IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. ST/1894/2010-CU [DB]
[Arising out of Order-in-Appeal No. 548/S. Tax/ D- II/10 dated 28.09.2010, passed by the Commissioner of Central Excise, New Delhi]

M/s. B.L. Kashyap & Sons Limited ....Appellant

Vs.

C.C.E, New Delhi ....Respondent

Appearance:
Sh. S.K. Pahwa, Advocate the Appellant
Sh. Govind Dixit, DR for the Respondent

CORAM:
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 29.11.2016

FINAL ORDER NO. 56454 /2016-CU[DB]

Per V. Padmanabhan

The present appeal is against the Order-in-Appeal No. 79/2009 passed by the Commissioner (Appeals), New Delhi. The appellant is engaged in providing "Commercial or Industrial Construction Service" and "Construction of Complex Service". The Revenue noticed that the appellant has claimed abatement to the extent of 67 per cent from the total consideration received in terms of Notification No. 15/2004-ST dated 10.09.2004 as well as 18/2005-ST dated 01.06.2005.However, it was further, observed that the appellant did not include the value of free supply material by their service receivers, while claiming 67 per cent abatement. Through the impugned proceedings, Revenue sought to recover Service Tax amounting to Rs 13,17,590/- towards Service Tax liability determined by including the value of free supply material in the gross value of service. The appellant paid the Service Tax so demanded but challenged the same before the Commissioner (Appeals). Since, they did not get relief; the present appeal has been filed.

2. Heard Shri S.K. Pahwa, ld. Advocate for the appellant as well as Shri Govind Dixit, ld. DR for the Revenue.

3. It has been submitted on behalf of the appellant that the issue of grant of abatement in cases where certain materials have been supplied free of charge by the service recipients stands decided in favour of the appellant's by the Larger Bench of the Tribunal in the case of **Bhayana Builders (P) Ltd Vs. Commissioner of Service Tax, Delhi 2013 (32) S.T.R. 49 (Tri.-LB).** Accordingly, the ld. Counsel submits that the issue may be decided in favour of the appellants.

4. Ld. DR reiterates the impugned order.

5. We have gone through the records of the case as well as the decision of the larger bench cited by the appellant. We find that the issue stands decided in favour of the appellant by the Larger Bench of the Tribunal in the Bhayana Builders (P) Limited (supra). The Larger Bench held 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."

6. In view of the above discussions, the impugned order is set aside and appeal is allowed.

[Dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

V. Padmanabhan
Member (Technical)

Ritu S.