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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 3380/2016**

SUVIDHA SIGNS STUDIOS PVT. LTD. ..... Petitioner
Through: Mr Abdhesh Chaudhary, Advocate.

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr Vivekanand Mishra, Senior Standing counsel for Respondent No.1/UOI.
Mr Satish Kumar, Senior Standing counsel for Respondent.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **25.04.2016**

CM No.14433/2016

1. Allowed, subject to all just exceptions.

W.P.(C) 3380/2016 & CM APPL. 14432/2016

2. This is a petition filed by the Petitioner seeking, *inter alia,* to challenge the order dated 30th March, 2015 passed by the Commissioner of Central Excise, Delhi. The petition to this extent appears misconceived because the aforementioned order is appealable and in fact the Petitioner filed an appeal before the Custom Excise & Service Tax Appellate Tribunal (CESTAT) which has been dismissed by the CESTAT by an order dated 27th November 2015, which also has been challenged in this petition.

3. In terms of Section 35F of the Central Excise Act, 1944(‘CE Act’) it is mandatory for the Petitioner to have deposited 7.5% of the demand of duty and penalty for its appeal to be entertained. The CESTAT in its impugned order dated 27th November 2015 noticed that no pre-deposit as against the compulsory deposit of 7.5 % of the penalty of Rs.42 lakhs had been made till that date. Accordingly the Petitioner's appeal was dismissed.

4. The Petitioner also challenges the validity of Section 35F of the CE Act to the extent it mandates a pre-deposit of 7.5% of the demand of duty and penalty for the appeal to be entertained. This provision is similar to Section 130 of the Customs Act 1962 which was considered by this Court in its order dated 20th October 2015 in Customs Appeal No. 19/2015 ***(Anjani Technoplast Ltd. v. The Commissioner of Customs)***. In the said order this Court concurred with the decision of the High Court of Allahabad in ***Ganesh Yadav v. Union of India 2015 (320) ELT 711 (All)*** which upheld the constitutional validity of Section 35 F of the CE Act. Consequently, this Court is not inclined to entertain a challenge to the constitutional validity of Section 35F of the CE Act.

5. The Petitioner having failed to comply with the statutory mandatory requirement of depositing the 7.5% of the demand of duty and penalty, the CESTAT was right in dismissing the Petitioner's appeal by its order dated 27th November, 2015.

6. Learned counsel for the Petitioner urges that the Petitioner is in great financial difficulty and only needs some more time to pay the pre-deposit amount. This Court is unable to accede the request. It is not possible for the

Court, in exercise of its jurisdiction under Article 226 of the Constitution, to modify the mandatory conditions set out in Section 35F of the CE Act on any ground whatsoever.

7. Accordingly, the writ petition and pending application are dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 25, 2016
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