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

36.

\+ **SERTA 7/2016**

UNIPRO MARKETING PVT.LTD. ..... Appellant

Through: Mr Ruchir Bhatia, Advocate.

versus

COMMISSIONER OF SERVICE TAX,
DELHI ..... Respondent

Through: Mr Satish Kumar, Senior Standing Counsel with Ms Resmitha, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **22.03.2016**

<u>CM No. 10749/2016 (Exemption)</u>

1. Allowed, subject to all just exceptions.

2. The applications stand disposed.

<u>CM APPL. 10750/2016 & SERTA 7/2016</u>

3. Notice. Mr Satish Kumar, learned Senior Standing counsel for the Respondent accepts notice.

4. This is an appeal against the order dated 26th October, 2015 passed by the Customs Excise and Service Tax Appellate Tribunal ('CESTAT') upholding the order dated 19th August, 2013 of the Commissioner (Appeals), Delhi-II

which rejected the appeal by Appellant against the original Adjudication order dated 9th May, 2013 raising the service tax demand of Rs.10,00,698/- along with the interest and penalty for the period 2007-08 and 2008-09.

5. The Commissioner (Appeals) had dismissed the Appellant's appeal on the ground that the Appellant had failed to make the pre deposit of Rs.5 lakhs as per the order dated 15th July, 2013 Commissioner (Appeals). The Appellant sought modification of the said order but the Commissioner (Appeals) declined the request.

6. The CESTAT has, in the impugned order, declined to interfere with the dismissal of the appeal by the Commissioner (Appeals) on the ground that the order was 'impeccable'.

7. The learned counsel for the parties have been heard. The Court is informed that subsequent to the dismissal of the Appellant's appeal by the CESTAT, it has deposited a sum of Rs. 2 lakhs through a challan dated 9th March, 2016. Considering that the total service tax demand is around Rs 10 lakhs, the said amount should serve as sufficient for a pre-deposit amount for the appeal to be heard on merits.

8. In that view of the matter, this court set asides the impugned order dated 26th October, 2015 of the CESTAT as well as the order dated 19th August, 2013 of the Commissioner (Appeals). The sum of Rs. 2 lakhs deposited by the Appellant shall be treated as being in compliance of the pre-deposit order dated 15th July, 2013 of the Commissioner (Appeals), which will stand

modified to that extent.

9. Resultantly, the Appellant's appeal before the Commissioner (Appeals), Delhi-II shall stand restored to the file and be now disposed of on merits in accordance with law. The appeal shall be listed before the Commissioner (Appeals) Delhi-II on 16th May, 2016 for directions.

10. The appeal and the application are disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 22, 2016
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