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

\+ **W.P.(C) 2999/2016 & CM No. 12588/2016**

HONDA CARS INDIA LTD ..... Petitioner
Through: Mr. V. Lakshmikumaran, Mr. Abhishek Anand and Mr. Yogendra Aldak, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Abhay Prakash Sahay, CGSC for Resp./ UOI.
Mr Pramod Kumar Rai, Sr. Standing Counsel for R-2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

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

% **27.07.2016**

1. There are two prayers in this writ petition. One is for declaring Section 35F of the Central Excise Act, 1944 ('CE Act') as amended by Section 105 of the Finance Act (No.2), 2014 with effect from 06th August 2014, as unconstitutional. This prayer was given up by the Petitioner, as recorded by the Court in its order dated 5th April, 2016.

2. The second substantive relief, is a challenge to the defect memos dated 23rd February, 2016 issued by the Customs Excise and Service Tax Appellate Tribunal ('CESTAT') on account of the failure by the Petitioner to make the mandatory deposit as envisaged under Section 35F of the CE Act.

3. Recently in ***M/s Pioneer Corporation v. Union of India 2016-TIOL-1116- HC-Del-CX***, this Court observed in paras 10 and 11 as under:

> "10. Under Section 35 F of the CE Act as it stood prior to 6th August 2014, a discretion was available to the CESTAT to consider the financial hardship and accordingly determine the pre-deposit amount. That discretion has been consciously sought to be curtailed and thus an amendment was made to Section 35 F CE Act requiring making of a pre-deposit of 7.5% in all cases subject to an upper cap of Rs.10 crores. A direction, therefore, to the CESTAT that it should waive the pre-deposit would be contrary to the express legislative intent expressed in the amended Section 35F with effect from 6th August, 2014.
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> 11. While, the jurisdiction of the High Court under Article 226 of the Constitution to grant relief notwithstanding the amended Section 35 F cannot possibly be taken away, the Court is of the view that the said power should be used in rare and deserving cases where a clear justification is made out for such interference. Having heard the submissions of Mr Datta and having perused the adjudication order, the Court is not persuaded to exercise its powers under Article 226 to direct that there should be a complete waiver of W.P.(C) 4016/2016 Page 7 of 7 the pre-deposit as far as the Petitioner's appeal before the CESTAT is concerned."

4. Mr. V. Lakshmikumaran, learned counsel for the Petitioner seeks to bring the present case within the exceptional category warranting the Court's interference under Article 226 of the Constitution. He refers to the order dated 20th January, 2015 passed by the CESTAT in

the Petitioner's own case while granting unconditional stay of the demand that was a subject matter of an Appeal No. E/53836/2014-Ex(DB). He urges that the facts of the said appeal before the CESTAT are no different from the facts as far as the present appeal pending before the CESTAT is concerned, except the period of demand. According to him, if an unconditional stay could have been granted by the CESTAT in the said appeal, this Court should, on merits, likewise invoke its powers under Article 226 of the Constitution and grant similar relief notwithstanding the above amendment to Section 35F which now precludes the CESTAT from granting an unconditional stay.

5. Having considered the said submission, the Court is unable to view the present case as an exceptional category where the Court should exercise its jurisdiction under Article 226 of the Constitution to grant relief notwithstanding the amended Section 35F of the CE Act.

6. The petition and the application are, accordingly, dismissed.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 27, 2016/kk