16.06.2025
Item No
A 44
Saswata

WPA 3418 of 2025

Ziauddin Ali
versus
Registrar, CESTAT & Ors.

Mr. Lalitendra Gulani
Mr. Souvik Das
...For the petitioner

Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja
...For the CGST & CX authorities

Mr. Kumaresh Dalal
Mr. Rameshwar Sinha
...For the Union of India

1. The present writ petition has been filed, inter alia, praying for a direction upon the respondent no. 1 to accept the appeal filed by the petitioner under Section 35B of the Central Excise Act, 1944 (hereinafter referred to as the “said Act”) without payment of pre deposit.

2. The petitioner claims to be engaged in the manufacture and supply of MS ingots and is otherwise registered under the provisions of the said Act. The petitioner’s case proceeds on the premise that the Directorate General of Central Excise Intelligence conducted an investigation by way of search at the premises of the petitioner on 28th November 2015 and later a show cause was issued on 23rd May 2019 thereby proposing to raise a demand of central excise and CENVAT credit on the petitioner along with applicable interest and penalty. The petitioner had participated in the said adjudication process. The respondent no. 2 had subsequently adjudicated the proceedings by passing the order in original dated 12th August 2024. Being aggrieved the petitioner had challenged the said order before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata under Section 35B of the said Act.

3. According to the petitioner although the provisions of Section 35F of the said Act requires payment of pre deposit of 7.5 per cent of the duty in case where duty or duty and penalty are in dispute, or penalty where penalty is in dispute. Admittedly, in this case 7.5 per cent of both duty and penalty in terms of Section 35F is payable by the petitioner.

4. Mr. Gulani, learned advocate appearing for the petitioner has, however, contended that the petitioner has closed down its business and is at present struggling and in the circumstances, he submits that this Court may be pleased to waive the mandatory pre deposit and direct the Tribunal to hear out the appeal.

5. In support of his aforesaid contention, he has placed reliance on a judgment of the Hon'ble Delhi High Court in the case of ***Mohammed Akman Uddin Ahmed & Ors. versus Commissioner Appeals Customs and Central Excise & Ors.*** reported in ***2023 (5) TMI 23 – Delhi High Court***.

6. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I may note that the provisions of Section 35F of the said Act, inter alia, records as follows:-

> ***"35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal****.—The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal –*
>
> *………………………………………*
>
> *Provided that the amount required to be deposited under this Section shall not exceed Rupees Ten crores.*
>
> *Provided further that the provisions of this Section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014."*

7. Having regard to the clear mandate provided for in Section 35F of the said Act, and also having regard to the judgment delivered by the Hon'ble Division Bench of this Court presided over by the Honb'le the Chief Justice in ***MAT 1126 of 2023 (Somnath Ray, proprietor of M/s Makloyed Electrical Enterpises vs- Additonal Commissioner of Central Tax, CGST & CX Commissionerate, Howrah & Ors.)***, in my view there is no scope for this Court to entertain this writ petition, I am also of the view that the Tribunal cannot be directed to hear out the appeal in contravention of the statutory provision.

8. The argument that the writ Court can waive the condition and relax the condition for payment of pre deposit, is unsustainable in law, having regard to the specific statutory pre condition provided for entertaining an appeal and unless such condition is met, the same does not authorize the Tribunal to hear out such appeal on merits.

9. Although, Mr. Gulani by referring to the judgment in the case of ***Mohammed Akman Uddin Ahmed (supra)*** has attempted to make out a case that the High Court is competent in a fit case to waive the pre condition or grant a right to prefer an appeal, I however find that the issue that fell for consideration in the said judgment was the Constitutional validity of Section 129E of the Customs Act 1962 and for a direction upon the respondents in the said case to admit the appeal filed by the petitioner without the pre deposit of mandatory duty as stipulated under Section 129E of the Customs Act 1962.

10. It is amply clear that the direction to admit the appeal under Section 129E of the Customs Act 1962 was sought for as and by way of a consequential relief. The High Court in the said case did not hold that the provisions of Section 129E of the Customs Act 1962 to be ultra vires the Constitution of India and having regard thereto, in my view grant of consequential relief in a case where the principal relief is disallowed cannot be construed as a right conferred on the petitioner to seek similar benefit. In view thereof, the aforesaid judgment does not assist the petitioner.

11. Accordingly, the writ petition fails and is accordingly dismissed without any order as to costs.

12. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)