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

\+ **W.P.(C) 13883/2025**

BHOLA YADAV .....Petitioner

Through: Mr. Ambuj Dixit, Mr. Kishlaya Mishra, Mr. Shiva Singh, Mr. Ayush Mishra, Mr. Saurabh Singh and Ms. Astha Ranjan, Adv.

versus

COMMISSIONER OF CUSTOMS APPEALS NEW CUSTOMS HOUSE NEAR IGI AIRPORT NEW DELHI .....Respondent

Through: Ms. Anushree Narain, SSC with Mr. Naman Choula, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

ORDER

% 18.09.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Bhola Yadav under Article 226 of the Constitution of India, challenging the impugned order dated 31st December, 2024 passed by the Commissioner of Customs (Appeals) New Customs House, Indira Gandhi International Airport, Terminal-3, New Delhi *(hereinafter 'the impugned order'),* by which a penalty of Rs. 11,20,000/- has been imposed upon the Petitioner.

3. The matter involves allegation of smuggling of gold by one Mr. Rahul Kumar. The role of the Petitioner, who is a sepoy in the Assam Rifles, was that he had helped Mr. Rahul Kumar and hence, penalty has been imposed upon the Petitioner.

4. In the impugned order, the reason for implicating the Petitioner was on the basis of the statement given by one Mr. Pradeep Kumar.

5. The Petitioner was suspended from his duty *vide* suspension order dated 12th June 2023 passed by the Directorate General, Assam Rifles, Shillong*(hereinafter 'suspension order')*.The limited relief that the Petitioner is seeking is that he has been suspended since 2023, and that he is unable to afford the mandatory pre-deposit for filing the appeal, pursuant to Section 129E of the Customs Act, 1962. It is submitted by the ld. Counsel for the Petitioner that the appeal has already been filed by the Petitioner.

6. On the last date after hearing *i.e.*, 10th September 2025, ld. Counsel for the Respondent was directed to seek instructions on the following aspects:

(i) Firstly, whether the Petitioner, being a sepoy in the Assam Rifles, could be granted waiver of the pre-deposit.

(ii) Secondly, whether there is any other appeal filed in respect of the impugned order.

7. Ms. Anushree Narain ld. SSC for the Respondent submits that the provisions of Section 129E of the Customs Act, 1962 *(hereinafter 'the Act')*are mandatory, and on the ground of financial difficulty, no waiver ought to be granted. She relies upon the ***W.P. (C) NO. 3380/2016*** titled ***Suvidah Signs Studios Pvt. Ltd vs. Union of India*** where a Coordinate Bench of this Court has held that mere financial difficulty would not be sufficient to exercise grounds or modify the statutory condition under Section 35F of the Central Excise Act,1944. The observation of the Court is as under:

“2. This is a petition filed by the petitioner seeking, inter alia, to challenge the order dated 30th March, 2015 passed by the Commissioner of Central Excise, Delhi. The petition to this extent appears misconceived because the aforementioned order is appealable and in fact the petitioner filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) which has been dismissed by the CESTAT by an order dated 27th November, 2015, which also has been challenged in this petition.

3. In terms of Section 35F of the Central Excise Act, 1944 ('CE Act') it is mandatory for the petitioner to have deposited 7.5% of the demand of duty and penalty for its appeal to be entertained. The CESTAT in its impugned order dated 27th November, 2015 noticed that no pre-deposit as against the compulsory deposit of 7.5% of the penalty of Rs. 42 lakhs had been made till that date. Accordingly the petitioner's appeal was dismissed.

4. The petitioner also challenges the validity of Section 35F of the CE Act to the extent it mandates a pre-deposit of 7.5% of the demand of duty and penalty for the appeal to be entertained. This provision is similar to Section 130 of the Customs Act, 1962 which was considered by this Court in its order dated 20th October, 2015 in Customs Appeal No. 19/2015 [2015 (326) E.L.T. 472 (Del)) (Anjani Technoplast Ltd. v. The Commissioner of Customs). In the said order this Court concurred with the decision of the High Court of Allahabad in Ganesh Yadav v. Union of India - 2015 (320) E.L.T. 711 (All.) = 2015 (39) S.T.R. 177 (All.) which upheld the constitutional validity of Section 35F of the CE Act. Consequently, this Court is not inclined to entertain a challenge to the constitutional validity of Section 35F of the CE Act.

5. The petitioner having failed to comply with the statutory mandatory requirement of depositing the 7.5% of the *demand of duty and penalty, the CESTAT was right in dismissing the petitioner's appeal by its order dated 27th November, 2015.*

*6. **Learned counsel for the petitioner urges that the petitioner is in great financial difficulty and only needs some more time to pay the pre-deposit amount. This Court is unable to accede the request. It is not possible for the Court, in exercise of its jurisdiction under Article 226 of the Constitution, to modify the mandatory conditions set out in Section 35F of the CE Act on any ground whatsoever.”***

8. On the other hand, ld. Counsel for the Petitioner relies upon ***W.P. (C)1242/2022*** titled ***Mohammed Akmam Uddin Ahmed & Ors. vs. Commissioner Appeals Customs and Central Excise & Ors.*** where waiver of pre-deposit in similar circumstances has been granted.

9. Heard. In the present petition, waiver is sought not merely on the ground of financial difficulty, but considering that the Petitioner was himself a Sepoy in the Assam Rifles, and a person working in the Army, the same would be a factor which the Court can consider.

10. Moreover, Petitioner is currently under suspension, and earning merely Rs.20,000/- per month as salary. The Petitioner is a sole earning member in the family. He has been implicated at the behest of one Mr. Pradeep Kumar, who has given a statement against him. In these facts, the Court is inclined to waive the pre-deposit.

11. Let the appeal be now filed by the Petitioner by 15th November, 2025 before the Appellate Authority.

12. Pre-deposit shall not be insisted upon from the Petitioner in this case.

13. The present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

SEPTEMBER 18, 2025/kp/sm