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

\+ SERTA 21/2016, C.M. APPL.20440/2016

EMAAR MGF CONSTRUCTION PVT. LTD. ..... Appellant

Through : Sh. V. Lakshmikumaran with Sh. Yogendra Aldak, Advocates.

versus

COMMISSIONER, SERVICE TAX COMMISSIONERATE, DELHI ..... Respondent

Through : Sh. Pramod Kumar Rai, Sr. Standing Counsel with Sh. Deepak Anand, Jr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **30.08.2016**

Issue notice. Sh. Pramod Kumar Rai, Sr. Standing Counsel accepts notice.

The appellant is aggrieved by the order of the Central Excise and Service Tax Appellate Tribunal (CESTAT) in as much as it has granted waiver of pre-deposit to a limited extent. As against the demand for ₹130 crores, the stay of pre-deposit was granted to the extent of ₹100 crores, this having left the appellant with an obligation to deposit ₹30 crores as a pre-condition for hearing its appeal.

Learned counsel urged that the nature of contract is such that service tax *per se* is not leviable. This position is not disputed by the learned counsel for the respondent. It is next contended that having regard to the present nature of law with effect from 06.08.2014, the pre-deposit should not exceed 7½ % of the demand. We are of the opinion that having regard to the totality of circumstances, the appellant should deposit an amount equal to 7½ % of the total demand, i.e. ₹130 crores, within three months. Subject to compliance with the order, the appellant should be heard and its case disposed of on merits.

The impugned order of the CESTAT is modified to the above extent.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 30, 2016
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