

(2014) 01 CAL CK 0031**Calcutta High Court****Case No:** Writ Petition No. 50 of 2014

Mohta Technocrats Pvt. Ltd.

APPELLANT

Vs

CESTAT

RESPONDENT

Date of Decision: Jan. 24, 2014**Citation:** (2014) 36 STR 288**Hon'ble Judges:** Harish Tandon, J**Bench:** Single Bench**Advocate:** J.P. Khaitan, Sr. Advocate, Advocate for the Appellant; S.B. Saraf and K.K. Maity, Advocate for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Harish Tandon, J.

The Court: The order dated 20-11-2013 passed by the Customs & Excise and Service Tax Appellate Tribunal, Eastern Bench, Kolkata is the subject matter of challenge in this writ petition. By the impugned order the Tribunal disposed of an application seeking waiver of condition of pre-deposit of duty on the ground that the petitioners did not co-operate with the department and the plea sought to be raised for the first time before the Tribunal was neither taken before the adjudicating authority nor raised in the pleading.

2. According to the petitioners the aforesaid findings are beyond the records.

3. My attention is drawn to reply to a show-cause notice submitted by the petitioners wherein it is categorically averred that the gross-receipts shown in the balance-sheet constitute service and non-service items which can be decipher from the findings recorded by an adjudication authority. The petitioner further placed the material to show that there was never a non-co-operation in an adjudication process and contends that the said finding is perversed having made contrary to the records. After hearing the respective counsels and on perusal of the material documents an averment made in the writ petition this Court finds that the findings

of the Tribunal relating to a non-co-operation as well as the non-raising of plea before the adjudicating authority is perversed.

4. Furthermore, the Tribunal is required to deal with an application seeking waiver of pre-condition deposit of duty after recording its satisfaction relating to undisputed hardship and the interest of revenue. The point of non cooperation before the adjudicating authority by no stretch of imagination can be considered for disposal of such application, it is a settled proposition of law that while considering an application seeking waiver of pre-condition deposit of duty, there must be a recording relating to a *prima facie* case, and unjust hardship taken into account the interest of the revenue. The order impugned before this Court is bereft of any such findings. The Tribunal have proceeded to dispose of the said application on extraneous consideration and, therefore, cannot be legally sustained. Accordingly the order impugned is quashed and set aside.

5. The Tribunal is directed to consider the said application afresh giving an opportunity of hearing to the petitioner by recording the reasons in accordance with law. The Tribunal is further directed to dispose of the aforesaid application within three weeks from the date of communication of this order. For abundant precaution it is hereby made clear that this order shall not be construed to have made on the merit of the said application and the Tribunal shall be free to decide the same independently and without being influenced by any observations made herein. The writ petition, is thus, disposed of. No costs.