(2015) 07 CESTAT CK 0010

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Appeal No. 391 Of 2012

M/s Skyline Contractors Pvt. Ltd. APPELLANT

Vs

CST, Delhi RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:
Finance Act, 1994 — Section 75, 76, 77

Citation : (2015) 07 CESTAT CK 0010

Hon'ble Judges : R. K. Singh, Technical Member;Sulekha Beevi, C.S., J

Bench : Division Bench

Advocate : S.K. Sarwal, Amresh Jain

Final Decision : Disposed Of

Judgement

1. Appeal has been filed against order-in-appeal dated 28.12.2011 which upheld the order-in-original dated 10.3.2011 in terms of which the amount of

interest of Rs.16,37,293/.- was confirmed under Section 75 of the Finance Act, 1994 along with penalty of Rs.6,09,700/- under Section 76 and

Rs.4,000/- under Section 77 of the 1994 Act ibid.

2. The Id. Consultant for the appellant argues that they had paid service tax under commercial or industrial construction service and it included value

of free supplies also in the assessable value and paid service tax thereon. He pleaded that in the wake of the CESTAT judgement in the case of M/s

Bhayana Builders Pvt. Ltd. Vs. CCE - 2013 (32) STR 49 (Tri.-LB) holding that the value of free supplies was not includible in the assessable value of

CICS for the purpose of paying service tax or for claiming abatement under Notification No. 15/2004-ST/1/2006-ST and therefore the service tax paid

by them is already a lot in excess than what was payable and as a result there will be no liability of interest or penalties, inasmuch as the liability to interest has been worked out on the ground that they paid service tax on the value of free supplies later than the due dates on which the same was to

be paid.

3. The Id. DR fairly concedes that the issue needs to be remanded to the primary adjudicating authority for de novo adjudication in the light of

judgement of M/s Bhyana Builders.

4. In the light of the contention of both parties and having regard to the fact that the judgement of M/s Bhayana Builders was not available to the

primary adjudicating authority, we remand the case to the primary adjudicating authority for de novo adjudication applying the ratio of the judgement in

the case of M/s Bhayana Builders for the purpose of arriving at the Hability to interest, if any, and also penalties, if any.

