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

Date of decision: 14th July, 2025

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W.P.(C) 9720/2025 & CM APPL. 40736/2025
MCM CONSTRUCTION AND REAL ESTATE PRIVATE LTD.

.....Petitioner

Through: Mr. Prabhat Kumar, Adv.

versus

COMMISSIONER, CENTRAL GOODS AND SERVICE TAX

.....Respondent

Through: Ms. Samiksha Godiyal, SSC, CBIC
with Mr. Tenging Bhutia & Mr. B. D.
Rao Kundan, Adv. (74889 46168)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner under Article 226 and 227 of the Constitution of India, *inter alia*, assailing the order dated 27th September, 2024 passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') as also the subsequent miscellaneous order bearing no. 50484/2024 dated 15th May, 2025.
3. The brief background of the case is that the Central Goods and Service Tax (hereinafter, '*CGST*') Department had issued a Show Cause Notice (hereinafter, '*SCN*') on 7th March, 2008 seeking to raise certain demands against the Petitioner. A further SCN also came to be issued on 28th November



2008. The details of the SCNs are set out below:-

<i>S.No</i>	<i>SCN No. & Date</i>	<i>Period Involved.</i>
1.	<i>C.No. DL/ST/AE/Inquiry/MCM/Gr.IV09/05/5945 dated 07.03.2008 issued by the Commissioner of Service Tax, New Delhi</i>	2005-06 & 2006-07
2.	<i>C. No. DL-II/ST/R.12/SCN/23/08/14603 dated 28.11.2008 issued by the Commissioner of Service Tax, New Delhi</i>	2007-08

4. Replies were filed to both the SCNs by the Petitioner. The short issue raised in the SCNs was that the Petitioner had not paid service tax on *taxable services*. The question raised by the Petitioner was whether services provided under construction of complex services and commercial or industrial construction services would be liable to service tax. The Order-in-Original in the present case came to be passed on 5th January, 2024.

5. The case of the Petitioner is that as the service provided by the Petitioner was a composite works contract, no service tax was liable to be paid by the Petitioner. In the Order-in-Original, exemption under **Notification No.18/2005-ST** dated 7th June 2005, **Notification No.15/2004-ST** dated 10th September, 2004 as amended and **Notification No.1/2006** dated 1st March, 2006 was not granted to the Petitioner. The total demand raised upon the Petitioner was to the tune of Rs. 4,28,08,029/- of service tax including education cess and other cess. The total amount of service tax liability was determined as Rs. 8,35,86,570/- out of which, the Petitioner had already made some payments and the demand in the Order-in-Original was raised for the remaining amounts.



6. The said Order-in-Original was challenged by the Petitioner before the CESTAT. The Petitioner sought waiver of the pre-deposit. The Registry of CESTAT had raised a defect for non-payment of the entire pre-deposit amount in terms of Section 35F of the Central Excise Act, 1944.

7. *Vide* order dated 27th September, 2024, CESTAT directed the Petitioner to deposit a sum of Rs. 17,21,477/-. A rectification application was filed by the Petitioner before CESTAT seeking rectification of the earlier order which was also rejected *vide* the order dated 15th May, 2025. Thus, both the orders dated 27th September, 2024 and 15th May, 2025 are under challenge in this petition.

8. The contention of Id. Counsel for Petitioner is that a substantial portion of the service tax amounts have already been deposited and the same would deserve to be given credit for, at the stage of pre-deposit. In his submission, the Petitioner disputes the entire demand itself as composite works contracts are not liable to service tax and are entitled for exemption. Reliance is also placed upon the decision of the Supreme Court in ***VVF India Ltd. v. State of Maharashtra, 2023 (72) G.S.T.L. 444 (S.C.)***, wherein the Supreme Court had made an observation in the context of Section 26(6A) of the Maharashtra Value Added Tax Act, 2002 which also requires certain pre-deposit. According to the said decision, any amounts deposited prior to the filing of the appeal would have to be given consideration for the purposes of pre-deposit.

9. Id. Counsel for the Petitioner further submits that even if the total amount is taken, the Petitioner has already deposited almost 39% of the total demanded amount which is much more than the pre-deposit.



10. On the other hand, Id. Counsel for the Respondent submits that the amounts which were paid by the Petitioner in respect of the entire service tax demand was on the basis of self-assessment. Therefore, the SCN related only to the short-paid amount. In view of the same, the Petitioner has to pay pre-deposit *qua* the short paid amount and no credit can be given for the earlier deposited amount as the same is not even the subject matter of the SCN.

11. Heard. At this stage, the only question that needs to be determined is whether the amount is to be taken as a whole or the same has to be considered in a pre-SCN and a post-SCN situation. The SCNs relate to unpaid amounts whereas the total demand was for the entire amount of service tax. The stand of the Petitioner is clear that composite works contracts are not liable for service tax and therefore, it is entitled to refund of even the amount which has already been paid. The Department's case is obviously to the contrary.

12. This Court at this stage would not like to go into the question as to whether the liability exists on the Petitioner to pay service tax or not. The only thing that this Court has to consider is whether there is a shortage in the pre-deposit and whether any waiver can be granted. The amounts which are in dispute are as under:-

<i>SCN</i>	<i>Gross Tax Demand</i>	<i>Deposited</i>	<i>Short paid</i>
<i>SCN dated 07.03.2008 (Para 44.6 of Order in- Original - page 162 of Vol-2)</i>	<i>Rs. 8,35,86,570</i>	<i>Rs.3,62,78,541 + Rs. 45,00,000 = Rs.4,07,78,541</i>	<i>Rs.4,28,08,029</i>
<i>SCN dated 28.11.2008 Para 50 of Order- in- Original - Page 176 of Vol-2)</i>	<i>Rs.5,30,44,996</i>	<i>Rs.1,29,00,000</i>	<i>Rs.4,01,44,996</i>



<i>Total</i>	<i>Rs. 13,66,31,566</i>	<i>Rs. 5,36,78,541</i> <i>(39.28% of Gross</i> <i>Tax Demand)</i>	<i>Rs.8,29,53,025</i>

13. A perusal of the above table would reveal that the total demand in this case is to the tune of approximately Rs. 13.66 Crore. The Petitioner has already deposited either through self-assessment or through other means Rs.5.36 Crore, which is a substantial part of the entire demand itself.

14. Under such circumstances, the question as to whether the Petitioner is entitled to exemption from payment of service tax is yet to be determined by the CESTAT. Moreover, the appeal filed by the Petitioner is likely to be rejected on the ground of non-payment of pre-deposit.

15. The total pre-deposit that is now demanded from the Petitioner is approximately to the tune of Rs. 17 lakh which is a small sum compared to what the Petitioner has already deposited *i.e.*, Rs. 5.36 Crore.

16. Moreover, a Coordinate bench of this Court in decision of ***Mohammed Akmam Uddin Ahmed & Ors. v. Commissioner Appeals Customs And Central Excise & Ors., 2023:DHC:2846-DB***, while discussing a number of decisions held that the Court has the power to exercise discretion to waive requirement of pre-deposit of penalty in rare and deserving cases. The relevant portion of the said decision reads as under:

“19. The principle enunciated in the judgments of Pioneer Corporation case (supra), Narender Yadav case (supra), Shubh Impex case (supra), Manoj Jha case (supra) and Ganesh Yadav case (supra) is that the Court has the power to exercise discretion to waive requirement of pre-deposit of penalty in “rare and deserving cases” where a clear justification is made out for interference. In Narendra Yadav case (supra),



*this Court had found that the Order-in-Original did not give any reasons for the penalty imposed on the Petitioners and hence was unwarranted. In **Shubh Impex** case (supra), the Court found that the condition of pre-deposit would completely disable and paralyse the business of the Appellant and given the financial condition and background of the Appellant would suffer financial breakdown and irreparable harm. The **Manoj Jha** case (supra) held that since the Petitioner has very limited means to deposit any amounts, the relief to him is warranted.”*

17. Accordingly, the Petitioner is granted waiver of a sum of Rs. 17,21,477/-. The appeal of the Petitioner before CESTAT shall now be adjudicated on merits and shall not be dismissed on the technical ground of non-deposit of the balance pre-deposit amount.

18. The appeal of the Petitioner be listed before the CESTAT on 26th August, 2025.

19. A copy of this order be communicated to the CESTAT by the Registry.

20. The petition is disposed of in the aforesaid terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

JULY 14, 2025

kk/ck