<u>THE HON'BLE SRI JUSTICE G. CHANDRAIAH</u>

<u>AND</u>

<u>THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM</u>

<u>C.E.A No. 73 of 2015</u>

<u>ORDER</u>:- (per Hon'ble Sri Justice G. Chandraiah)

This appeal, at the instance of Revenue, is directed against the order dated 14.10.2014 passed by CESTAT, South Zonal Bench, Bangalore, in ST/27227/2013-DB. The substantial questions of law raised are as under:

> **"a) Whether the CESTAT is vested with powers to set aside any Order-in-Original without finding any infirmity in such Order-in-Original?**
>
> **b) Whether the CESTAT can set aside any Order in Original and remand back the matter for de-novo adjudication without giving any directions as mandated in Section 35C(1) of the Central Excise Act, 1944 made applicable to the Service Tax Under Section 83 of the Finance Act, 1994.**
>
> **c) Whether CESTAT can set aside any Order in Original without recording its reasons for disagreeing with the findings recorded by the Commissioner even though there is judicial pronouncement to support the same."**

2. Learned counsel for the appellant/Department submits that the Tribunal has not recorded any reason for setting aside the order dated 25.03.2013 and remanding the matter to the original adjudicating authority.

3. A perusal of the impugned order reveals that the Tribunal, while examining the order dated 25.03.2013 passed by the Commissioner, found that the case of the appellant/Department was that the assessee was paying service tax under 'Commercial or Industrial Construction Service' even before June 2007 and for the same activity which continued after 01.06.2007, the assessee continued to pay service tax under the same service head. The Department has taken a stand that the assessee should have paid service tax under the Works Contract Service and neither composition benefit nor abatement has been allowed to the assessee. The Tribunal found that the Department itself had taken a view that after 01.06.2007, if tax was being paid under a different head earlier and the same project continued thereafter, there was no need to change the

classification; and that being the position, it can be said that the assessee has made out a prima facie case for waiver, and as several issues were involved which require detailed consideration by the Commissioner, the Tribunal thought it fit to remand the matter. It was also stated that in respect of demand for more than Rs.3.78 crores, activity was undertaken for the Ministry of Defence and therefore it cannot be said that the project was undertaken for commerce or industry. In respect of all the services undertaken for Defence Ministry, whether the service tax could not be demanded on the ground that the activity was not for commerce or industry also requires a more detailed consideration.

4. In that view of the matter, it cannot be said that no reasons were recorded by the Tribunal for setting aside the impugned order therein and remanding the order back to the original adjudicating authority. Hence, we find no grounds to entertain the appeal.

5. The appeal is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

02nd July, 2015

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HON'BLE SRI JUSTICE G. CHANDRAIAH

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<u>C.E.A. No. 73 of 2015</u>

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