FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL NO. 28/2014
(MANISH PRABHAKAR GUPTA, M/S PRAYAG TRADERS **VERSUS** THE COMMISSIONER, CUSTOMS, CENTRAL EXCISE AND SERVICE TAX, NAGPUR)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

---

Shri S.N. Kapoor, counsel for the appellant.
Shri Anand Deshpande, counsel for the respondent.

CORAM : B.R. GAVAI AND
MRS. MRIDULA BHATKAR, JJ.

DATE : JANUARY 9, 2015.

The present appeal challenges the order dated 16.12.2013 thereby rejecting the application of the present appellant for modification of the order dated 02.07.2013 and also dismissing the appeal by the learned Customs, Excise and Service Tax Appellate Tribunal.

Being aggrieved by the order passed by the Commissioner (Appeals), the present appellant had filed an appeal before the learned Customs, Excise and Service Tax Appellate Tribunal along with the application for waiver of condition of pre-deposit. It was contended by the appellant that on account of financial constraints, he should be granted complete exemption.

The learned Customs, Excise and Service Tax Appellate Tribunal, vide order dated 02.07.2013, taking into consideration the contentions raised on behalf of the appellant, directed him to deposit 50% of the amount of the assessment confirmed by the Commissioner (Appeals). Four weeks time was granted to the appellant to deposit the aforesaid amount.

The appellant again filed an application for modification of the said condition. The said application is rejected vide oder dated 16.12.2013. By the said order, the appeal itself has been dismissed on the ground of non-compliance of the condition of pre-deposit.

Shri Kapoor, the learned counsel for the appellant, by relying on the judgment of the Division of this Court in the case of *Maina Khemka Versus Union of India*, reported in **2004-TIOL-14-HC-MUM-CESTAT**, submits that the learned Tribunal has jurisdiction to consider the application for modification and as such, the appeal deserves to be allowed.

The question as to whether exemption should be granted and if yes, on what conditions, is a matter which is purely within the discretion of the learned Tribunal. The learned Customs, Excise and Service Tax Appellate Tribunal has recorded reasons while passing the first order so also the second order. In that view of the matter, we do not find any merit in the appeal and the same is dismissed accordingly. No costs.

JUDGE **JUDGE**

APTE