
(2014) 05 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 746 Of 2008

M/s Ahluwalia Contracts (I) Ltd.

APPELLANT

Vs

CST, Delhi

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Finance Act, 1994 — Section 73(1), 75, 77, 78

Citation : (2014) 05 CESTAT CK 0011

Hon'ble Judges : G. Raghuram, J; Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : S.K. Sarwal, Suchitra Sharma

Final Decision : Allowed

Judgement

1. We have heard the learned counsel Shri S.K. Sarwal for the appellant and learned Jt. CDR for the respondent/Revenue Ms. Suchitra Sharma.

2. Assessee has preferred this appeal against the adjudication order dated 31/07/08 passed by the Commissioner, Service Tax, Delhi confirming

service tax demand of Rs.1,88,18,139/-, Rs.23,77,324/-; appropriating these two amounts, deposited by the appellant; and confirming levy of interest

under Section 75 and penalties under Sections 76 and 78 of the Finance Act, 1994.

3. Proceedings were initiated by show cause notice dated 29/11/07, invoking the extended period of limitation under the proviso to Section 73(1) of the

Act, alleging that the appellant had provided taxable services classified as "commercial or industrial construction" and "construction of

complex" services during 12/09/04 to 31/03/07 and 15/06/05 to 31/10/06, for the respective categories of services; that the appellant had remitted

service tax after availing abatement of 67% under exemption Notification No.

15/2004-ST dated 10/09/04 as amended by Notification No. 18/2005-ST

dated 17/06/05; and that the appellant was disentitled to avail abatement benefits since it failed to disclose the gross consideration received including

the value of supplies made free of cost by service recipients to the appellant for incorporation into construction services provided.

4. The Larger Bench of this Tribunal in *Bayana Builders Pvt. Ltd. vs. CST, Delhi* reported in 2013 - TIOL - 1331 - CESTAT - DEL - LB has decided

the issue. On interpretation of relevant exemption Notifications, the Tribunal ruled that for availment of exemption benefits under the relevant

Notifications including the one in issue, it is not necessary to include in the taxable value, the value of supply of goods free of cost by a service

recipient to a service provider, which are incorporated into constructions during rendition of tenable services. The issue is therefore no longer res-

integra, being covered by the decision of the Larger Bench.

5. Following that decision in *Bayana Builders Pvt. Ltd. vs. CST, Delhi* (supra), we allow this appeal and quash the adjudication order No.

64/VKG/2008 dated 31/07/2008 passed by the Service Tax Commissioner, New Delhi.

6. As a consequence, the appellant shall be entitled to refund of the amounts remitted pursuant to the proceedings which culminated in the adjudication

order, subject to entitlement for such refund in accordance with law.

(Dictated and pronounced in open court)