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

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\+ **SERTA 9/2016**

AHLUWALIA CONSTRUCTION GROUP ..... Appellant

Through: Mr C. Hari Shankar, Senior Advocate with Mr S. Sunil, Advocates.

versus

COMMISSIONER 0F SERVICE TAX, DELHI-I ..... Respondent

Through: Mr Satish Kumar, Senior Standing counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE R. K. GAUBA

<u>O R D E R</u>

% **01.04.2016**

<u>CM No.11997/2016</u>

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

2. The application stands disposed of.

<u>SERTA 9/2016 & CM No.11996/2016</u>

3. This is an appeal filed by the Appellant against order No. SO/52657/2015 dated 28th July, 2015 and Misc. Order No M0/50076/2016-CU (DB) dated 9th February 2016 passed by the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') requiring the Appellant to deposit Rs.1.8 crores as pre-deposit along with proportioned interest failing which the appeal would be dismissed for failure of pre-deposit.

4. At the outset, it is pointed out by Mr C. Hari Shankar, learned Senior Counsel appearing for the Appellant that in the impugned order dated 28th July 2015 the CESTAT has set out only three 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 light of the judgment of the Supreme Court in the ***Commissioner of Central Excise & Customs, Kerala v. Larsen & Tourbo 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.

5. The Court notices that in a similar appeal before this Court by a sister concern of the Appellant, this Court by an order dated 12th October, 2015 in Service Tax Appeal No.1/2015 (***Ahlcons India Pvt Ltd v. Commissioner of Service Tax***) noted a similar contention of the Appellant 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.

6. 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 orders dated 28th July 2015 and 9th February 2016 and revives the stay application filed by the Appellant before the CESTAT for a fresh decision in accordance with law.

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

S. MURALIDHAR, J

R. K. GAUBA, J

APRIL 01, 2016
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