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

\+ VAT APPEAL Nos. 4/2018 CM APPL. 6779/2018

M/S BHARTI ELECTRONICS ..... Appellant

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

versus

COMM. OF VALUE ADDED TAX & ANR. ..... Respondents

Through Mr. Shadan Farasat, ASC, Mr. Ahmed Said, Mr. Shashi Pratap Singh with Mr. Rakesh Singh, AVATO, and Ms. Manpreet, Legal Assistant, Department of Trade and Taxes.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

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

% 21.02.2018

We have heard counsel for the appellant and counsel for the respondents who appear on advance notice.

Counsel for the respondent states that the question of pre-deposit of the penalty amount of 10% may be remanded to the Tribunal for consideration and a fresh decision. This statement is made as that impugned order does not deal with and examine the question of pre-deposit of the penalty amount in the light of the judgement of this Court in SC Appeal No. 29/2015, ***Bansal Dye Chem Private Limited versus Commissioner Value Added Tax, Delhi and Another***. Counsel for the respondents has stated that this judgement can be distinguished because the objection hearing authority had given a hearing. Be that as it may, the Tribunal will re-examine the question of pre-deposit of the penalty amount afresh without being influenced with the observations and findings recorded in the order dated 29^{th} November, 2017.

Counsel for the appellant states that in view of the aforesaid directions, he would not impugn the other part of the order relating to pre-deposit of 20% of the disputed tax and interest. He, however, states that observations in the order of the Tribunal regarding pre-deposit should not be treated as conclusive and affirmative findings for the appellant perceives and believes that they have a good case on merits.

Counsel for the respondents states that the Tribunal has only made prima facie observations which are not final and conclusive. We clarify that the observations made in the impugned order on the question of pre-deposit would not be treated as final and conclusive, when the appeal is heard and decided on merits.

On the request made by the appellant, the appellant is granted four weeks further time to make 20% pre-deposit of the principal disputed tax and the interest amount.

The appeal is disposed of in terms of the statement made by the counsel for the parties without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 21, 2018
MR/pk