IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(104) **CWP-20125-2023**
Decided on : 30.10.2023

M/s Ajay Sangari & Company ……Petitioner(s)

Versus

Commissioner, Central Goods & Services Tax, Chandigarh, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh ……Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr.Sunil Kumar Mukhi, Advocate
Mr.Vishav Bharti Gupta, Advocate
Ms.Mamta Gupta, Advocate for the petitioner (s).

Mr.Alankrit Bhardwaj, Advocate, for the respondent.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Article 226 of the Constitution of India is against the order dated 01.08.2023 (Annexure P-5) whereby the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh (for short, the 'Tribunal') had directed the petitioner to comply with the mandatory pre-deposit as required under Section 35-F of the Central Excise Act, 1944 (for short, the 'Act') read with Section 83 of the Finance Act, 1994 within 4 weeks from the said date failing which his appeal was liable to be dismissed for non-compliance of the mandatory pre-deposit as required under Section 35-F of the Act.

2. The Tribunal, while passing the said order, has relied upon the judgment passed by this Court in **M/s G.D.Goenka World Institute Vs. Union of India & others 2019 (368) ELT 67 (P&H)** apart from other judgments to come to the conclusion that the Tribunal had no power to entertain the appeal and it would defeat the legislative intent which would be clearly visible from the provisions of Section 35-F of the Act.

3. Mr.Mukhi has vehemently argued that initially there was an order in favour of the petitioner whereby the Additional Commissioner had come to the conclusion that the noticees are not liable to be covered under service tax and therefore, the demand was held not to be sustainable. The case of the petitioner is that the mandatory pre-deposit of 7.5% as required under Section 35-F of the Act would lead to undue financial hardship.

4. We have perused the application dated 27.02.2023 (Annexure P-4) filed before the Deputy Registrar, CESTAT, Chandigarh for exemption since the revenue had filed an appeal against the order dated 22.09.2021 (Annexure P-1). The Commissioner (Appeal) had set aside the earlier order on 09.05.2022 (Annexure P-2) against which the petitioner is in appeal before the Tribunal. A perusal of the application would go on to show that the merits of the case had been addressed as to the liability of the petitioner to pay service tax as in the application there has been no such averment made regarding the undue hardship which would be caused to the petitioner which the Tribunal could have decided upon regarding dispensing with the liability subject to certain conditions. The amount mentioned in the application itself is Rs.10,08,243/- and bare averment has been made that it would lead to great financial hardship to the appellant-firm which has already raised loans to the extent of Rs.12,49,76,747/- which are outsanding.

5. It is in such circumstances we are of the considered opinion that keeping in view the earlier decision of this Court in **M/s G.D.Goenka World Institute** (supra), the Tribunal was well justified in insisting for the mandatory pre-deposit as required under Section 35-F of the Act. It was for the petitioner who had to put-forth his case in the application in a detailed manner as to how

undue hardship would be caused to him. The argument now sought to be raised by placing additional document including the outstanding of loan including the bank balance was an exercise to be done before the Tribunal and not before this Court.

6. In such circumstances, we are of the considered opinion that the present writ petition warrants no interference under Article 226 of the Constitution of India and the same is hereby dismissed in limine. However, we extend the time to make the deposit by another four weeks from today.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

30.10.2023
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :		No