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ORDER SHEET
WPO/1593/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. ROADWINGS INTERNATIONAL PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 26th September, 2023.

Appearance:
Mr. Aditya Dutta, Adv.
Mr. Akash Dutta, Adv.
...For the Petitioner
Mr. Debasish Chowdhury, Adv.
Mr. Amit Sharma, Adv.
...For Union of India
Mr. K.K. Maiti, Adv.
Mr. Tapan Bhanja, Adv.
....For CGST Authorities

The Court: Heard learned advocates appearing for the parties.

Petitioner has filed this writ petition seeking relief of allowing it to make statutory pre-deposit for filing the appeal before the appellate authority by way of bank guarantee.

Mr. Maiti, learned advocate appearing for the respondent CGST Authority in opposing the writ petition for allowing the petitioner to make pre-deposit by way of bank guarantee has relied on a decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage (P) Ltd. vs. Union of India reported in 2017 (50) S.T.R. 96 (S.C.) which is quoted as hereunder :

"11. Be it stated, there is no cavil over the fact that an appeal lies under Section 35 of the Central Excise Act, 1944 to the Commissioner (Appeals), who can address both the issues relating to facts and law keeping in view the applicability of the relevant notifications. It is borne out from the record that the assessee-appellant had furnished a bank guarantee amounting to Rs. 2,20,18,124/- for obtaining an order of Stay. In our considered opinion it would not be appropriate to give an opportunity to the appellant to prefer statutory appeals and allow it to enjoy the benefit of stay of recovery on the basis of a bank guarantee. Therefore, we would direct the assessee to deposit Rs. 2.5 crores before the adjudicating authority within six weeks and after the said deposit is made and the receipt obtained, the appeal would be entertained within the said period. On an appeal being filed, the Commissioner (Appeals) shall deal with the matter on merits. Learned Attorney General very fairly stated that the revenue would not raise the issue of limitation as the period spent before the High Court and this Court and the time granted for depositing of the amount would stand excluded for the purpose of preferring the appeal."

Considering the aforesaid judgment of the Hon'ble Supreme Court, I am not inclined to entertain this writ petition and grant any relief. Accordingly, this writ petition being WPO 1593 of 2023 is dismissed.

(MD. NIZAMUDDIN, J.)

TR/