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

\+ **<u>VAT APPEAL 2/2017 & CM Nos.1867-68/2017</u>**

M/S SREI EQUIPMENT FINANCE LTD. ..... Appellant

Through: Mr. A.K. Babbar, Mr. Surendra Kumar, Mr. Atul Babbar, Mr. Bharat Tripathi and Ms. Amita Babbar, Advocates.

Versus

COMMISSIONER OF VALUE ADDED TAX & ANR...Respondents

Through: Mr. Siddharth Dutta, Advocate.

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

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

% 17.01.2017

<u>CM No.1868/2017 (for exemption)</u>

1. Allowed, subject to all just exceptions.

2. The application stands disposed off.

<u>VAT APPEAL 2/2017 & CM No.1867/2017 (for stay)</u>

3. Issue notice. Mr. Siddharth Dutta, Advocate accepts notice on behalf of the respondents.

4. With the consent of the parties, the appeal is heard finally.

5. The appellant/ assessee is aggrieved by an order of the Appellate Tribunal, Value Added Tax (hereinafter to be referred as the 'VAT Tribunal'), which rejected its application for waiver of pre-deposit. The

assessee was subjected to default assessment by a notice/order of 15.06.2015 and assessed to tax at Rs.71,23,810/-. The appeal by way of objections too were rejected, therefore, it approached the VAT Tribunal. Alongwith its appeal, the appellant/assessee requested for waiver of pre-deposit contending *inter alia* that the default assessment was not preceded either by a notice or hearing and that it appears, apparently, the order was passed on "system generated" pre-determined order and the result of a programme. It relies upon the decision of this Court in ***M/s. Bhumika Enterprises Vs. Commissioner of Value Added Tax & Anr***., W.P.(C) No.7379/2015 – decided on 28.08.2015.

6. It is contended that even though the VAT Tribunal has apparently accepted the assessee's contentions, the relief is highly inadequate as 10% of the tax penalty and interest would be payable.

7. Counsel for the Revenue urged that the VAT Tribunal has granted substantial relief and, therefore, the question of granting any further relief- based upon discretion- should not ordinarily arise in exercise of narrow jurisdiction that the High Court possesses.

8. This Court has considered the submissions. ***Bhumika Enterprises's*** case (*supra*) too substantiates that system generated orders cannot stand the test of law. The Court had quashed a circular issued by the Delhi VAT Department dated 19.06.2015. *Prima facie* the default assessment in this case too appears to follow the same course, of course the appeal is not before the Court – nor can in the present instance, the Court comment either favourably or adversely against the default assessment order. Nevertheless,

having regard to the totality of the circumstances, the Tribunal is directed to hear the assessee's appeal, pending before it without insisting upon the pre-deposit.

9. The appeal is allowed in the above terms. CM No.1867/2017 also stands disposed off.

10. A copy of this order be given *dasti* to parties.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

JANUARY 17, 2017
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