$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
5.
\+ **SERTA 3/2016**

NATIONAL BUILDING CONSTRUCTION CORPORATION LIMITED ..... Appellant
Through: Mr.J.K. Mittal, Advocate with Mr. Rajveer Singh, Advocate.

versus

COMMISSIONER, SERVICE TAX COMMISSIONERATE, NEW DELHI ..... Respondent
Through: Mr. Rahul Kaushik, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **22.01.2016**

CM APPL No. 2159 of 2016(exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CM APPL No. 2158 of 2016(delay)

3. For the reasons stated in the application, the delay in filing the appeal is condoned.

4. The application is disposed of.

SERTA 3 of 2016 & CM No. 2157 of 2016

5. The challenge in this appeal is to the order dated 6th April 2015 passed by the Customs Excise and Service Tax Appellate Tribunal (‘CESTAT’), by which the refund application filed by the Appellant was remitted to the adjudicating authority with certain directions to decide that application afresh.

6. Pursuant to the impugned order, the Assistant Commissioner, Service Tax passed an Order-In-Original dated 30th November 2015 rejecting the refund application primarily on the ground that the Appellant was not able to satisfy the said authority that it has not passed on the burden of service tax. Accordingly, the amount claimed as refund was directed to be transferred to the Consumer Welfare Fund in terms of Section 11B of the Central Excise Act,1944 (‘Act’).

7. It is stated by Mr. J.K. Mittal, learned counsel for the Appellant that the Appellant would be filing an appeal against the aforementioned order dated 30th November 2015 passed by the Assistant Commissioner, Service Tax.

8. The first grievance of the Appellant is that, the Appellant being a Public Sector Undertaking (‘PSU’) is a ‘State’ and therefore is outside the purview of Section 11B of the Act. The second grievance is that despite adequate

documents and materials having been placed on record to show that the service tax was paid by mistake by the Appellant on its own and was not passed on to any other person, its refund claim was wrongly rejected. The third issue is with regard to the entitlement of the Appellant to interest on the amount of refund.

9. The Court is of the considered view that instead of there being parallel proceedings on the question of entitlement of the Appellant to refund, the better course would be to permit the Appellant to raise the aforesaid three issues, apart from other issues it may want to raise, in the appeal to be filed by it against the order dated 30th November 2015.

10. In any event, on the second issue raised by the Appellant, the Appellate Authority will have to examine the documents and materials placed on record by the Appellant and come to a conclusion on merits.

11. Accordingly, the Court permits the Appellant to raise the aforesaid three issues, apart from other issues it may want to raise, in the appeal to be filed by it against the order dated 30th November 2015.

12. Considering that the Appellant's application for refund has been pending

for quite some time, and with the Appellant having already approached this Court once earlier, the Court directs that the appeal to be filed by the Appellant be disposed of by the Commissioner Appeals within a period of three months from the date of registration of such appeal.

13. The appeal and the application are accordingly disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 22, 2016
mg