WA No. 22 of 2015
IN WP(C) No. 245 of 2014

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE
THE HON'BLE MR. JUSTICE S.R. SEN

14.07.2015

Mr K Khan, learned counsel, appears for the appellants.

Mr N Mozika, learned counsel, represents the respondent.

Learned counsel for the respondent prays for and is granted ten days' time to argue the matter. List on 27.07.2015.

JUDGE CHIEF JUSTICE

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WP(C) No. 157/2015

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

<u>14.07.2015</u>

Mr. N Das Gupta, learned counsel, appears for the petitioner.

Mr. R Deb Nath, learned CGC, represents the respondents.

Learned counsel for the petitioner refers to works orders dated 18.02.2009 and 13.10.2009. Vide works order dated 13.10.2009, (para 3.1) the construction price also included all kinds of tax including the service tax. Learned counsel also took us to definition of commercial or industrial construction as provided in Clause (25b) of Section 65 of service tax as contained in Chapter 5 of the Financial Act, 1994, as under:

"(25b)["Commercial or industrial construction"] means –
(a) construction of a new building or a civil structure or a part thereof; or
(b) construction of pipeline or conduit; or
(c) completion and finishing services such as glazing, plastering, painting, floor and wall tilling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction or swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or
(d) repair, alteration, renovation or restoration or, or similar services in relation to, building or civil structure, pipeline or conduit, which is –
(i) used, or to be used, primarily for; or
(ii) occupied, or to be occupied, primarily with; or
(iii) engaged, or to be engaged, primarily in,
commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;]"

It appears from Sub Clause (25b)(d)(iii) that the commercial or industrial construction does not include such services as provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams. Thus prima facie there is a case in favour of the petitioner. Hence, we issue notice.

Mr. R. Deb Nath, learned counsel who is present for the respondents, prays for and is granted 2 (two) weeks' time to file the affidavit in reply. List thereafter, on 28.07.2015.

JUDGE **CHIEF JUSTICE**

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