given in the impugning order.

5. After having considered the facts of the case and submissions of both the sides it appears that the appellant assessee is entitled to the abatement of 67 %

under Notification no. 1/2006-ST as per the CESTAT decision in the case of *M/s Bhayana Builders Pvt Ltd VSC CCE* 2013 (32) STR 49(Trib.-LB). What would be the quantum of the liability of service tax against the assessee appellant, once benefit of 67% abatement is given to them, is required to be computed.

The larger Bench of CESTAT in the case of *Bhayana Builders Pvt Ltd* (Supra) in para 16 observes as follows:

> 16. In conclusion we answer the reference as follows:
>
> (a) The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the *gross amount charged,* within the meaning of the later expression in Section 67 of the Finance Act, 1994; and
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> (b) Value of free supplies by service recipient do not comprise the *gross amount charged* under Notification No.15/2004-S.T., including the Explanation thereto as introduced by Notification No.4/2005-S.T.

5.1 Thus following the decision made in the case of *Bhayana Builders Pvt Ltd* (supra), the appeal is allowed by way of remand to the adjudicating authority, who within four months of receipt of this order shall decide the quantum of liability of service tax after giving benefit of abatement as per the CESTAT decision in the case of *Bhayana Builders Pvt Ltd* (Supra). The matter thus is to be adjudicated by the adjudicating authority de novo after giving fresh opportunity of personal hearing and submission of documents to the appellant.

6. In the result, the appeal is allowed by way of remand.

(Ashok Kr Arya)
Member(Technical)

(S.K.Mohanty)
Member(Judicial)

pcs

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