HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CENTRAL EXCISE APPEAL NO.28 OF 2015

DATED:22.4.2015

Between:

The Commissioner of Customs,

Central Excise & Service Tax,

P.B. No.331, C.R. Buildings

Kannavari Thota

Guntur – 522 004

… Appellant

And

M/s. Kalyani Engineering Enterprises

Door No.39-9-43/44

S.V.S. Temple Street

Vijayawada – 520010

Krishna District … Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

CENTRAL EXCISE APPEAL NO.28 OF 2015

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JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted against the judgment and order of the learned Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, dated 10.6.2014, on the following suggested questions of law:

a. *Whether the Hon'ble Tribunal is correct in rejecting the appeal blatantly setting aside the entire confirmation of demand without going into merits of the case including issue of leviability of Service Tax on the services rendered by the respondent?*

b. *Whether the Hon'ble CESTAT, Bangalore, should have remanded back the matter to the Original Adjudicating authority for examining the matter afresh as the tax was actually due from the respondent and there was in fact a valid demand issued in time?*

c. *The respondent should have been asked to pay the service tax in the appropriate taxable category of Finance Act, 1994, for the services they are providing for which the demands are already raised in time?*

The learned Tribunal has examined the judgment and order of the Commissioner and found factually that the Commissioner has traveled beyond the scope of the show cause notice and has failed to appreciate the facts in proper perspective and allowed the appeal.

We have seen the Order of the Commissioner and indeed we find that the Commissioner has traveled beyond the scope of the show cause notice. The show cause notice relates to the issue whether the work done by the assessee falls under the definition 'Commercial or Industrial Construction Service' basing on the facts and circumstances of the case. In the order of the Commissioner the aforesaid issue does not find place. Therefore, we do not find any element of law to be decided in this appeal.

The appeal is accordingly dismissed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

22.4.2015

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