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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **SERTA 4/2016 & CM No. 2350/2016**

AHLUWALIA CONSTRUCTION GROUP ..... Appellant
Through: Mr. S. Sunil, Advocate.

versus

COMMISSIONER OF SERVICE TAX, DELHI-I, ... Respondent
Through: Mr. Satish Kumar, Senior Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **22.01.2016**

1. This is an appeal filed by the Ahluwalia Construction Group against an order dated 9th November, 2015 passed by the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') requiring the Appellant to deposit Rs.1.75 crores as pre-deposit and report compliance by 20th January, 2016.

2. At the outset, it is pointed out by the counsel for the Appellant that in the impugned order the CESTAT has set out only two contentions of the Appellant. The CESTAT has, however, not noted that inasmuch as the service tax demand is for a period subsequent to 2007 the demand under the head 'construction service' was in contravention of the circular dated 24th

August, 2010 issued by the Central Board of Excise and Customs clarifying that the activity had to be treated as a works contract. It is pointed out that the above jurisdictional issue of the exigibility of the works contract executed by the Petitioner to service tax by wrongly classifying it as 'construction service', despite having been specifically urged by the Appellant before it, has not been taken note of by the CESTAT. It is pointed out that a further contention raised, but not considered by the CESTAT, is that in the light of the judgment of the Supreme Court in the ***Commissioner of Central Excise & Customs, Kerala v. Larsen & Turbo Ltd. 2015 (2) SCC 461*** a distinction had to be drawn between the value of goods supplied as part of the works contract and the value of the services rendered for the purposes of service tax.

3. The Court notices that in a similar appeal before this Court by an entity of the Appellant Group, this Court by an order dated 12th October, 2015 in Service Tax Appeal No.1/2015 noted a similar contention and remanded the matter to the CESTAT for consideration of the Appellant's application for waiver of the pre-deposit afresh in accordance with law.

4. In view of the fact that the above contentions have not been considered by

the CESTAT when it passed the impugned order, the Court sets aside the impugned order dated 9th November 2015 and revives the stay application filed by the Appellant before the CESTAT for a fresh decision in accordance with law.

5. The appeal as well as the pending application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 22, 2016
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