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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 110 OF 2016

M/s. Souvenir Developers India Private Limited **...Appellant**

Versus

Commissioner of Central Excise **...Respondent**

Mr. Bharat Raichandani, for the Appellant.

Ms. P.S. Cardozo, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 14 December 2017

ORDER :

1. This Appeal under Section 35G of the Central Excise Act, 1944 ("***the Act***" for short) read with Section 83 of the Finance Act, 1994 challenges the order dated 17th August 2015

passed by the Customs, Excise & Service Tax Appellate Tribunal ("***the Trubunal***" for short). By the impugned order dated 17th August 2015, the Appeal of the Appellant was dismissed for failure to comply the mandate of Section 35F of the Act namely, depositing the amount equivalent to 7.5 percent of the service tax liability confirmed by the adjudicating authority.

2. The Appellant urges the following question of law for our consideration:-

> "Whether in the facts and circumstances of the present case, the Appellants are liable to make mandatory pre-deposit in terms of Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994, as amended with effect from 06.08.2014?"

3. The Appellant's contention is that the requirement of deposit consequent to the amendment to Section 35F of the Act

on 6th August 2014 would not apply to causes where show cause notice has been issued prior to 6th August 2014. The aforesaid contention was negatived by the impugned order of the Tribunal and the Appeal itself was dismissed. The issue raised herein in this Appeal was raised earlier before this Court in case of ***Nimbus Communications Limited Vs. Commissioner of Service Tax, Mumbai-IV***[1] and ***Parimal D. Mehta Vs. The Commissioner of Central Excise***[2] but an identical submission as raised herein was negatived. It was held that the mandatory requirement of pre-deposit as provided in Section 35F of the Act with effect from 6th August 2014 have to be complied with even in respect of causes where show cause notice has been issued prior to 6th August 2014.

4. Therefore, the question raised herein is covered in the decision of this Court in ***Nimbus Communications Limited*** (supra). Therefore, it does not give rise to the substantial question of law. Thus, not entertained.

1 ***2016(44) STR pg. 578 (Bom.)***

2 ***Central Excise Appeal No. 34 of 2016 decided on 10.10.2017***

5. At this stage, Mr. Raichandani, the learned Counsel appearing for the Appellant on instructions states that they would comply with the requirement of pre-deposit under the provisions of Section 35F of the Act within a period of four weeks from today. Upon the Appellant complying with the provisions of Section 35F of the Act and on such deposit being found satisfactory by the Tribunal, the Appeal itself would be restored for consideration on merits.

6. Appeal dismissed with the above observation/direction. No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**