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

% **DECIDED ON: 16.08.2016**

\+ SERTA 25/2016

NATIONAL BUILDINGS CONSTRUCTION CORPORATION LIMITED
..... Appellants

Through: Mr. J.K. Mittal with Mr. Rajveer Singh, Advocates.

Versus

C.S.T. DELHI ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

S.RAVINDRA BHAT, J.(ORAL)

1. In this appeal, under Section 35G of the Central Excise Act, read with Section 83 of the Finance Act, a grievance has been made against an order directing pre-deposit of ₹50 lakhs within six weeks, as a condition for hearing of an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

2. The appellant received show cause notices which were adjudicated; this resulted in an adjudication order which crystallized its service tax liability of ₹6,87,89,365 under proviso to section 73 (1) of Chapter V of the Finance Act, 1994; Cenvat Credit demand of ₹9,80,365 under section 73(1) of the Finance Act, 1994 read with Rule 14 of the Cenvat Credit Rules, 2004; further interest demand of ₹2,13,051 under section 75; with interest under section 75 of the Act on confirmed- demand; penalty under Section 76

for the period from 2011-12; penalty of ₹15,000/- under section 77 for the period from 2007-08 to 2011-12; and penalty of ₹4,68,53,167/- under Section 78 of Finance Act, 1994 for the period from 2007-08 to 2011-12 by holding the Appellant was liable to pay service tax of ₹3,74,12,7611/- for the period from 2007-08 to 2010-11. Other demands on the basis of the adjudication were made.

3. The assessee/appellant approached the CESTAT; along with its appeal, it sought exemption from pre-deposit of any amount as condition for hearing of its plea. The CESTAT did not grant full waiver; instead, after discussing the rival submissions of the parties, it observed as follows:

> *"though that is contested by ld. Departmental Representative and elaborate discussion thereon can be done only at the time of final hearing, we are of the view that a pre-deposit of Rs.50 lakhs would meet the requirement of Section35F of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. Accordingly, we order pre-deposit of Rs.50 lakhs within six weeks. Compliance is to be reported by 19.08.2016."*

4. It was argued that the above order, impugned is prejudicial, because the appellant is a Central PSU and would not evade duty, if ultimately found warranted. Counsel said that in the circumstances, the CESTAT should have given full waiver.

5. On an overall consideration of the facts, this court is unimpressed with the submissions made. The CESTAT granted substantial relief; only a small amount was directed to be deposited. No financial hardship has been shown warranting interference with the impugned order.

6. The appeal is unmerited and therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

AUGUST 16, 2016