REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1335-1358 OF 2015

COMMISSIONER OF SERVICE TAX ETC. .....APPELLANT(S)

VERSUS

M/S. BHAYANA BUILDERS (P) LTD. ETC. .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 15865 OF 2017

CIVIL APPEAL NO. 2888 OF 2015

CIVIL APPEAL NO. 7238 OF 2015

CIVIL APPEAL NOS. 3248-3252 OF 2015

CIVIL APPEAL NOS. 2452-2455 OF 2014

CIVIL APPEAL NO. 45 OF 2015

CIVIL APPEAL NO. 1400 OF 2015

CIVIL APPEAL NO. 10206 OF 2017

CIVIL APPEAL NO. 6207 OF 2016

CIVIL APPEAL NOS. 8148-8149 OF 2014

CIVIL APPEAL NO. 7370 OF 2014

CIVIL APPEAL NO. 10027 OF 2014
CIVIL APPEAL NO. 4209 OF 2015

CIVIL APPEAL NO. 1326 OF 2015

CIVIL APPEAL NO. 1647 OF 2015

CIVIL APPEAL NO. 3060 OF 2015

CIVIL APPEAL NO. 2437 OF 2015

CIVIL APPEAL NO. 1888 OF 2015

CIVIL APPEAL NO. 2081 OF 2015

CIVIL APPEAL NOS. 2082-2083 OF 2015

CIVIL APPEAL NO. 4208 OF 2015

CIVIL APPEAL NO. 3247 OF 2015

CIVIL APPEAL NO. 2474 OF 2015

CIVIL APPEAL NO. 5601 OF 2015

CIVIL APPEAL NO. 7038 OF 2015

CIVIL APPEAL NO. 7235 OF 2015

CIVIL APPEAL NO. 7243 OF 2015

CIVIL APPEAL NO. 4970 OF 2016

CIVIL APPEAL NO. 5941 OF 2016

CIVIL APPEAL NO. 8484 OF 2016

CIVIL APPEAL NO. 2338 OF 2018
(ARISING OUT OF DIARY NO. 42349 OF 2016)

CIVIL APPEAL NOS. 5319-5320 OF 2017

CIVIL APPEAL NO. 15485 OF 2017

CIVIL APPEAL NO. 11085 OF 2017

CIVIL APPEAL NO. 10606 OF 2017

CIVIL APPEAL NO. 15570 OF 2017

CIVIL APPEAL NO. 12451 OF 2017

CIVIL APPEAL NO. 11182 OF 2017

CIVIL APPEAL NO. 1430 OF 2015

CIVIL APPEAL NO. 9423 OF 2017

A N D

CIVIL APPEAL NO. 10611 OF 2017

J U D G M E N T

A.K. SIKRI, J.

Delay condoned in Diary No. 42349 of 2016.

2) The respondents herein are engaged in the business of construction and, in the process, providing the services known as 'Commercial or Industrial Construction Service'. This service is exigible to service tax as per the provisions of Section 65(105)(zzq) of the Finance Act, 1994 (hereinafter referred to as the 'Act'). The assessees accept that they are covered thereby and, therefore, are paying service tax as well. The dispute, however,

is with regard to the valuation of taxable service provided by them. Under Section 67 of the Act deals with such a valuation.

3) It is a matter of common knowledge that for undertaking construction projects, the assessees not only render services, lot of materials/goods are also used in the construction of building or civil structure etc. For valuation of taxable services, the material/goods element has to be excluded. In order to make the things easier for the assessees as well as the Assessing Officers (AOs), the Government issued the Notification No. 15/2004-ST dated September 10, 2004 as per which service tax is to be calculated on the value which is equivalent to 33% of the gross amount charged from any person by such commercial concern for providing the taxable service. This notification was amended vide another Notification No. 4/2005-ST dated March 01, 2005 whereby an explanation was added to the original notification. This explanation mentions that the 'gross amount charged' shall include the value of goods and material supplied and provided or used by the provider of construction services for providing such service. It is made optional for the assessees to take advantage of the aforesaid notification and get the value calculated as per the aforesaid formula provided therein. The assessees have

availed the benefit and paid the service tax @33% of the gross amount which they have charged from the persons for whom construction was carried out, i.e., the service recipients. It so happened that in all these cases where the construction projects were undertaken by the assessees, some of the goods/materials (particularly, steel and cement) were supplied or provided by the service recipients. As these materials were to be utilised in the projects meant for service recipients themselves, obviously, no costs thereof was charged from the assessees. The Department wants that value of such goods/materials even when supplied or provided free should be included, while calculating the "gross value" and 33% thereof be treated as value for the purpose of levying service tax.

4) The question, therefore, which has fallen for consideration is as to whether, the value of goods/material supplied or provided free of cost by a service recipient and used for providing the taxable service of construction or industrial complex, is to be included in computation of gross amount (charged by the service provider), for valuation of the taxable service, under Section 67 of the Act and for availing the benefits under Notification No. 15/2004-ST dated September 10, 2004 as amended by Notification No.

4/2005-ST dated March 01, 2005 (whereby an Explanation was added to Notification No. 15/2004-ST).

5) We may mention here that different benches of the Customs, Excise and Service Tax Appellate Tribunal (for short 'CESTAT') had given conflicting views on the aforesaid question and, therefore, the matter was referred to the Larger Bench which has, by impugned judgment dated September 6, 2013 rendered in a batch of matters, has decided the issue in favour of the assessees by holding that the value of the goods/materials cannot be added for the purpose of aforesaid notification dated September 10, 2004, as amended by notification dated March 01, 2005. It is the said judgment of the Larger Bench dated September 6, 2013, correctness whereof is the subject matter of present appeals.

6) For answering the question, it would be necessary to refer to the relevant provisions of the Act and the Notifications, which are as under:

As mentioned above, 'commercial or industrial construction service' is a taxable service enumerated under Section 65(105)(zzq) of the Act. Section 65(25b) of the Act defines construction or industrial construction service to mean:

(a) construction of a new building or a civil structure or a part thereof; or

(b) construction of pipeline or conduit; or

(c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and meal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or

(d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,

which is-

(i) used, or to be used, primarily for; or

(ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;"

7) Section 67 of the Act deals with valuation of taxable services. This Section was amended w.e.f. April 18, 2006. Unamended provision reads as under:

> "67. *Valuation of taxable services for charging service tax.*-For the purposes of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service provided or to be provided by him.
>
> *Explanation 1*.-For the removal of doubts, it is hereby declared that the value of a taxable service, as the

case may be, includes,-

(a) the aggregate of commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;

(b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

(c) the amount of premium charged by the insurer from the policy holder;

(d) the commission received by the air travel agent from the airline;

(e) the commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

(f) the reimbursement received by the authorised service station from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer; and

(g) the commission or any amount received by the rail travel agent from the Railways or the customer,

but does not include-

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;

(ii) the cost of unexposed photography film, unrecorded magnetic tape or such other storage devices, if any, sold to the client during the course of providing the service;

(iii) the cost of parts or accessories, or consumable such as lubricants and coolants, if any, sold to the customer during the course of service or repair of motor cars, light motor vehicle or two wheeled motor

vehicles;

(iv) the airfare collected by air travel agent in respect of service provided by him;

(v) the rail fare collected by rail travel agent in respect of service provided by him;

(vi) the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service;

(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loans.

Explanation 2.-Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.

Explanation 3.-For the removal of doubts, it is hereby declared that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service."

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, bet he amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is

inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.- For the purposes of this section.

(a) "consideration" includes any amount that is payable for the taxable services provided or to be provided;

(b)"money" includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) "gross amount charges" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called 'suspense account' or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]"

8) After the amendment, Section 67 of the Act is as follows:

Section 67. Valuation of taxable services for charging service tax

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,-

(i) in a case where the provision of service is for a

consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed

Explanation.-For the purposes of this section,-

[(a) “consideration” includes-

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the

> difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.]
>
> (c) "gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [2][book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]"

9) Exemption Notifications:

(a) Notification No. 12/2003-ST dated June 26, 2003, issued by the Central Government, exercising powers under Section 93(1) of the Act exempted the value of goods and materials sold by a service provider to a recipient of service from the tax leviable thereon, subject to documentary proof specifically indicating the value of such goods and material. This notification was specified to come into force w.e.f. July 01, 2013.

(b) By Notification No. 15/2004-ST dated September 10, 2004, a further exemption was granted in respect of taxable service provided by a commercial concern to any person in relation to construction service. This Notification reads:

> "In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a commercial concern to any person, in relation to construction

> service, from so much of the service tax leviable thereon under Section 66 of the said Act, as is in excess of the service tax calculated on a value which is equivalent to thirty-three per cent of the gross amount charged from any person by such commercial concern for providing the said taxable service"
>
> Provided that this exemption shall not apply in such cases where-
>
> (i) the credit of duty paid on inputs or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2004;
>
> or
>
> (ii) the commercial concern has availed the benefit under the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503(E), dated the 20th June, 2003]."

(c) Notification No. 4/2005-ST was issued on March 01, 2005, introducing an Explanation at the end of Notification No. 15/2004-ST. This Explanation reads:

> "Explanation. – For the purposes of this notification, the "gross amount charged" shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service."

10) We may also note at this stage that the Board has also issued the Circular dated September 17, 2004 clarifying the scope of these services. In para 13.5 thereof, reasons for issuing the exemption notifications were given. This para reads as under:

> "13.5 The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider

> can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents. Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-S.T.) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. (Refer Notification No. 15/2004-S.T. dated 10-9-2004). This would, however, be optional subject to the condition that no credit of input goods, capital goods and no benefit (under Notification No. 12/2003-S.T.) of exemption towards cost of goods are availed."

11) As already pointed out in the beginning, all these assessees are covered by Section 65(25b) of the Act as they are rendering 'construction or industrial construction service', which is a taxable service as per the provisions of Section 65(105)(zzq) of the Act. The entire dispute relates to the valuation that has to be arrived at in respect of taxable services rendered by the assessees. More precisely, the issue is as to whether the value of goods/materials supplied or provided free of cost by a service recipient and used for providing the taxable service of construction or industrial complex, is to be included in computation of gross amount charged by the service provider, for valuation of taxable service. For valuation of taxable service, provision is made in Section 67

of the Act which enumerates that it would be 'the gross amount charged by the service provider for such service provided or to be provided by him'. Whether the value of materials/goods supplied free of cost by the service recipient to the service provider/assessee is to be included to arrive at the 'gross amount', or not is the poser. On this aspect, there is no difference in amended Section 67 from unamended Section 67 of the Act and the parties were at *ad idem* to this extent.

12) On a reading of the above definition, it is clear that both prior and after amendment, the value on which service tax is payable has to satisfy the following ingredients:

a. Service tax is payable on the gross amount charged:- the words "gross amount" only refers to the entire contract value between the service provider and the service recipient. The word "gross" is only meant to indicate that it is the total amount charged without deduction of any expenses. Merely by use of the word "gross" the Department does not get any jurisdiction to go beyond the contract value to arrive at the value of taxable services. Further, by the use of the word "charged", it is clear that the same refers to the amount

billed by the service provider to the service receiver. Therefore, in terms of Section 67, unless an amount is charged by the service provider to the service recipient, it does not enter into the equation for determining the value on which service tax is payable.

b. The amount charged should be for "for such service provided": Section 67 clearly indicates that the gross amount charged by the service provider has to be for the service provided. Therefore, it is not any amount charged which can become the basis of value on which service tax becomes payable but the amount charged has to be necessarily a consideration for the service provided which is taxable under the Act. By using the words "for such service provided" the Act has provided for a nexus between the amount charged and the service provided. Therefore, any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67. The cost of free supply goods provided by the service recipient to the service provider is neither an amount "charged" by the

service provider nor can it be regarded as a consideration for the service provided by the service provider. In fact, it has no nexus whatsoever with the taxable services for which value is sought to be determined"

13) A plain meaning of the expression 'the gross amount charged by the service provider for such service provided or to be provided by him' would lead to the obvious conclusion that the value of goods/material that is provided by the service recipient free of charge is not to be included while arriving at the 'gross amount' simply, because of the reason that no price is charged by the assessee/service provider from the service recipient in respect of such goods/materials. This further gets strengthened from the words 'for such service provided or to be provided' by the service provider/assessee. Again, obviously, in respect of the goods/materials supplied by the service recipient, no service is provided by the assessee/service provider. Explanation 3 to sub-section (1) of Section 67 removes any doubt by clarifying that the gross amount charged for the taxable service shall include the amount received towards the taxable service before, during or after provision of such service, implying thereby that where no

amount is charged that has not to be included in respect of such materials/goods which are supplied by the service recipient, naturally, no amount is received by the service provider/assessee. Though, sub-section (4) of Section 67 states that the value shall be determined in such manner as may be prescribed, however, it is subject to the provisions of sub-sections (1), (2) and (3). Moreover, no such manner is prescribed which includes the value of free goods/material supplied by the service recipient for determination of the gross value.

14) We may note at this stage that Explanation (c) to sub-section (4) was relied upon by the learned counsel for the Revenue to buttress the stand taken by the Revenue and we again reproduce the said Explanation hereinbelow in order to understand the contention:

> (c) "gross amount charges" includes payment by cheque, credit card, deduction from account and <u>any form of payment</u> by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called 'suspense account' or <u>by any other name</u>, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]" *[emphasis supplied]*

15) It was argued that payment received in 'any form' and 'any amount credited or debited, as the case may be...' is to be

included for the purposes of arriving at gross amount charges and is leviable to pay service tax. On that basis, it was sought to argue that the value of goods/materials supplied free is a form of payment and, therefore, should be added. We fail to understand the logic behind the aforesaid argument. A plain reading of Explanation (c) which makes the 'gross amount charges' inclusive of certain other payments would make it clear that the purpose is to include other modes of payments, in whatever form received; be it through cheque, credit card, deduction from account etc. It is in that hue, the provisions mentions that any form of payment by issue of credit notes or debit notes and book adjustment is also to be included. Therefore, the words 'in any form of payment' are by means of issue of credit notes or debit notes and book adjustment. With the supply of free goods/materials by the service recipient, no case is made out that any credit notes or debit notes were issued or any book adjustments were made. Likewise, the words, 'any amount credited or debited, as the case may be', to any account whether called 'suspense account or by any other name, in the books of accounts of a person liable to pay service tax' would not include the value of the goods supplied free as no amount was credited or debited in any account. In fact, this last portion is related to the debit or credit of the account

of an associate enterprise and, therefore, takes care of those amounts which are received by the associated enterprise for the services rendered by the service provider.

16) In fact, the definition of “gross amount charged” given in Explanation (c) to Section 67 only provides for the modes of the payment or book adjustments by which the consideration can be discharged by the service recipient to the service provider. It does not expand the meaning of the term “gross amount charged” to enable the Department to ignore the contract value or the amount actually charged by the service provider to the service recipient for the service rendered. The fact that it is an inclusive definition and may not be exhaustive also does not lead to the conclusion that the contract value can be ignored and the value of free supply goods can be added over and above the contract value to arrive at the value of taxable services. The value of taxable services cannot be dependent on the value of goods supplied free of cost by the service recipient. The service recipient can use any quality of goods and the value of such goods can vary significantly. Such a value, has no bearing on the value of services provided by the service recipient. Thus, on first principle itself, a value which is not part of the contract between

the service provider and the service recipient has no relevance in the determination of the value of taxable services provided by the service provider.

17) Faced with the aforesaid situation, the argument of the learned counsel for the Revenue was that in case the assessees did not want to include the value of goods/materials supplied free of cost by the service recipient, they were not entitled to the benefit of notification dated September 10, 2004 read with notification dated March 01, 2005. It was argued that since building construction contract is a composite contract of providing services as well as supply of goods, the said notifications were issued for the convenience of the assessees. According to the Revenue, the purpose was to bifurcate the component of goods and services into 67%:33% and to provide a ready formula for payment of service tax on 33% of the gross amount. It was submitted that this percentage of 33% attributing to service element was prescribed keeping in view that in the entire construction project, roughly 67% comprises the cost of material and 33% is the value of services. However, this figure of 67% was arrived at keeping in mind the totality of goods and materials that are used in a construction project. Therefore, it was incumbent upon the

assessees to include the value of goods/material supplied free of cost by the service recipient as well otherwise it would create imbalance and disturb the analogy that is kept in mind while issuing the said notifications and in such a situation, the AO can deny the benefit of aforesaid notifications. This argument may look to be attractive in the first blush but on the reading of the notifications as a whole, to our mind, it is not a valid argument.

18) In the first instance, no material is produced before us to justify that aforesaid basis of the formula was adopted while issuing the notification. In the absence of any such material, it would be anybody's guess as to what went in the mind of the Central Government in issuing these notifications and prescribing the service tax to be calculated on a value which is equivalent to 33% of the gross amount. Secondly, the language itself demolishes the argument of the learned counsel for the Revenue as it says '33% of the gross amount '**charged**' from any person by such commercial concern for providing the said taxable service'. According to these notifications, service tax is to be calculated on a value which is 33% of the gross amount that is charged from the service recipient. Obviously, no amount is charged (and it could not be) by the service provider in respect of goods or

materials which are supplied by the service recipient. It also makes it clear that valuation of gross amount has a causal connection with the amount that is charged by the service provider as that becomes the element of 'taxable service'. Thirdly, even when the explanation was added vide notification dated March 01, 2005, it only explained that the gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of construction service. Thus, though it took care of the value of goods and materials supplied by the service provider/assessee by including value of such goods and materials for the purpose of arriving at gross amount charged, it did not deal with any eventuality whereby value of goods and material supplied or provided by the service recipient were also to be included in arriving at gross amount 'gross amount charged'.

19) Matter can be looked into from another angle as well. In the case of ***Commissioner, Central Excise and Customs, Kerala*** v. ***M/s. Larsen & Toubro Ltd.***[1] This Court was concerned with exemption notifications which were issued in respect of 'taxable services' covered by sub-clause (zzq) of clause (105) read with clause (25b) and sub-clause (zzzh) of clause (105) read with

1 (2016) 1 SCC 170

clause (30a) and (91a) of Section 65 of Chapter V of the Act. This Court in the aforesaid judgment in respect of five 'taxable services' [viz. Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh)] has held as under:

> "23. A close look at the Finance Act, 1994 would show that the fixed taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines 'taxable service' as 'any service provided'.

Further, while referring to exemption notifications, it observed:

> "42. …Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise."

It is clear from the above that the service tax is to be levied in respect of 'taxable services' and for the purpose of arriving at 33% of the gross amount charged, unless value of some goods/materials is specifically included by the Legislature, that cannot be added.

20) It is to be borne in mind that the notifications in questions are exemption notifications which have been issued under Section 93 of the Act. As per Section 93, the Central Government is empowered to grant exemption from the levy of service tax either wholly or partially, which is leviable on any 'taxable service'

defined in any of sub-clauses of clause (105) of Section 65. Thus, exemption under Section 93 can only be granted in respect of those activities which the Parliament is competent to levy service tax and covered by sub-clause (zzq) of clause (105) and sub-clause (zzzh) of clause (105) of Section 65 of Chapter V of the Act under which such notifications were issued.

21) For the aforesaid reasons, we find ourselves in agreement with the view taken by the Full Bench of CESTAT in the impugned judgment dated September 6, 2013 and dismiss these appeals of the Revenue.

22) Insofar as Civil Appeal No. 3247 of 2015 is concerned, where the assessee is Gurmehar Construction, it may additionally be noted (as pointed out by the learned counsel for the respondent) that the assessee was a sole proprietorship concern of Mr. Narender Singh Atwal, who died on February 24, 2014. This is so stated in the counter affidavit filed by the respondent on May 16, 2017 and this position has not been disputed by the Department. This appeal, in any case, has abated as well in view of the judgment of this Court in ***Shabina Abraham & Ors.*** v. ***Collector of Central Excise & Customs***[2]

2 (2015) 10 SCC 770

23) As a result, all appeals stand dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
FEBRUARY 19, 2018.