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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
46.
\+ **SERTA 2/2017**

COMMISSIONER OF SERVICE TAX DELHI-1 ..... Appellant
Through: Mr. Sameer Jain, Standing Counsel.

versus

BIRD TRAVELS PVT. LTD. ..... Respondent
Through: Mr. Mayank Nagi, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

O R D E R
% **22.05.2017**

CM No. 19452/2017 (for exemption)

1. Allowed, subject to all just exceptions.

CM No. 19453/2017 (for condonation of delay of 28 days in re-filing the appeal)

2. For the reasons stated in the application, the delay of 28 days in re-filing the appeal is condoned. The application is disposed of.

CM No. 19451/2017 (for condonation of delay of 42 days in filing the appeal)

3. For the reasons stated in the application, the delay of 42 days in filing the appeal is condoned. The application is disposed of.

4. Mr. Mayank Nagi, learned counsel for the Respondent, points out that the question sought to be urged in the present appeal is one pertaining to classification of the services rendered by the Respondent. It is the case of the Appellant that it is 'business auxiliary services'. The CESTAT has in the impugned order accepted the case of the Respondent Assessee that it is a case of export of services and, therefore, exempt from payment of service tax during the relevant period.

5. This Court by order dated 14th July, 2015 passed in CEAC 4/2015 (***Commissioner of Service Tax v. Amadeus India Pvt. Ltd.***) held that "the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment" would be covered by Section 35 L of the Finance Act, 1994 ('Act') and the appeal in such case from an order of the CESTAT would lie directly to the Supreme Court. The Court in that order referred to its decision in ***Commissioner of Service Tax v. Ernst & Young Private Limited 2014 (34) STR 3 (Del)***.

6. Learned counsel for the Respondent points out that the appeals filed by the Service Tax Department against the decision in ***Ernst & Young Private Limited*** (*supra*) are pending in the Supreme Court.

7. Consequently, the Court dismisses this appeal on the ground of maintainability. It will be open to the Appellant to seek the remedy of an appeal under Section 35L of the Act before the Supreme Court in

accordance with law.

S. MURALIDHAR, J

VINOD GOEL, J

MAY 22, 2017
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