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

\+ **W.P.(C) 118/2025 & CM APPLs.446-48/2025**

SACHIN WALIA .....Petitioner

Through: Mr Chinmaya Seth & Mr A.K. Seth & Mr. Varun Phore, Advs. (M: 9911610547)

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Mr. Atul Tripathi, Adv. for R-2. (M: 9560018960)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

ORDER

% 08.01.2025

1. This hearing has been done through hybrid mode.

CM APPL.447-48/2025 (for exemption)

2. Allowed, subject to all just exceptions. Applications are disposed of.

W.P.(C) 118/2025 & CM APPL.446/2025 (for stay)

3. The present petition has been filed by Petitioner-Sachin Walia under Articles 226 and 227, *inter alia*, seeking exemption from the pre-deposit requirement mandated by Section 35F of the Central Excise Act, 1944 in order to get the appeal heard before CESTAT.

4. The present petition arises out of the show cause notice dated 21st June, 2017 addressed to the Petitioner in respect of the search carried out at his premises situated opposite House No.423, village & PO Mukhmelpur, Delhi-110036. The search was carried out on 19th July, 2012 and seizure of certain gutka products was effected.

5. Subsequent to the search and seizure, an initial show cause notice, which did not implicate the Petitioner, was issued on 15th July 2013. However, thereafter, a second show cause notice was issued on 21st June, 2017 wherein the Petitioner was also made a noticee. The Petitioner participated in the show cause notice proceedings and the ***Order In Original No. 12 /C.Ex./Pr.Commr./M.M.G/D.N./2023-24*** dated 31st January, 2024 came to be passed. In the said order, the only role ascribed to the Petitioner was that he was a property dealer, who enabled the property to be taken on rent. The said extract from the said Order In Original reads as under:

> *"6.15 Further, **<u>I hold that Sh Sachin Walia by his above narrated acts of omission and commission, in his capacity as a property dealer, has acted negligently and not taken due care and precautions while arranging for the premises to be taken on rent by Sh Pankaj Aggarwal,</u>** and for actively conniving with Sh Pankaj Aggarwal, he has rendered himself liable for penalty under the provisions of Rule 17 of the Pan Masala (Capacity Determination and Collection of Duty) Rules, 2008 read with Rule 26 of the Central Excise Rules, 2002 read with section 174 of the CGST Act, 2017."*

However, a penalty of Rs.1.5 crores was imposed on the Petitioner, who was running a property dealership under the name Walia Properties.

6. The Petitioner preferred an appeal against the said Order In Original before the CESTAT which was dismissed on preliminary grounds *vide* the impugned order dated 9th October, 2024, upon recording that the appeal would not be liable to be heard since the Appellant has not made required pre-deposit. Thus, the Petitioner has preferred this writ petition.

7. The Petitioner, in the writ petition, submits that the Order In Original

dated 31st January, 2024 only ascribes a minimal role to the Petitioner, *i.e.*, negligently enabling the property to be taken on rent for illegal activity. Further, it is also submitted that he is a small-time property dealer earning a mere amount of Rs. 15,000/- per month and, hence, under no circumstances can he deposit an amount of Rs. 11,25,000/- as pre-deposit. He has also annexed the following documents with the petition in this regard -

(i) copy of the Income and Asset Certificate dated 11th July, 2021 provided for the purpose of availing reservation under economically weaker sections quota; and

(ii) Personal Bank Statement.

8. Reliance is placed on ***Pioneer Corporation Vs. Union of India 2016 SCC Online Del 6758*** and ***Shubh Impex Vs. Union of India & Ors. 2018 SCC Online Del 879*** to argue that this Court under Article 226 has the power to grant a waiver to the said mandatory condition in '*rare and deserving cases*'**.** The relevant paragraph in ***Shubh Impex (Supra)*** is as under

> *"Para 10: Given the aforesaid facts, while we are inclined to accept the preliminary objection of the respondents on the alternative remedy, we are also inclined to interfere and relax the condition of pre-deposit. We would direct that on the petitioner making a pre-deposit of Rs.5,00,000/- in addition to Rs.3,70,008/-, the appeal which would be filed by the petitioner would be entertained by the first appellate authority. The pre-deposit would abide by the result of the appeal. First Appeal, if preferred within 21 days, would not be rejected on the ground of limitation.*
> *11.* ***<u>In Pioneer Corporation versus Union of India, 2016 (340) ELT 63 (Del), a Division Bench of this Court has held that the High Court while exercising writ jurisdiction under Article 226 of the Constitution can exercise discretion and reduce the pre-deposit in rare and deserving case, notwithstanding the amendment made under Section 35F of the Customs Act. The statute has not withdrawn or taken away the said power vested in</u>***

<u>the Writ Court, which should be exercised in rare but compelling and deserving cases, when the cause of justice requires such reduction</u>.”

9. The Court has considered the matter. In view of the relevant facts on record, such as:

(i) The limited role ascribed to the Petitioner by the Order In-Original;

(ii) the admitted position being that he was merely a property dealer, who had enabled the property to be taken on rent and was a witness to the rent agreement as also;

(iii) his financial condition,

this Court is of the opinion that the appeal of the Petitioner deserves to be heard on merits by CESTAT.

10. In view of the above reasons and the statutorily mandated pre-deposit condition, it is directed that subject to a deposit of a sum of Rs.1 lakh, the appeal of the Petitioner be heard on merits by CESTAT.

11. The impugned order is set aside and the appeal is restored to its original number. The deposit shall be made within four weeks.

12. The petition and the pending applications (if any) are disposed of in the above terms.

PRATHIBA M. SINGH, J

DHARMESH SHARMA, J

JANUARY 8, 2025/*dk/am*