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

\+ **W.P.(C) 5758/2017**

BCC DEVELOPERS AND PROMOTERS ..... Petitioner

Through: Mr. A.R. Madhav Rao & Ms. Pragya Awasthi, Advocates.

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Kavindra Gill, Advocate for UOI/R-1.
Mr. Sanjeev Narula, Senior Standing Counsel, CBEC with Mr. Abhishek Ghai, Advocate.

**CORAM:**
**JUSTICE S.MURALIDHAR**
**JUSTICE PRATHIBA M. SINGH**

**O R D E R**

% **12.07.2017**

**CM Nos. 23979-23980/2017 (Exemptions)**

1. Allowed, subject to just exceptions.

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2. The challenge in this writ petition is to the order dated 6th February, 2017 of the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT') in Service Tax Appeal No. 60299/2013.

3. Mr. A.R. Madhav Rao, learned counsel appearing for the Petitioner, submits that since the CESTAT has failed to notice and deal with the main contention of the Petitioner regarding the applicability of the decision of the Supreme Court in ***Commissioner of Central Excise & Customs, Kerala v. Larsen & Toubro Ltd. 2015 (39) STR 913 (SC)***.

Therefore, this Court should, notwithstanding the fact that the Petitioner has a remedy of a statutory appeal before the Supreme Court under Section 35L of the Central Excise Act, 1944 (CE Act) read with Section 83 of the Finance Act, 1994 (FA), entertain the present writ petition, set aside the impugned order and remand the matter to the CESTAT for a fresh adjudication for considering the above plea of the Petitioner.

4. In support of his above submission, Mr. Rao *inter alia* relies on the decisions in ***Vadilal Gases Ltd. v. Union of India 2016 (332) ELT 625 (Guj.); Foshan Shansui Romantic Ceramics Co. Ltd. v. Union of India 2017 SCC OnLine Del 7886*** and the decision dated 7th April, 2016 in W.P.(C) 2685/2014 (***Samsung India Electronics Private Limited v. Government of NCT of Delhi***).

5. Mr. Sanjeev Narula, learned Senior Standing Counsel appearing for the Respondent objects to the maintainability of the present writ petition by pointing out that the order in the appeal before the CESTAT i.e., the order of the Commissioner (Appeals), did deal with the contention of the Petitioner on merits, viz., that the service rendered by it was a composite which was not amenable to service tax under the category of "works contract services" prior to 1st June, 2007. He submits that there was a factual finding by the Commissioner (Appeals) that the service rendered by the Petitioner could be classified as "commercial or industrial construction services" prior to 1st June, 2007 and was, therefore amenable to service tax. Therefore, according to him, the applicability of the deision in ***Commissioner of Central Excise & Customs, Kerala v. Larsen & Toubro Ltd.*** (*supra*) was a debatable

issue.

6. The Court would not like to comment on the above submissions made by either party on merits. The Court is only concerned at this stage with the question whether it should exercise its extraordinary jurisdiction to entertain the present writ petition challenging an order of the CESTAT passed in an appeal on merits. It is only in exceptional cases that the Court decides to exercise its powers under the writ jurisdiction, notwithstanding that the Petitioner has an efficacious alternate statutory remedy.

7. Having considered the submissions of the learned counsel for the parties and having perused the impugned order of the CESTAT, the Court is not satisfied that this is one such case where it should exercise its extraordinary jurisdiction under Article 226 of the Constitution. Each case turns on its facts. The decisions cited by the learned counsel for the Petitioner are distinguishable on facts.

8. Leaving it open to the Petitioner to canvas all the points urged in the present petition in the statutory appeal that it can file under law, the Court declines to entertain the writ petition.

9. The writ petition is dismissed in the above terms.

**S.MURALIDHAR, J**

**PRATHIBA M. SINGH, J**

**JULY 12, 2017/***b'nesh*