CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 30049 of 2016

(Arising out of **Order-in-Original** No.HYD-EXCUS-001-COM-037-15-16 dated 16.11.2015 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

V P R Mining Infrastructure Pvt Ltd., .. **APPELLANT**
8-2-268/k/18, Plot No.18,
Navodaya Colony, Road No. 2,
Banjara Hills,
Hyderabad,
Telangana – 500 034.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Hyderabad – II
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:

Shri K. Girish, CA for the Appellant.
Shri V Srikanth Rao, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30259/2023

Date of Hearing:12.09.2023
Date of Decision:12.09.2023

[ORDER PER: R. MURALIDHAR]

The Appellants are undertaking "Site Formation, Clearance and Excavation" services for Singareni Colleries Company Limited (SCCL). In the case of services provided by them, they were also issued free supply of materials like explosives and diesel by SCCL. Show cause proceedings were initiated on the ground that the value of such free supply of materials have to be taken as part of the consideration received by the appellants to discharge the Service Tax liability.

2. After due process, the demands were confirmed. Being aggrieved by the same, the appellant is before the Tribunal.

3. Learned CA appearing on behalf of the appellant submits that the present proceedings are in respect of the financial year 2011-12. This is a periodical notice and such demands were issued for the prior period also.

He submits that the issue in no more *res integra*, as in their own case for the prior period on the same issue, this Bench vide Final Order No. A/30741-30748/2018 dated 10.07.2018 has held that the value of free supply of materials is not required to be included for the purpose of reckoning the Service Tax payable. For coming to this conclusion, this Bench has relied upon the judgment of the Hon'ble Supreme Court in the case of M/s Bhayana Builders (P) Ltd., [2018 (10) GSTL 118 (SC)]. Therefore, he submits that the present appeal may be allowed.

4. Learned AR reiterates the findings of the Lower Authorities and does not deny that in the appellant's own case the earlier appeals were allowed by this Bench.

5. On going through the Final Order No. A/ 30741-30748/2018 dated 10.07.2018 we find that on identical issue, this Bench after relying on the case law of M/s Bhayana Builders (P) Ltd., has held that the value of free supplies cannot be included in the value of services rendered and accordingly set aside the Order-in-Original and allowed the appeals.

6. Since the issue in the present case is identical and emanates from the periodical notice issued to the appellants, following the cited case law, we set aside the impugned order and allow the appeal of the appellant along with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in open court
on conclusion of the hearing)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

jaya