IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

MAT/1442/2025
With
IA NO: CAN/1/2025,
CAN/2/2025

ZIAUDDIN ALI
VS
REGISTRAR, CESTAT AND ORS.

For the Appellant : Mr. Lalitendra Gulani, Advocate
Mr. Subhadip Roy, Advocate
Mr. Souvik Bose, Advocate

For the Respondent No. 2 : Mr. Bhaskar Prosad Banerjee, Advocate
Mr. Tapan Bhanja, Advocates

Heard & Judgment on: October 28, 2025

Debangsu Basak, J.

1. CAN 1 of 2025 is an application for condonation of delay. For the ends of justice the causes shown in the application for condonation of delay are accepted as sufficient. Delay in making and filing the appeal is condoned. CAN 1 of 2025 is allowed.

2. Appeal is at the behest of the writ petitioner and directed against an order dated June 16, 2025 passed in WPA 3418 of 2025.
3. By the impugned order, learned Single Judge dismissed the writ petition.
4. Essentially, the appellant seeks waiver of a pre-deposit prescribed under Section 35B of the Central Excise Act, 1944.
5. Learned advocate appearing for the appellant submits that, the appellant is not in a position to make the pre-deposit for preferring the appeal. He submits that, making pre-deposit is not a condition precedent for the purpose of filing the appeal. In a given case, pre-deposit requirement to put in the pre-deposit can be waived.
6. Represent no. 2 is represented.
7. As noted above, appellant seeks to prefer an appeal under Section 35F of the Act of 1944. Section 35F of the Act of 1944 requires the Tribunal or the Commissioner (Appeals), as the case may be, not to entertain any appeal, till the amount prescribed for preferring the appeal is deposited.
8. Section 35F of the Act of 1944 is explicit. For the purpose of preferring an appeal, it requires a pre-deposit to be made. It is trite law that requirement of a pre-deposit for the purpose of preferring an appeal cannot be said to be onerous or burdensome.

9. Reliance is placed on the Income Tax Return and the Balance sheet of the appellant to contend that the appellant was making losses in the business and therefore is unable to make the pre-deposit.

10. We are not convinced as to the score of the inability of the appellant to make the pre-deposit. Nothing is placed before us to suggest that the appellant is indigent or there is any insolvency proceeding pending as against the appellant. Appellant is not a declared insolvent.

11. Learned Single Judge dismissed the writ petition, after considering Section 35F of the Act of 1944 and the two authorities cited before it.

12. We do not find any reason to interfere with the order impugned.

13. MAT/1442/2025 along with CAN/2/2025 are dismissed.

(Debangsu Basak, J.)

14. I agree

(Md. Shabbar Rashidi, J.)

Dd