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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **SERTA 12/2019**

M/S. L.R. SHARMA & CO. ..... Appellant
Through: Mr J.K. Mittal, Ms Vandana Mittal and Mr Chetan Uppal, Advocates.

versus

COMMISSIONER OF SERVICE TAX, DELHI ..... Respondent
Through: Mr Harpreet Singh, Senior Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>
% **13.11.2019**

1. Notice in the present appeal was issued on 9th April, 2019, limited to the question of whether the matter ought not be remitted to the Customs Excise Service Tax Appellate Tribunal ('CESTAT'), for a fresh consideration of the appeal before it.

2. The short question before the CESTAT, in the appeal filed by the department before it, was whether the Appellant was liable to pay service tax for the work of shifting and laying of the water pipelines for the Delhi Metro Rail Corporation ('DMRC'), undertaken by it. The contention of the Appellant is that the service tax was sought to be levied by invoking Section 65 (105) (zzd) of the Finance Act, 1994, and that since the contract with the DMRC was a composite contract, the said levy of service tax was bad in law. In support of its submissions, the Appellant relied upon the judgment of

the Supreme Court in the ***Commissioner, Kerala v L&T Ltd. (2016) 1 SSC 170*** and the judgment of this Court in ***Swadeshi Construction Co. v CST, Delhi 2018 (8) G.S.T.L. 228 (Del.)***.

3. It is seen that by the impugned order dated 17th May, 2018, the CESTAT, after earlier having given time to the department to produce copies of the contract, remitted the matter to the Adjudicating Authority ('AA') only on the ground that "the relevant agreements had not been produced for our perusal". Subsequently, by an order dated 25th January, 2019, the CESTAT dismissed an application for rectification of mistake being ROM No.51133 of 2018.

4. Having heard learned counsel for the parties, the Court is of the view that the matter ought to be remanded to the CESTAT for a fresh consideration of the department's appeal. It is pointed out by Mr Mittal, learned counsel for the Appellant that all the relevant documents, including the contract in question, were already produced in the enquiry prior to the issuance of the show cause notice ('SCN') and was already available with the department. Mr Harpreet Singh, learned Senior Standing Counsel appearing for the department, assures the Court that on the date that may be fixed by this Court for appearance of the parties before the CESTAT, the documents relied upon by the department will be produced before the CESTAT. It is pointed out by Mr Mittal that only such documents referred to in the SCN, ought to be permitted to be relied upon by the Department before the CESTAT. It will be open to the Appellant herein to make submissions in this regard before the CESTAT.

5. Since the enquiry in the matter started in 2007, we request the CESTAT to dispose of the appeal at the earliest convenience, and preferably within six months from the date fixed by this Court for listing of the appeal before it for directions.

6. The impugned orders dated 17th May, 2018 and 25th January, 2019 of the CESTAT are accordingly set aside. The appeal of the department being Appeal No.ST/2258/2012 will now be listed before the CESTAT for directions on 2nd December, 2019.

7. The appeal is disposed of in above terms. No costs.

8. *Dasti* under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 13, 2019
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