3IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551 **24.02.26**
D/L.
Item No.14
(Samar)

WPA 6693 of 2025

Samrat Chatterjee
Vs
The Union of India & Ors.

Mr. Himangshu Kumar Ray,
Mr. Subhasis Podder,
Ms. Shiwani Shaw,
Mr. Gaurav Chakraborty
....for the Petitioner.
Mr. Kaushik Dey,
Mr. Anurag Roy,
.... for the respondent no. 3.
Mr. Kaushik Dey,
Mr. Tapan Bhanja,
.... for the respondent no. 1, 2 & 4.
Mr. Prabir Kumar Bhowmick,
Mr. Sujit Bhunia,
.... For the UOI.

1. At the outset, it is submitted by the parties that there is a mistake in the amounts recorded in paragraph 3 at page 2 of the order dated January 05, 2026. Let the amounts typed as "Rs. 1,41,910 and Rs. 26,920/-" in the sixth line of paragraph 3 at page 2 of the said order dated January 5, 2026 be replaced by the amounts "Rs. 1,52,046/- and Rs. 28,844/-".
2. This writ petition inter alia mounts challenge to an order dated January 14, 2025 passed by the Appellate Authority under Section 85 of the Finance Act, 1994 read with Section 35F of the Central

Excise Act, 1944 whereby the petitioner's appeal against the order in original dated April 18, 2024 has been dismissed on the ground of non-compliance with the condition of statutory pre-deposit in terms of Section 35F of the said Act of 1944.

3. On the first date when this matter was taken up, it was submitted on behalf of the petitioner that payments to the tune of Rs. 1,52,046/- and Rs. 28,844/- (wrongly recorded as Rs. 1,41,910/- and Rs. 26,920/- as indicated at the outset) had been made by the petitioner to the respondents CGST Authorities on account of service tax in respect of *"works contract service"* for the same year for which the order in original dated April 18, 2024 had been passed and that the said sums should have been considered by the appellate authority as having been made towards compliance with the requirement of statutory pre-deposit.

4. Upon such submission a report in the form of an affidavit was called for from an appropriate officer of the CGST Department indicating the reason or purpose wherefor the sums mentioned in the cyber receipts dated September 11, 2017 and September 23, 2017 had been deposited by the petitioner as also the heads under which the said sums had been accepted by the department.

5. In terms of the said order, a report in the form of affidavit was filed in court on February 18, 2026 which revealed that the petitioner had deposited a total sum of Rs. 1,80,890/- (i.e. Rs.1,52,046 + Rs. 28,844). As regards the purpose or reason where for such deposit had been made the report states thus:-

"*Regarding the point, for which purpose or reason such deposition was made, it is to submit further that nothing in this regard was mentioned in any statutory document(s) by the petitioner above named. This amount was not pertinent to any outstanding declared liability on part of the said petitioner as per their Service Tax returns.*

....

Hence, reason of payment of Rs. 1,80,890/- vide above stated challans are not known to the department."

6. It is thus evident from the aforesaid extract that the petitioner has not put in the said sum of Rs. 1,80,890/- with the respondents towards discharge of any liability of the petitioner.

7. In such view of the matter, there should be no impediment on the part of the respondents to treat the said sum or a portion thereof (as may be required or necessary) as having been put in to meet the condition of statutory pre-deposit for the purpose of entertaining the petitioner's appeal by the appellate authority.

8. It is evident that the petitioner's appeal was dismissed by the Appellate Authority only on the ground of non-fulfillment of the condition of mandatory pre-deposit in terms of Section 35F of the said Act of 1944.

9. Since it is not in dispute that a sum of Rs. 1,80,890/- is already lying with the respondent CGST Authorities which in terms of the report the petitioner was not otherwise liable to pay on account of any demand having been raised against him therefore, for ends of justice it is directed that the respondent CGST Authorities shall treat the aforesaid sum or any portion thereof (as may be required/necessary) as having been paid towards fulfillment of the condition of the statutory pre-deposit in terms of Section 35F of the said Act of 1944.

10. In such view of the matter, the order impugned dated January 14, 2025 passed by the appellate authority is set aside and the matter is remitted to the file of the appellate authority for consideration of the petitioner's appeal on merits upon verifying and being satisfied that the condition of statutory pre-deposit under Section 35F of the said Act of 1944 has been met by the petitioner by

treating the said amount of Rs.1,80,890/- or portion thereof (as may be required or necessary) as having been deposited by the petitioner towards statutory pre-deposit. It is clarified that if despite treating the said sum of Rs.1,80,890/- as having been put in to meet the condition of statutory pre-deposit, it is found that there is any deficit and further sum is required to be deposited by the petitioner to comply with the condition of mandatory statutory pre-deposit, the petitioner shall be obliged to do so within the time specified by the Appellate Authority for the purpose of maintaining the appeal.

11. With the aforesaid observations, WPA 6693 of 2025 stands disposed. No costs.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities

(Om Narayan Rai , J.)