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**(2010) 03 MAD CK 0250**

**Madras High Court**

**Case No:** Writ Petition No. 6013 of 2010 and M.P. No. 1 of 2010

Nippon Enterprises  
South

APPELLANT

Vs

CESTAT, Chennai

RESPONDENT

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**Date of Decision:** March 29, 2010

**Acts Referred:**

- Central Excise Rules, 1944 - Rule 223A
- Central Excises and Salt Act, 1944 - Section 11A, 11D

**Citation:** (2011) 271 ELT 188

**Hon'ble Judges:** Chitra Venkataraman, J

**Bench:** Single Bench

**Advocate:** L. Maithili, for the Appellant; M.S. Govindarajan, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.

The petitioner challenging the order of the first respondent dated 3-3-2010 (2010) 21 STJ 306 , wherein the Tribunal directed the petitioner to deposit entire demanded amount by way of pre-deposit for entertaining the appeal.

2. A perusal of the order passed by the first respondent shows that the petitioner had not shown any financial difficulties that stand in the way of remitting the entire amount. They have also stated that the petitioner has collected, service tax amount on the gross value charged by them, but have remitted only part of it to the Exchequer. Hence, the Tribunal held that the petitioner should be directed to deposit the entire demanded amount of Rs. 31,04,785/- within a period of four weeks from the date of the order of the Tribunal and to report compliance within four weeks thereafter. Aggrieved by the same, the petitioner has come before this Court seeking writ of certiorari to quash the order of the Tribunal dated 3-3-2010 and directed, the first respondent to dispose of the appeal on merits without

insisting on the pre-deposit condition. The petitioner Submit-E that overlooking the fact that consideration received by the petitioner for sale of materials is outside the purview of Section 11D as per the ratio of the judgment reported in 2008 (222) E.L.T. 216 (Tri.) - Bikash Industries, 2007 (121) ECC 123 : 2009 (15) S.T.R. 640 (Tribunal) - SAIL Bansal Service Centre and 2008 (221) E.L.T. 583 (Tri.) - Ascent Laboratories the first respondent directed the petitioner to make the payment of the entire demanded amount. The petitioner further submits that the Tribunal had not considered the prima facie case made out by the petitioner either on merits of the claim or on the applicability of the time limit u/s 11A to the provisions of Rule 223A of the erstwhile Central Excise Rules. It is submitted that the demand itself is without authority of law. Learned counsel-submits that the order passed by the first respondent be set aside and the condition as regards pre-deposit the entire disputed amount be stayed, so that the appeal can be taken up and disposed of.

3. I have gone through the order of the first respondent and the claim of the petitioner as regards prima facie case. It is no doubt true that the discretion exercised by the Tribunal cannot be the subject matter of interference before this Court. I having regard to the prima facie case made out by the petitioner, at least for the purpose of considering pre-deposit, taking note of the interest of the Revenue, the petitioner be directed to deposit 50% of the disputed amount within a period of two weeks from today. On such payment, the Tribunal shall take up the appeal on merits and pass orders expeditiously. Till the disposal of the appeal, there shall be stay for the balance disputed amount.

4. With the above observation, the writ petition is disposed of. No costs. Consequently, connected MP is closed.