CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 19.07.2017

Appeal No. ST/51777/2014-ST[DB]

[Arising out of the Order-in-Appeal No. 237(VC)/ST/JPR-I/2013 dated 24.12.2013, passed by the Commissioner of Central Excise, Jaipur]

M/s. Gab Associates … Appellant

Vs.

C.C.E. Jaipur-I ... Respondent

Appearance:

Present Shri S.C. Kamra, Advocate for the appellant
Present Shri Sanjay Jain, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 55499 /2017

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against the order in Appeal No. 237/2013 dated 24.12.2013. The disputed period is 2010-11.

2. The brief facts of the case are that during the period under consideration, appellants were engaged in providing service in relation to erection, commissioning or installation. During the course of services, appellant has claimed of using his own raw material for installation of petrol pump for Bharat Petroleum Corporation Ltd and paid service tax at the rate of 33% of the

taxable value after availing the benefit of abatement under notification no. 01/2006 dated 01.03.2006. The department was of the view that the exemption under notification is not available to the appellant on the ground that the material such as the petrol pump, supplied by M/s. BPCL is not included in gross value for the purpose of computing 33 % of value for service tax. Being aggrieved the appellant has filed the appeal.

3. With this background, we have heard Shri S.C. Kamra, Advocate for the appellant and Shri Sanjay Jain, DR for the respondent.

4. After hearing both the sides and perusal of the record, it appears that the issue of free supply materials has come up before the Larger Bench of the Tribunal in the case of ***Bhayana Builders (P) Ltd. Vs. CST Delhi 2013 (32) STR 49 (Tri-LB)*** wherein claim of the appellant was allowed and it was observed as follows:

> *"16. In conclusion we answer the reference as follows :*
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> *(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. By following the said decision of the Tribunal we set aside the impugned order and allow the claim of the appellant. In the result, appeal filed by the appellant is allowed.

[Dictated and Pronounced in the open court]

(V. Padmanabhan) (Justice Dr. Satish Chandra)
Technical Member President

Bhanu