IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

C.E.Appeal.No. 27 of 2015 ()

AGAINST THE FINAL ORDER NO.21827/2015 DATED 03.09.2015 IN APPEAL NO.ST 21734/2014-DB PASSED BY CUSTOMS,EXCISE&SERVICE TAX APP.TRIBUNAL,BANGALORE

APPELLANT(S):/APPELLANT

B.SASIKUMAR
ASTHITHALAYAM, ERAVIPURAM P.O., KOLLAM
PIN-691 011.

BY ADVS.SRI.G.JAYAPRAKASH
SMT.MANJU RAJAN
SMT.P.V.REMA

RESPONDENT(S):/RESPONDENT

THE COMMISSIONER OF CENTRAL EXCISE,
CUSTOMS AND SERVICE TAX,
ICE BHAVAN, PRESS CLUB ROAD
THIRUVANANTHAPURAM-695 001.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SR.SC,CBEX

THIS CENTRAL EXICISE APPEAL HAVING COME UP FOR ADMISSION ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CEA 27/15

## APPENDIX

**APPELLANT'S EXHIBITS**

ANNEXURE-A : COPY OF SHOW CAUSE NOTICE NO.34/2011 ST ADJN DATED 03.08.2011 ISSUED BY THE ASSISTANT COMMISSIONER OF CEX CUS & ST, KOLLAM TO THE APPELLANT.

ANNEXURE-B : COPY OF REPLY DATED 31.10.2011 ISSUED BY APPELLANT TO THE SHOW CUASE NOTICE.

ANNEXURE-C : COPY OF ORDER IN ORIGINAL NO.24/2012 ST ADJN DATED 30.07.2012 PASSED BY ASSISTANT COMMISSIONER, CEX, CUS & ST, KOLLAM.

ANNEXURE-D : COPY OF APPEAL NO.106A/ST/TVM/2012 FILED BY APPELLANT BEFORE THE COMMISSIONER (APPEALS), KOCHI.

ANNEXURE-E : COPY OF ORDER IN APPEAL NO.140/2014-ST DATED 26.02.2014.

ANNEXURE-F : COPY OF APPEAL NO.ST/21734/14-DB DATED 14.05.2014 FILED BY THE APPELLANT BEFORE THE CESTAT, BANGALORE.

ANNEXURE-G : COPY OF STAY APPLICATION NO.ST/STAY/21919/2014 IN APPEAL NO.ST/21734/2014 DB FILED BY THE APPELLANT.

ANNEXURE-H : COPY OF ADDITIONAL SUBMISSIONS DATED 14.10.2014 FILED BY THE APPELLANT.

ANNEXURE-I : COPY OF STAY ORDER NO.21114/2015 DATED 16.07.2015 PASSED BY CESTAT, BANGALORE.

ANNEXURE-J : COPY OF ORDER NO.21827/2015 IN APPEAL NO.ST 21734/2014-DB DATED 03.09.2015 PASSED BY THE CESTAT, BANGALORE.

ANNEXURE-K : COPY OF RELEVANT CLAUSE OF FINANCE BILL (NO.2) 2014.

//TRUE COPY//

PA TO JUDGE.

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THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

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C.E.Appeal No.27 of 2015

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Dated this the 8th day of December, 2015.

## JUDGMENT

Thottathil B.Radhakrishnan, J.

1. We have heard the learned counsel for the appellant and the learned Senior Standing Counsel for the Department of Central Excise and Customs.

2. We think that it is unnecessary for us to state elaborately on the issues arising for decision and on the facts of the case. This is because one of the fundamental issues relates to the question of severability of the different components of a works contract, if permissible in law. It is pointed out by the learned counsel for the appellant that the issue is covered in favour of his client as per the judgment of the Apex Court in Commissioner of C.Ex. & Cus., Kerala v. Larsen & Toubro Ltd. [2015 (39) STR 913 (SC)]. The learned Senior Standing Counsel for the Department points out that the said issue may have a bearing only as regards one

particular financial year and that it will be worthwhile to remit the matter for re-consideration. We, accordingly, accede to the request of the learned counsel on both sides that the matter may be remitted to the original authority for re-consideration of the different aspects and issues in relation to the different years covered by the impugned orders, in the light of the aforenoted precedent and any other issue that may arise for decision at that end. Without entering on merits, including on the applicability of the aforenoted precedent, the impugned orders are vacated and the matter is remitted for re-consideration by the authority at the first instance, namely, the Assistant Commissioner of Central Excise, Customs and Service Tax, Kollam Division. The appellant is directed to mark appearance before that Office on 29.12.2015, so that appropriate date of hearing can be fixed by that authority. This appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

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