

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.282 of 2009

(Arising out of OIA-149/2009/STC/LMR/COMMR-A-/AHD passed by Commissioner of Central Excise-AHMEDABAD)

M S Khurana Engineering Ltd

2nd Floor, Msk House, Nr. Jahanvee Restaurant,
Panjarapole Cross Road, Ambawadi,
AHMEDABAD, GUJARAT

.....Appellant

VERSUS

C.S.T.-Service Tax – Ahmedabad

7 Th Floor, Central Excise Bhawan, Nr. Polytechnic
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT- 380015

.....Respondent

APPEARANCE:

Shri Deven Parekh (Sr. Advocate) with Shri Nirav Shah, Adv. for the Appellant
Shri. S.K. Shukla, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10246 /2020

DATE OF HEARING: 07.01.2020
DATE OF DECISION: 24.01.2020

RAJU

This appeal has been filed by M/s. Khurana Engineering Ltd. against demand of Service Tax, Interest and imposition of penalty under section 76 & 78 of the Finance Act, 1994.

2. Learned Counsel for the appellant pointed out that there are two issues involved in the present appeal. The first issue relates to the service tax demand on the value of Free Supply Material supplied to them for the provision of Commercial and Industrial Construction Services rendered by them. He argued that the issue is already settled by Hon'ble Apex Court in the case of BHAYANA BUILDERS PVT. LTD 2018 (10) GSTL 118 (SC). Learned Counsel further pointed out that part of the demand relates to the pure service provided by them on which they had failed to pay Service Tax at the material time.

3. A perusal of the Order-In-Original as well as Order-In-Appeal shows that no segregation has been made on these lines in the findings. The findings are solely in respect of non-inclusion of the value of Free Supply Materials. In fact there are no separate arguments recorded either in Order-In-Original or Order-In-Appeal with respect to the value, other than the value of Free Supply Material, which escaped assessment.

4. In view of above, we find that the orders of the Lower Authorities are not dealing with all the issues. The impugned orders is therefore, set aside and the matter is remanded to the Adjudicating Authority to deal specifically with the charge of Free Supply Materials and the charge relating to value of service which escaped assessment separately. The appeal is allowed by way of remand.

(Pronounced in the open court on 24.01.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul