IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CENTRAL EXCISE APPEAL NO. 18/2013.

M/s. Anupan Rai Builders & Engineers, Nagpur.

-**VERSUS**-

The Customs, Excise and Service Tax Appellate Tribunal, Mumbai and another.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM : B.P.DHARMADHIKARI & P.N. DESHMUKH, JJ.

DATE : OCTOBER 12, 2015.

Heard Shri A.J. Bhoot, learned counsel for the appellant and Shri A.R. Deshpande, learned Counsel for respondent.

2. Very same assessee questions an order of pre-deposit passed by CESTAT in appeal proceedings preferred by it. Against an order in original demanding service tax, the appellant filed an appeal before the Commissioner. In that appeal, the Appellate Authority asked for pre-deposit. The said order was then questioned before the CESTAT in further appeal. During pendency of the appeal before the CESTAT for want of predeposit, the appeal was dismissed by the Commissioner. The CESTAT also ordered pre-deposit vide orders dated 06.08.2013 and 12.09.2013. Against the order of pre-deposit, the present appeal has been filed.

3. It is submitted that as orders of pre-deposit were not complied with, CESTAT has dismissed the appeals filed by the present appellant. Dismissal of those appeals, is questioned in separate appeals which are also listed today.

4. Learned counsel for the appellant submits that as tax was demanded on receipts towards services rendered for construction of hospital building. The demand itself was without jurisdiction and the appellant has supported his submissions by CBEC circular, hence, the order of pre-deposit itself was unwarranted.

5. According to Shri Deshpande, learned counsel for respondent, the consideration at the stage of pre-deposit are entirely different and the appellant did not press any such facts before the CESTAT.

6. After hearing the respective counsel, we find that even before this Court only effort is to demonstrate that there could not have been any demand on account of service tax. Thus, attempt is is to have adjudication on merits of controversy involved and the factors like undue hardship, inability to pay etc., which are relevant for deciding the issue of pre-deposit are not being pressed into service. Infact no substantial question of law has been framed in this respect.

7. This Court has heard the appeal on 05.10.2015, and in order to give the appellant an opportunity the matter came to be adjourned to today. Today an affidavit has been filed simply undertaking to comply with the order of pre-deposit within a period of 60 days. We therefore, find that the appeal is not being prosecuted bonafidely. No substantial questions of law arise in the matter. The appeal is, therefore, dismissed. No costs.

<u>JUDGE</u> **<u>JUDGE</u>**

Rgd.