(2014) 06 CESTAT CK 0004

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 119 Of 2008

?Millennium Constructions Pvt. Ltd. APPELLANT

Vs

C.S.T., New Delhi RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) 06 CESTAT CK 0004

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : S.K. Pahwa, Govind Dixit

Final Decision : Allowed

Judgement

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

Rs.1,11,02,564/- , apart from interest and penalties, pursuant to a show cause notice dated 10.7.2006, covering the period 10.9.2004 to 31.3.2006.

During this period, appellant provided â??constructionâ? service which later on was renamed and redefined as â??Commercial or Industrial

Constructionâ? service; and â??construction of complexâ? service. During rendition of these taxable services, petitioner received certain materials

from recipients of the respective taxable services, free of cost for incorporation into works executed for their benefit. The appellant remitted service

tax on the consideration received for rendition of these services. It did not however disclose in the returns filed the presumptive value of the free

supplies nor remitted tax on such value. The appellant availed benefits of Notification Nos.15/2004-ST, dated 10.9.2004 and 18/2005-ST dated

7.6.2005, while remitting tax on the consideration disclosed.

2. The impugned adjudication order confirms the demand indicated above on the basis that the presumptive value of the free supplies is also a

consideration received for the rendition of the services and that this component and non-disclosure of this component disentitles availment of the

benefits of Notification Nos.15/2004-ST, dated 10.9.2004 and 18/2005-ST dated 7.6.2005.

3. This issue is covered by the decision of the Larger Bench of this Tribunal in Bhayana Builders (P) Ltd. vs. C.S.T., Delhi - 2013 (32) STR 49 (Tri-

LB). This legal position is not contested by the ld. A.R. for Revenue. No other issue fall for consideration is also admitted.

4. In the circumstances, the impugned adjudication order is unsustainable and is quashed. This order records that the appellant had already deposited

the tax demand, of Rs.1,11,02,264/- and this amount is appropriated. In the circumstances, as the appeal is allowed, the appellant shall be entitled to

the refund of the amount of tax already remitted, in accordance with law.