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The LB answers a vexed question.

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In a landmark order, which is a treatise by itself, replete with judicial jargons, application of various principles of interpretation and analysis of various decisions connected to the issue, the Larger Bench of the Hon'ble Tribunal has held that the value of materials supplied by the service recipient need not be included for the purpose of claiming abatement under construction services by the service provider. The issue was referred to the larger bench, in view of the conflicting decisions in the cases of Cemex Engineers and Jaihind Projects.

The larger bench has held that as per Section 67 of the Finance Act, 1994 the value of taxable service shall be only the "gross amount charged by the service provider". Goods like cement and steel supplied by the service recipient are not for the benefit of the service recipient at all and hence cannot at all constitute "consideration" for the service provider. The fundamental difference between excise valuation and service tax valuation has been beautifully captured by the larger bench. In excise, the attempt is to ascertain the intrinsic value of the goods under assessment and hence the value of certain items supplied by the buyer also are required to be added to the value {Rule 6 of Central Excise (Determination of Price of excisable goods) Rules, 2000}. But, Rule 3 of Service Tax (Determination of Value) Rules, 2006 contemplates only inclusion of "non monetary consideration" of the service provider in the value of taxable service. For example, as a consideration for providing a service, if the service recipient gives a laptop to the service recipient, then the value of laptop shall form part of the value of taxable service. But, the cement and steel supplied by the service recipient, which are used in the construction activity, which is ultimately delivered back to the service recipient is not at all a consideration for the service provider,as observed by the Larger bench.

Now, it has to be seen whether the effect of this ruling can be extended even to the composition scheme under the erstwhile works contract service and also post negative list era.

Under the Works Contract (Composition scheme for payment of service tax) Rules, 2007, service tax was payable @ 2 % (from 01.06.2007 to 28.02.2008) or @ 4% (from 01.03.2008), on the "gross amount charged". An Explanation was added to Rule 3 (1) of the said rules, so as to include the value of all goods, even the goods supplied by the service recipient, with effect from 07.07.2009. Even though the said Rule 3 is a non obstante provision and reads as "notwithstanding anything contained in section 67 of the Act", can the said rule, seek to include something in the value of taxable service, which is beyond the provisions of Section 67? Similar to the dispute before the larger bench, while the preamble part of Rule 3(1) refer to "gross amount charged", the later Explanation seeks to expand it so as to cover the value of free supplies also? Does it not running foul to the ratio now laid down by the larger bench?

After the negative list regime from 01.07.2012, under Rule 2 A (ii) of the Service tax (Determination of Value) Rules, 2006, service tax is payable on a specified percentage of "total amount", depending on the nature of work. The term "total amount" has also been defined to include "fair market value of all goods supplied in or in relation to the execution

of the works contract", which could cover the goods supplied by the service recipient also. It is also curious to note that the said rule is not "notwithstanding the provisions of Section 67"but "subject to the provisions of section 67". So, when the goods supplied by the service recipient cannot form part of the "gross amount charged by the service provider" as held by the larger bench, how the value of such free supplies can be included under Rule 2 A (ii)?

So, more than what it has answered, the LB has given birth to so many other questions!