(2014) 02 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 608 Of 2008

?M/s Five Star Construction Company APPELLANT

Vs

CCE, Raipur RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:
Finance Act, 1994 — Section 78

Citation : (2014) 02 CESTAT CK 0006

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

Bench : Division Bench

Advocate : Tuhina Sinha, Govind Dixit

Final Decision : Disposed Of

Judgement

1. Heard learned Ms. Tuhina Sinha, Advocate, learned counsel for the appellant and Shri Govind Dixit, learned Departmental Representative for the

respondent.

2. The Commissioner, Central Excise, Chhattisgarh by the impugned order-in-original No. Commissioner/RPR/ 47/2008 dated 11/06/2008 confirmed

service tax demand of Rs.1,87,63,988/- besides penalty of an equivalent amount, under Section 78 of the Finance Act, 1994. This order is assailed by

the assessee.

3. The appellant claimed benefits of abatement in terms of Notification No. 15/2004-ST dated 10/09/2004, whereby 67% tax abatement is provided on

the gross value received for providing the taxable commercial or industrial construction service, which is the taxable service in issue. Para 7.1 of the

adjudication order records that the appellant had fulfilled all the conditions of the Notification, but however failed to report the taxable value namely the gross amount charged for providing the service, which in the Adjudicating Authority's view should have included the value of material supplied free of

cost by the recipient of the service to the appellant for use in the taxable service provided.

4. The issue is no longer res-integra. A full bench of the Tribunal in Bhayana Builders (P) Ltd. vs. CST, Delhi reported in 2013 (32) S.T.R. 49 (Tri. -

LB) has concluded the issue and ruled that the gross amount charged in the circumstances would not include the value of the free supplies of goods

which are used in providing commercial and industrial construction service. The very Notification namely 15/2004-ST, was considered in the judgment.

5. In the light of the law declared in Bhayana Builders (P} Ltd. vs. CST, Delhi (supra), the impugned adjudication order cannot be sustained and is

accordingly quashed. There shall however be no order as costs.

(Dictated and pronounced in open court)