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

\+ **W.P.(C) 10353/2025**

NK SHARMA .....Petitioner

Through: Dr. Ashutosh and Ms. Fatima, Advocates.

versus

ASSISTANT COMMISSIONER .....Respondent

Through: Mr. Akash Panwar and Ms. Jasleen Kaur, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 21.07.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner - N.K Sharma under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking partial waiver of pre-deposit for a sum of Rs.1,12,000/- which constitutes 2.5 per cent of the penalty amount in filing the appeal before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter, '*CESTAT*').

3. The said appeal arises out of Show Cause Notice dated 27th April, 2022 by which certain demand has been raised against the Petitioner. The Order-in-Original dated 20th March, 2023 confirms the demand of service tax in terms of Section 73(1) Finance Act, 1994 read with Section 174 of the Central Goods and Service Tax Act, 2017 to the tune of Rs. 44,74,935/-. Even interest on the confirmed demand as also the penalties have been imposed upon the Petitioner.

4. The submission on behalf of the Petitioner is that 7.5 per cent of the pre-deposit has already been made and the Petitioner is not in a position to

arrange the remaining 2.5 per cent. Hence, waiver may be granted to the Petitioner.

5. Mr. Akash Panwar, ld. Counsel for the Respondent however relies upon the decision of a Coordinate bench of this Court in '***Diamond Entertainment Technologies vs. Commissioner Central Goods and Service Tax Commissionerate Dehradun and Another', 2019 SCC OnLine Del 12414*** to argue that no such waiver of pre-deposit can be granted. In fact, this judgment is also been followed by this Court in ***'Impressive Data Services Private Limited vs. Commissioner (Appeals-I), Central Tax GST', 2025 SCC OnLine Del 2497*** where it is held as under:

> *"7. The Court has considered the matter. The question raised herein is whether the requirements mandated in terms of Section 107(6) of the Act for pre-deposit can be waived or not. Section 107(6) of the Act reads as under:*
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> > *"(6) No appeal shall be filed under sub section (1), unless the appellant has paid— (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,] in relation to which the appeal has been filed. [Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant]"*
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> ***In terms of the above provision, insofar as the admitted tax, interest or penalty is concerned, the entire amount would have to be deposited. In so far as the disputed amount is concerned, 10% of the tax would have to be deposited as a pre-deposit along with the appeal. The said provision does not,***

in the opinion of this Court, give discretion for waiver of the pre-deposit. *In any event in Diamond Entertainment (supra) in the context of the Excise Act, the Court has clearly observed as under:*

> *"12. In Pioneer Corporation v. Union of India, (2016) 340 ELT 63, Shubh Impex v. Union of India, (2018) 361 ELT 199 (Del) and Manoj Kumar Jha v. DRI, (2019) 365 ELT 166 (Del), this Court, even while dealing with cases in which the appeal had been filed before the CESTAT after 6 th August, 2014, nevertheless, allowed the appeal to be prosecuted on payment of partial pre-deposit, given the financial stringency in which the respective appellants, before it, were placed; a reading of these decisions would reveal, that the attention of this Court had not been invited to its earlier judgment in Anjani Technoplast (supra) which set out, in clear and unambiguous terms, that every appeal, before the CESTAT, filed after the amendment of Section 35F/129E would be maintainable only if mandatory predeposit were made. xxxx 15. In view of the aforesaid merger, of the judgment of the Division Bench of this Court in Anjani Technoplast (supra) with the order passed by the Supreme Court in appeal thereagainst, we are bound, by Article 141 of the Constitution of India, to follow the law laid down in Anjani Technoplast (supra), in preference to that laid down in Pioneer Corporation (supra), Manoj Kumar Jha (supra) and Shubh Impex (supra). xxxx*
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> ***21. Inasmuch as the judgment in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha (supra) are contrary to the law laid down in Anjani Technoplast (supra) as well as to the law laid down in Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash***

Mishra (supra), A.B. Bhaskara Rao v. C.B.I. (supra), Manish Goel v. Rohini Goel (supra) and State of Bihar v. Arvind Kumar (supra), none of which have been noticed in the said decisions, it is not possible for us to follow the decisions in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha (supra), on which learned counsel places reliance."

8.In view of the settled legal position, the prayer for waiver of pre-deposit cannot be entertained. However, if there is any amount lying with the Government entities which the Petitioner wishes to rely upon as being part of the pre-deposit, the Petitioner is free to make such a prayer before the concerned Appellate Authority. It is also submitted on behalf of the Petitioner that Rs. 20 lakhs is also lying with the Department out of a total of Rs. 64 lakhs which is to be deposited by the Petitioner. This submission may also be made before the concerned Appellate Authority."

6. In view of the above, the prayer for partial waiver of the pre-deposit is not tenable.

7. However, in the facts and circumstances of this case, the Petitioner is granted time till 31st October, 2025 to make the remaining pre-deposit.

8. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

JULY 21, 2025
v/ck