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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **SERTA 13/2016 & CM 17159/2016**

FARHAT CONSTRUCTION ..... Appellant

Through: Mr. J.L. Joel, Advocate with Mr. K.N. Jayasankar, Advocate.

versus

COMMISSIONER, CENTRAL EXCISE AND SERVICE TAX, RAIPUR ..... Respondent

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% **27.07.2016**

1. This is an appeal by an Assessee under Section 35G of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 against an order dated 15th September 2015 passed by the Customs Excise and Service Tax Appellate Tribunal ('CESTAT') the Appellant was asked to pay the pre-deposit an amount of Rs. 40 lakhs within a period of eight weeks and the appeal was posted for compliance on 1st December, 2015, 14th January 2016 and 9th February, 2016 failing which the appeal before the CESTAT would stand dismissed. The appeal was directed against an order dated 27th January 2014 of the Commissioner, Central Excise and Service Tax, Bhilai, Chhattisgarh.

2. At the first hearing of this appeal on 9th May 2016 this Court asked the learned counsel for the Appellant to satisfy it about the maintainability of the appeal since both the Appellant as well as the Respondent were located in Chhattisgarh. Learned counsel for the Appellant sought tie for that purpose and the appeal was adjourned to 20th May 2016.

3. On 20th May 2016, the Court passed an order, the relevant portion of which reads thus:

> "4. In support of the plea that this appeal is maintainable in this Court, learned counsel for the Appellant seeks to place reliance on the decision of the Supreme Court in *Canon Steels P. Ltd. v. Commissioner of Customs 2007* (123) *ECC page* 1. Mr Satish Kumar, learned Senior Standing counsel for the Respondent on the other hand places reliance on another decision of the Supreme Court in *Ambica Industries v. Commissioner of Central Excise 2007* (5) *TMI* 21. He further states that he need some time to undertake research on the question of maintainability."

4. Today, learned counsel for the Appellant sought to place reliance on the decision of a five-Judges Bench of this Court in ***Sterling Agro Industries Ltd. v. Union of India 181(2011) DLT 658 (FB)***. In the said decision, *inter alia,* it has been held in the context of Article 226 of the Constitution in para 33 as under:

> "(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens.*

> (d) The conclusion that where the appellate or revisional authority is located constitutes the place of *forum conveniens* as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question."

5. As far as the present appeal is concerned, the learned counsel for the Appellant is unable to convince the Court why the Appellant, which is located in Bhilai in Chhattisgarh, and with the order in adjudication having been passed by the Respondent i.e. the Commissioner Service Tax at Raipur in Chhattisgarh, is precluded from filing an appeal before the High Court at Chhattisgarh against the order of the CESTAT.

6. Consequently, the Court declines to exercise its jurisdiction to entertain the present appeal. The Appellant is at liberty to approach the appropriate Court to avail the remedy available to it in accordance with law.

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

S. MURALIDHAR, J

NAJMI WAZIRI, J

JULY 27, 2016
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