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

\+ W.P.(C) 8647/2015 & C.M.No.18901/2015

N.V.MARKETING PVT.LTD. ..... Petitioner

Through: Mr.Ruchir Bhatia and Mr.D.P.Sisodia, Advocates

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr.Ripu Daman Bhardwaj, CGSC for UOI with Mr.T.P.Singh, Adv. for R-1

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

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

% **24.08.2016**

The main grievance of the petitioner is with respect to the liability of service tax. It is contended by learned counsel that levy of service tax upon lottery and lottery related activities have been declared unconstitutional by the Sikkim High Court. Consequently, the demand is illegal. Alternatively, it is submitted that in any event since the assessee's appeal is pending adjudication before the CESTAT, this court should permit pre-deposit of amount statutorily kept at 7.5 % rather than the entire amount. Counsel for the revenue urges that the validity of the statute has been upheld by the Kerala High Court and that of Sikkim is pending before the Supreme Court. Having regard to the totality of the circumstances, especially that the legislature by amendment to the Central Excise Act statutorily kept the pre-deposit to 7.5% of the principal tax determined, the respondent are restrained from enforcing the demand or taking any coercive action provided petitioner deposit Rs.3 lakhs, as a condition for the hearing of the appeal. The deposit shall be made within two weeks from today.

This court is not examining the correctness or otherwise of the assessee's other contention with respect to the vires of the Statute since that issue is pending before the Supreme Court.

The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 24, 2016
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