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

\+ W.P.(C) 884/2016

M/S. CANARA HSBC ORIENTAL BANK OF COMMERCE
..... Petitioner

Through Mr. Parag P. Tripathi, Sr. Adv. with Mr. Abhishek Anand, Mr. udit Jain and Mr. Archit Gupta, Advs.

versus

COMMISSIONER OF SERVICE TAX- DELHI IV
..... Respondent

Through Mr. Deepak Anand, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **06.08.2018**

We have heard the counsel for the parties.

The petitioner's grievance is that the amount reimbursed by its commission agent, in terms of understanding of agreement between both the parties, was a contractual payment and did not play a character of tax. It therefore, challenges the order in original of Commissioner of Service Tax demanding Rs.15.8 Lakh relying upon several rulings – including a judgment of the Supreme Court as well as of this Court and ITAT's ruling, to say that sharing of service tax liability- as long as the duties availed by the person, subjected to the levy, in full, cannot be enquired into in tax proceedings.

Revenue opposes the petition pointing out that alternative remedy of the appeal has not been exhausted. It relied upon this Court's order in *Max Life Insurance Co. Ltd. vs. CIT* [WP(C) 4264/2015, decided on 03.01.2018].

This Court has considered the submissions of the parties in *Max Life Insurance Co. Ltd*. (supra). Part of the controversy pertain to identical questions. The Court then directed the writ petitioner to approach the Custom Excise and Service Tax Appellate Tribunal (CESTAT).

The Court notices that like in *Max Life Insurance Co. Ltd.* (supra), the full amount of the duty payable in the first instance was pre-deposited by the petitioner. In the circumstances, the petitioner is at liberty to move the appeal before CESTAT within four weeks from today. In such event, CESTAT shall decide the appeal on merits and not rejected on the ground of limitation. Requirement of further pre-deposit in the circumstances, is dispensed with.

Writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 06, 2018

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