(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.ST/50681/2014(DB)
(Arising out of Order-in-Appeal No.278(OPD)ST/JPR-II/2013 dated 24.10.2013 passed by Commissioner(Appeals) New Central Excise Revenue Building, Jaipur)

M/s Shukla Construction …Appellant

Vs

CCE Jaipur-II …Respondent

Appearance:
Present for the Appellant : Ms Rinki Arora, Advocate
Present for the Respondent : Shri Sanjay Jain. DR

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR V. PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing/decision: 07.08.2017

Final Order No.55777/2017

Per Justice (Dr) Satish Chandra

The present appeal has been filed against the order in Appeal no. 278(OPD)ST/JPR-II/2013sp dated 24.10.2013. The period of dispute is April, 2005 to March, 2009. During the period under consideration, the appellant was providing services under Commercial or Industrial Custom Service and Erection Commissioning and Installation Services, to various oil companies like HPCL & BPCL. The appellant claimed the benefit of abatement @ 67% of the value of taxable service in terms of notification No.1/2006. However, department was of the view that appellant was not entitled to such abatement since they have not included the value of free supplies, such as tank etc., which were provided free of cost by the oil companies.

Accordingly, demand of service tax was raised. Aggrieved by the impugned order, the present appeal has been filed.

2. With this background, We have heard Ms Rinki Arora and Sh Sanjay Jain, the ld Counsel of the parties. From the record, it appears that the identical issue has come up before the Tribunal in the case of Commissioner of Central Excise, Bhopal Vs Sonali India, 2014, (34) S.T.R 47 (Tri.-Del.) where the claim of the appellant was allowed with the following observation:

> "We find that Larger Bench of the Tribunal in the case of Bhayana Builders Pvt Ltd Vs CST, Delhi recorded as 2013 (32) S.T.R. 49 (Trl.-L.B) while interpreting the identical notification have held that free supplies made by the Customs to the construction service provider would not get added in the gross amount charged for providing construction services. As the ratio of the above decision is fully applicable to the facts of the present case, we find no infirmity in the views adopted by Commissioner (Appeals)."

3. By following our earlier decision (supra), we set aside the impugned order and allow the appeal.

(Dictated in the open court)

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

pcs