(2014) 06 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 52 Of 2008

?Krishna Construction Company Pvt. Ltd. — APPELLANT

Vs

C.S.T., New Delhi — RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:
Finance Act, 1994 — Section 65(30a), 65(91a), 76

Citation : (2014) 06 CESTAT CK 0003

Hon'ble Judges : D.N. Panda, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : Jitendra Singh, Reena Rawat, Piyush Kumar, Govind Dixit

Final Decision : Allowed

Judgement

1. This appeal is preferred against the adjudication order dated 25.10.2007 passed by the Commissioner of Service Tax, New Delhi confirming service

tax liability of Rs.1,17,32,437/-, apart from interest under Section 76 and penalty equivalent to the service tax demand confirmed.

2. Proceedings were initiated by a show cause notice dated 5.7.2006 covering the period 10.9.2004 to 31.3.2006 proposing levy of service tax, interest

and penalties on the ground that appellant provided taxable services such as â??commercial or industrial constructionâ? and â??construction of

complexâ? defined under Sections 65(30a) and 65(91a) respectively, of the Finance Act, 1994. The core and singular dispute pertains to liability to

service tax on free supplies by recipients (of services provided by the appellant) for incorporation into the works executed for their benefit. The

appellant did remit service tax on the consideration received for the rendition of the taxable services but did not disclose the value of the free supplied

in the returns or remit service tax, on this component. Proceedings were initiated on a presumptive value of free supplies.

3. Larger Bench of this Tribunal in Bhayana Builders (P) Ltd. vs. c.s. T., Delhi - 2013 (32) STR 49 (Tri-LB) has decided this issue and ruled that free

supplies could not be considered as part of the gross consideration received for rendition of taxable services; and that an assessee is entitled to

benefits under Notification Nos. 15/2004-ST, dated 10.9.2004 and 18/2005-ST dated 7.6.2005, nevertheless. The same issue is involved in this appeal

also and this is the only issue. Ld. A.R. for Revenue does not dispute that. The issues present in this appeal are covered by the decision of the Larger

Bench referred to above.

4. In view of the aforesaid circumstances, we allow the appeal. Since the impugned order records that Rs.1,17,32,437/- was already remitted by the

appellant before issue of show cause notice and has been appropriated in the order towards the confirmed tax liability, appellant is entitled to refund of

the amount, in accordance with law.