(2014) 07 CESTAT CK 0013

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 55615 Of 2013

?M/s.Capital Builders APPELLANT

Vs

CCE, Delhi-II RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Citation : (2014) 07 CESTAT CK 0013

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

Bench : Division Bench

Advocate : Jitendra Singh, Devendra singh

Final Decision : Allowed

Judgement

1. The appellants filed this appeal against Order-in-Appeal No. 205/ST/DII/2012 dated 25.10.2012 which had up held the Order-in- Original No.

0l/JC/1/2011/ dated 14.01.2011.

2. The facts, briefly stated, are as under:

Â The appellants had entered into contracts for construction of commercial and residential buildings/structures but they had not been paying the

service tax nor obtained timely registration. The adjudicating authority confirmed the service tax demand of Rs.28,78,235/- (on the amounts recovered

by them for executing those contracts) along with interest and penalties invoking extended period.

3. The appellants contended that the demand has been computed allowing abatement of 67% after adding the value of material supplied free of cost

by the principals. They contended that the value of free supplies was not includible in the gross amount charged for the purpose of availing exemption

under Notification No. 15/2004-ST dated 10.09.2004, Notification No. 1/2006-ST dated 01.03.2006 or Notification No. 18/2005-ST dated 07.06.2005.

4. The Ld. AR fairly conceded that the issue of inclusion value of free supply in the gross amount charged has been decided by CESTAT Larger

Bench in the case of Bhayana Builders Vs. CST: 2013-TIOL-1331-Cestat-Del-LB.

5. We have considered the facts and the submissions. We find that the adjudicating order in its discussion and finding portion has not devoted even a

single line to discuss the includibility of the value of free supplies in the assessable value for the purpose of granting 67% abatement under the

aforesaid notifications. However, this omission loses its significance considerably as the impugned Order-in-Appeal has discussed this issue.

6. As has been contended by the appellants, in the case Bhayana Builders (supra) it has been held that the value of goods and materials supplied free

of cost by service recipient to the service provider would be outside the taxable value or gross amount charged. This judgment has a direct bearing on

the present case as far as the computation of the impugned demand is concerned. It is evident that at the time of adjudication by the original

adjudicating authority as well as by the Commissioner (Appeals) the said decision of the CESTAT Larger Bench was not available.

7. In view of the law relating the free supplies having now been settled by the CESTAT Larger Bench in the case of Bhayana Builders, it is deemed

appropriate to remand the case to the original adjudicating authority for denovo adjudication. Accordingly we set aside the impugned order and remand

the case to the original adjudicating authority for adjudicating the same afresh in view of, and in accordance with the judgment of CESTAT Larger

Bench in the case of Bhayana Builders (supra) after giving the appellants an opportunity of being heard.

[Dictated & Pronounced in the open Court].

