IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

<u>BENCH-DB</u>

COURT –III

<u>Service Tax Appeal No. ST/52355/2014 -CU [DB]</u>

[Arising out of Order-in-Original NoJAI-EXCUS-002-COM-107-13-14 dated 24.01.2014 passed by the Commissioner (Appeals), Central Excise, Jaipur]

M/s. Simplex Infrastructure Ltd. …Appellant

Vs.

C.C.E., Jaipur-I … Respondent

Present for the Appellant : Mr.Narendra Singhvi, Advocate.
Mr.Manish Gour, Advocate.
Present for the Respondent: Mr.Amresh Jain, D.R.

Coram:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 01.08.2017

FINAL ORDER NO. 55920/2017

PER: B.RAVICHANDRAN

The appeal is against the order dated 24.01.2014 passed by the Commissioner (Appeals), Central Excise, Jaipur.

2. The appellants are engaged in providing construction service and are registered with the Department for payment of tax. The dispute in the present appeal relates to the valuation of such construction service, for tax liability. The appellants for providing construction service, to M/s. Grasim Industries Ltd. received free of cost cement and steel from M/s. Grasim Industries. They have included the value of such free of cost materials also in their running bill and calculated the gross value for Service Tax purposes. The Revenue entertained a view that supply of such free of cost materials should be considered as advance payment for taxable service, with reference to date of supply of such materials. This will result in the appellants discharging Service Tax at the appropriate period relatable to receipt of free of cost materials. In other words, while considering the free supply items as advance payment, the Revenue reckoned that they were regular delay in discharging Service Tax on such “advance payment” as consideration. Proceedings were initiated to recover applicable interest on this ground, from the appellant. The original authority confirmed the interest of Rs.62,54,135/- and imposed a penalty under Section 76 of the Finance Act, 1994.

3. The ld. Counsel appearing for the appellant submitted that the free of cost materials received from the recipient of service is not to be considered as a consideration for taxable service, rendered by the appellant. He relied on the decision of

the Tribunal in Bhayana Builders Pvt. Ltd. v. Commissioner– 2013 (32) STR 49 (Trib. – Delhi). Since the consideration itself does not arise for tax liability, the question of interest has no relevance.

4. The ld. A.R. while supporting the findings of the lower authority, submitted that in terms of Section 67 of the Finance Act, 1994, the gross consideration has to be taken into account for tax liability. In-fact, in the present case the appellants did take the cost of cement and steel, while arriving at the gross consideration and discharging Service Tax, accordingly. In such situation, it is correct to hold that the material supplied by the recipient, as advance payment, other than by cash. Hence, the tax liability on such payment should be relatable to relevant period of receipt of such material. Accordingly, the interest liability will accrue.

5. We have heard by sides and perused the appeal records. Though the appellants included the free of cost materials in gross value while discharging Service Tax, before the original authority as well as in appeal they are contesting the includability of such cost in the gross value. We note, the reliance placed by the appellant on the decision of the Tribunal in Bhayana Builders Pvt. Ltd. (supra) is relevant and has force. Accordingly, following the reasoning adopted by the Tribunal, which held that free supplies by service recipient cannot be

included in the gross value charged for taxable service, the Tribunal interpreted the provisions of Section 67 and Notification providing abatement.

6. Following the ratio adopted by the Tribunal in Bhayana Builders (supra), we find that the impugned order cannot be sustained. Accordingly, the same is set aside. The appeal is allowed.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita