NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 93 of 2017

(Arising out of order dated 02.03.2017 in appeal No.57383 of 2013 passed by the CESTAT)

- M/s Larsen & Toubro Limited Cyber Gateway. B-Block, Wing No.1, First Floor, Madhapur, Hyderabad 500081 **---- Appellant**

Versus

1. Commissioner of Central Excise Office of Commissioner of Central Excise, Commissionerate Central Revenue Buildings Raipur 492001
2. Customs, Excise and Service Tax Appellate Tribunal, New Delhi

---- Respondents

For Appellant	:	Shri Prasoon Agrawal, Advocate
For Respondents	:	Shri Vinay Pandey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

16.11.2017

1) Hearing the learned counsel for the appellant and the learned counsel for the Revenue, we see that the substantial question of law that arises for decision at the present stage of this litigation, having regard to the contents of the impugned order of the CESTAT (Customs Excise and Service Tax Tribunal) is as follows:

> "Did CESTAT act otherwise than in accordance with law by not considering the issue of territorial jurisdiction of the Commissioner, Service Tax, Raipur to pass the order which was the impugned before the Tribunal?"

2) The question of territorial jurisdiction of the Commissioner of the Service Tax, Raipur was pointedly raised before that authority in opposition to the notice. That was an issue which was raised before the CESTAT in the appeal as well. That issue has been left unconsidered.

We are inclined to take the view that such question ought to have been considered by the Tribunal and that cannot be considered by the High Court in this appeal for the first time except to the extent of holding that such question, though duly raised, was not considered either by the Commissioner or CESTAT. We are not inclined to accept the very persuasive submissions on behalf of the Revenue that having regard to the Extant rules and the facts of the case, the question of territorial jurisdiction may be considered by this Court and it could be ultimately held that the objection raised by the appellant to the notice of the Commissioner is unsustainable.

3) We are, therefore, of the view that the impugned order of CESTAT is vitiated for non-consideration of the question of the territorial jurisdiction of the Commissioner, Service Tax, Raipur, as specifically raised in the appeal before CESTAT. This is more particularly because such issue of territorial jurisdiction was raised before the authority of the first instance at the earliest opportunity. The collateral issue based on the doctrine of prejudice has also to be answered in favour of the appellant since non-consideration of the territorial jurisdiction of the Commission at Raipur, inspite of such plea being specifically raised, may foreclose that issue qua the appellant which, it is submitted, has operations elsewhere as well.

4) In the result, this appeal is allowed, answering the formulated question in the affirmative and consequently directing that CESTAT consider the contention of the appellant that the Commissioner, Service Tax, Raipur did not have jurisdiction to pass the order impugned in the appeal before it. Since the different issues and material findings would be

inter-related, we vacate all the findings in the impugned order of the Tribunal paving way for the Tribunal to re-consider all the issues. It is clarified that we have not expressed anything either way on the merits of those issues. The impugned order is accordingly set aside and the appeal filed before the CESTAT is remanded to that authority for consideration *denovo* in terms of the aforestated. Parties are directed to mark appearance in the Tribunal's Office concerned by 11 am on 4th January, 2018.

Sd/-	Sd/-
(Thottathil B. Radhakrishnan)	**(Sharad Kumar Gupta)**
Chief Justice	**Judge**

padma