

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No. 43979 of 2016

ORDER: (*Per VRS,J*)

Aggrieved by an order of adjudication passed by the Commissioner of Central Excise, demanding service tax together with interest and penalty, the assessee has come up with the present writ petition.

2. Heard Mr. Joseph Prabhakar, learned counsel for the petitioner.

3. The main ground, on which the petitioner has come up with the above writ petition, is that their case is covered by Section 65B(54) of the Finance Act, and that what they did was only a works contract. But, while taking a statement from the Managing Director, the adjudicating authority went beyond the purview of his powers and extracted wrong answers by framing a wrong question of law, in relation to the interpretation to be given to Section 65B(44) and that, therefore, the order is vitiated.

4. But, the fact remains that in the entire order in original, the provisions of Section 65B (44) are correctly understood and

interpreted. Whether they were applied correctly to the facts of the case or not, is a matter which the petitioner should adjudicate only before the appellate authority.

5. There are only two contingencies, in which this Court will allow an assessee to bypass the alternative remedy of appeal, namely, (a) total violation of principles of natural justice, and (b) total lack of jurisdiction. The case on hand does not fall under either of these two contingencies, to warrant interference, bypassing the alternative remedy of appeal.

6. Therefore, the Writ Petition is dismissed. The registry is directed to return the original impugned order. Since the time limit for filing an appeal would have just expired, the Tribunal may consider the question of condonation of delay if any, favourably to the petitioner.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

A.V. SESA SAI, J.

19th December, 2016
cbs



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