Ppk Newsclick Studio Pvt Ltd vs Deputy Commissioner Of Income Tax ... on 10 May, 2024

Author: Yashwant Varma

Bench: Yashwant Varma, Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5493/2024 & CM APPL. 22604/2024 (stay)
PPK NEWSCLICK STUDIO PVT LTD ..... Petiti
Through: Mr. Rohit Sharma, Mr. Nikhi
Purohit and Mr. Jatin Lalwa
Advs.
versus
DEPUTY COMMISSIONER OF INCOME
TAX CENTRAL - I ..... Responden
Through: Mr. Abhishek Maratha, Sr.SC
with Mr. Nupur Sharma, Mr.
Parth Semwal and Mr. Apoorv
Agarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV
ORDER

% 10.05.2024

1. This writ petition is directed again the order dated 05 April 2024 passed by the Income Tax Appellate Tribunal ["ITAT"] while dealing with an application for stay of demand.

2. We note that in an earlier round of litigation and faced with a direction which had called upon the writ petitioner to make a pre- deposit of 20%, this Court had been petitioned by way of W.P.(C) 15337/2023.

3. The said writ petition came to be disposed of on 29 November 2023. However, while passing a detailed order on that writ petition, the Court had made the following observations:

> "8. Keeping in view the aforesaid findings, this Court is of the view that the petitioner has not been able to make out a prima facie case in its favour. To put it mildly, the petitioner has a „lot to answer in the appeal.
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> 9. The petitioner s plea of financial stringency based on its balance-sheet also inspires no confidence as according to the Assessing Officer, the accounts have not been properly maintained. One of the instance given by the Assessing Officer in the assessment order is reproduced hereinbelow:-
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> 7.1 ....In one case of Sh. Anup Chakraborty, who has received salary/business receipts of Rs.13,90,275/- from assessee categorically denied having provided any services to PPK News Click in lieu of receipts.....
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> 7.2 When the same finding was show caused to assessee, vide reply dated 26.12.2022, it has been argued by Assessee that the expenses made to this party is only 2.57% of the total expenditure.....Besides, Assessee contended that this payment to Sh. Anup Chaudhary were made pursuant to a family arrangement between him and his brother Sh.

Amit Chakraborty. Assessee has claimed that the actual services were rendered by Sh. Amit Chakraborty on the account of his brother Sh. Anup Chaudhary. Assessee, contends that during FY 2020-21, Sh. Amit Chakraborty had provided administrative services to the assessee, however, the payments were made to his brother Sh. Anup Chakraborty, as per their request. And thus, assessee contends that, the expenses claimed as against payments made to Sh. Anup Chakraborty are genuine business expenses of the assessee in lieu of services rendered by Sh. Amit Chakraborty.

7.3 The facts have been perused and it is found that the argument by Assessee is devoid of merits and is nothing more than a make-believe concocted story. The assessee has not objected to the categorical finding that Sh. Anup Chakraborty has been paid an amount of Rs.13,90,275/- without any provision of services. Then to explain the incongruency, Assessee has made this story that his brother gave services. It is not understandable that how come, payments need to be made to a completely different person. Further, it is pertinent to mention here that the assessee has even deducted Taxes at Source in the name of Sh. Anup Chakraborty and not in the name of Sh. Amit Chakraborty who has (according to the argument of the Assessee) provided services to them. Further, the circumstantial evidences also do not corroborate the argument of the assessee. The person in question is living in a metro and it is not the case of a migrant labor/poor person where the payment may be made to his family living This is a digitally signed order.

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Accordingly, the argument of Assessee is rejected....."....."

10. Accordingly, the writ petition is dismissed. However, this Court clarifies that the findings given by this Court are only in the context of the present writ proceedings and shall not prejudice either of the parties at the stage of the appellate proceedings."

4. Learned counsel appearing for the petitioner apprises us that during the pendency of the challenge which was taken to the aforesaid order passed by the High Court as well as the subsequent application that has been made, it has by now deposited a sum in excess of the 20% which was originally demanded.

5. However, and while examining its application for grant of interim reliefs, the ITAT has while passing the order impugned before us, has observed as follows:

> "27. To conclude, as the ld. AR has himself conceded that unless the transaction as a whole is questioned as a 'farce' , provisions of section 68 of the Act could not have been invoked with regard to the receipts shown in the nature of income. We find that the tax authorities have examined the whole transaction on that aspect only and at this stage, based on our discussion above, there is no reason to differ from the same. The provisions of Section 68 of the Act rests initial burden on the assessee to explain the genuineness of the transaction. It being a deeming income provision, the burden needs to be sufficiently discharged, at least on the preponderance of probability. Here before us there are concurrent findings of two quasi- judicial authorities against the assessee by raising valid concerns about the genuineness of the transaction. Before us also, the same set of arguments and explanations have been raised , which, we also find prima facie lacking the strength to stand on its own legs. Thus, we have no hesitation to hold that the assessee has no prima facie case to contend that as for the purpose of section 68 of the Act, it had prima facie discharged its burden or that provisions of section 68 of the Act have been patently wrongly invoked.
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> 28. The aforesaid discussion made by us is bolstered by Order dated 29.11.2023 in W.P.(C) 15337 /2023 & CM Appl. 61508 / 2023 & CM Appl. 61509/2023 titled PPK Newsclick Studio This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/05/2024 at 21:58:44 Pvt.Ltd. Vs. Principal CCIT, Central Delhi and Anr., wherein the present Applicant had approached Hon'ble High Court for stay of demand during the pendency of appeal before CIT(A). Hon'ble High Court, having taken note of the 'cogent findings' against the Applicant had concluded that Assessing Officer has virtually held that the transaction between the petitioner and the foreign entity was based on 'reverse engineering'. Relying the findings of the Assessing Officer , the Hon'ble High Court had concluded in Paragraph 8 as follows:-
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> "8. Keeping in view the aforesaid findings, this Court is of the view that the petitioner has not been able to make out a prima facie case in its favour. To put it mildly, the

petitioner has a 'lot to answer' in the appeal ."

29. The question of financial stringency was also examined by the Hon'ble High Court and the financials of the Applicant were not found to be inspiring confidence. As a matter of fact, the findings of the learned Assessing Officer now stand sustained and further reasoned by the Order of the learned CIT(A) in the first appellate proceedings.

30. Since there is no prima facie case, the balance of convenience in no way comes to assist the applicant assessee. On the contrary, when substantial receipts are from the Foreign Body only, and assessee is no having any other source of prospective earnings to ensure payments of demands if being unsuccessful, here, the Revenue is justified in initiating recovery proceedings. We find no malice in the action of the ld. AO in that regard.

31. Considering the entirety of facts and circumstances, we do not find any justification to interefere with the impugned recovery proceedings. Nevertheless, the assessee shall be at liberty to approachy the Assessing Officer with plan to liquidate the disputed tax demand or otherwise seek securitization of the same, as may be found satisfactory by the Assessing Officer."

6. As we go through the same, we find that the ITAT has duly applied its mind to the issue of a prima facie case.

7. We also bear in mind that the 20% prescription which is spoken of is not an inviolable condition or a prescription etched in stone. We bear in mind in this regard the following observations as rendered in National Association of Software and Services Companies (NASSCOM) v. Deputy Commissioner of Income Tax This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/05/2024 at 21:58:44 (Exemption) Circle 2(1), New Delhi [2024:DHC:2078-DB]:-

> "12. It must at the outset be noted that the two OMs noticed above neither prescribe nor mandate 15% or 20% of the outstanding demand as the case may be, being deposited as a pre-condition for grant of stay. The OM dated 29 February 2016 specifically spoke of a discretion vesting in the AO to grant stay subject to a deposit at a rate higher or lower than 15% dependent upon the facts of a particular case. The subsequent OM merely amended the rate to be 20%. In fact, while the subsequent OM chose to describe the 20% deposit to be the "standard rate", the same would clearly not sustain in light of the discussion which ensues.
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> 13. We note that while dealing with an identical question, we had in Avantha Realty Ltd. vs The Principal Commissioner of Income Tax Central Delhi & Anr. observed as under:-

> "2. We note that the impugned orders are principally based on the instructions of the Central Board of Direct Tax ["CBDT"] as encapsulated in the Office Memorandum dated 31 July 2017 and which had while dealing with the manner in which the power under Section 220(6) of the Act is liable to be exercised had held that assessees may be accorded interim protection subject to deposit of 20% of the total outstanding demand failing which they would be treated as an "assessee in default".

3. Insofar as the aforesaid Office Memorandum is concerned, suffice it to note that while considering its ambit the Supreme Court in Principal Commissioner of Income Tax and Others vs. LG Electronics India Private Limited had held as follows:-

> "1. Delay condoned. Leave Granted.
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> 2. Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative circular will not operate as a fetter on the Commissioner since it is a quasi-judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.
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> 3. The appeal is disposed of accordingly. Pending application, if any, shall stand disposed of."

14. As is manifest from the order passed by the Supreme Court in Principal Commissioner of Income Tax & Ors. vs LG Electronics India Pvt. Ltd., it had been emphasized that the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/05/2024 at 21:58:44 administrative circular would not operate as a fetter upon the power otherwise conferred on a quasi-judicial authority and that it would be wholly incorrect to view the OM as mandating the deposit of 20%, irrespective of the facts of an individual case. This would also flow from the clear and express language employed in sub-section (6) of Section 220 which speaks of the Assessing Officer being empowered "in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case". The discretion thus vested in the hands of the AO is one which cannot possibly be viewed as being cabined by the terms of the OM.

15. The issue of a grant of stay pending appellate remedies being pursued arose for the consideration of a Division Bench of the Court in Dabur India Limited vs Commissioner of Income Tax (TDS) & Anr. where it was pertinently observed as under:

> "6. Having heard learned counsel for the parties and having perused the two Office Memorandums, in question, this Court is of the view that the requirement of payment of twenty percent of disputed tax demand is not a pre-requisite for putting

> in abeyance recovery of demand pending first appeal in all cases. The said pre-condition of deposit of twenty percent of the demand can be relaxed in appropriate cases. Even the Office Memorandum dated 29 February, 2016 gives instances like where addition on the same issue has been deleted by the appellate authorities in earlier years or where the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee.
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> 8. In the present case, the impugned order is non- reasoned. The three basic principles i.e. the prima facie case, balance of convenience and irreparable injury have not been considered while deciding the stay application."

16. More recently in Indian National Congress vs Deputy Commissioner of Income Tax Central - 19 & Ors. we had an occasion to examine the scope of the power conferred by Section 220(6) of the Act and which was explained in the following terms:

> "22. However, as we read the order impugned, the matter does not appear to have proceeded along those lines before the ITAT. The tone and tenor of submissions clearly appear to have been concentrated upon the merits of the assessment order. Although the issue of payment of 20% of the outstanding demand appears to have been raised, the same came to be summarily rejected by the ITAT in cryptic terms. Notwithstanding the above, it becomes pertinent to observe that the 20% deposit which is spoken of in the OM dated 31 This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/05/2024 at 21:58:44 July 2017 is not liable to be viewed as a condition etched in stone or one which is inviolable. The OM merely seeks to provide guidance to the authorities to bear in mind certain aspects while considering applications for stay of demand pending an appeals remedy being pursued. The OM is not liable to be read as conferring an indefeasible right upon the assessee to claim a stay of a tax liability by merely offering or consenting to deposit 20% of the outstanding liability. Ultimately, it is for the authorities to examine and consider what amount would be sufficient to securitise the interest of the Revenue and thus a just balance being struck. The quantum of the deposit that would be required to be made would ultimately depend upon the facts and circumstances of each case. .....
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> 23. The position which thus emerges is that while 20% is not liable to be viewed as an entrenched or inflexible rule, there could be circumstances where the respondents may be justified in seeking a deposit in excess of the above dependent upon the facts and circumstances that may obtain. This would have to necessarily be left to the sound exercise of discretion by the respondents based upon a consideration of issues such as prima facie, financial hardship and the likelihood of success. This observation

> we render being conscious of the indisputable position that the OM applies only upto the stage of the appeal pending before the CIT(A) and being of little significance when it comes to the ITAT."

17. As explained in Indian National Congress, the 20% which is spoken of in the OM cannot possibly be viewed as being an inviolate or inflexible condition. The extent of the deposit which an assessee may be called upon to make would have to be examined and answered bearing in mind factors such as prima facie case, undue hardship and likelihood of success. We note that while dealing with the question of the claim of stay as made by an assessee and the competing obligation to protect the interest of the Revenue, the Supreme Court in Benara Valves Ltd. & Ors. Vs Commissioner of Central Excise & Anr. had elucidated the legal position in the following words:

> "6. Principles relating to grant of stay pending disposal of the matters before the forums concerned have been considered in several cases. It is to be noted that in such matters though discretion is available, the same has to be exercised judicially.
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> 7. The applicable principles have been set out succinctly in Silliguri Municipality v. Amalendu Das and Samarias Trading Co. (P) Ltd. v. S. Samuel and CCE v. Dunlop India Ltd.
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> 8. It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand on, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this Court has indicated the principles that does not give a license to the forum/authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen s faith in the impartiality of public administration, interim relief can be given.
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> 9. It has become an unfortunate trend to casually dispose of stay applications by referring to decisions in Siliguri Municipality and Dunlop India cases without analysing factual scenario involved in a particular case.
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> 11. Two significant expressions used in the provisions are "undue hardship to such person" and "safeguard the interests of Revenue". Therefore, while dealing with the application twin requirements of considerations i.e. consideration of undue hardship aspect and imposition of conditions to safeguard the interest of Revenue have to be kept in view.
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> 12. As noted above there are two important expressions in Section 35-F. One is undue hardship. This is a matter within the special knowledge of the applicant for waiver and has to be established by him. A mere assertion about undue hardship would not be sufficient. It was noted by this Court in S. Vasudeva v. State of Karnataka that under Indian conditions expression "undue hardship" is normally related to economic hardship. "Undue" which means something which is not merited by the conduct of the claimant, or is very much disproportionate to it. Undue hardship is caused when the hardship is not warranted by the circumstances.
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> 13. For a hardship to be 'undue' it must be shown that the particular burden to observe or perform the requirement is out of proportion to the nature of the requirement itself, and the This is a digitally signed order.
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> 14. The word "undue" adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant
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> 15. The other aspect relates to imposition of condition to safeguard the interest of Revenue. This is an aspect which the Tribunal has to bring into focus. It is for the Tribunal to impose such conditions as are deemed proper to safeguard the interests of the Revenue. Therefore, the Tribunal while dealing with the application has to consider materials to be placed by the assessee relating to undue hardship and also to stipulate condition as required to safeguard the interest of the Revenue."

The aforesaid principles were reaffirmed by the Supreme Court in Monotosh Saha vs Special Director, Enforcement Directorate & Anr.

18. We find a lucid explanation of the legal position with respect to pre-deposit and the grant of stay in a decision rendered by a Division Bench of the Allahabad High Court in ITC Ltd v. Commissioner (Appeals), Customs & Central Excise where the Court had held as follows:

> "18. In Income-tax Officer v. M.K. Mohammad Kunhi, AIR 1969 SC 430, the Apex Court held that stay should be granted if a strong prima facie case has been made out and in the most deserving and appropriate cases where entire purpose of the appeal

will be frustrated or rendered nugatory by allowing the recovery proceedings to continue, during the pendency of the appeal.

19. In B.P.L. Sanyo Utilities and Appliances Ltd. v. Union of India, 1999 (108) E.L.T. 621, the Karnataka High Court held that in the matter of grant of waiver of pre-deposit, each case has to be examined on its own merit and no hard and fast rule can be formulated.

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21. In Mehsana District Cooperative Milk P.U. Ltd. v. Union of India, 2003 (154) E.L.T. 347 (S.C.), the Hon'ble Supreme Court considered the case of dispensation of pre-deposit condition and held that the Appellate Authority must address to itself to the prima facie merits of the appellant's case and upon being satisfied of the same, determine the quantum of deposit taking into consideration the financial hardship and This is a digitally signed order.

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23. In J.N. Chemicals Pvt. Ltd. v. CEGAT, 1991 (53) E.L.T. 543, the Calcutta High Court while considering the provisions of pre- deposit of duty and penalty, observed that where the authority concerned comes to the conclusion that the appellant has a good prima facie case so as to justify the dispensation of requirement of pre-deposit of the disputed amount on duty and penalty, the authority must exercise its discretion to dispense with such requirement particularly in a case where the appellant satisfies the authority concerned that its case is squarely covered by the decision of a competent Court binding on it. In such an eventuality, asking the appellant to deposit the duty demanded and penalty levied would undoubtedly cause undue hardship to the appellant. While deciding the said case, Calcutta High Court placed reliance upon the judgment of the Hon'ble Apex Court in L. Hirday Narain v. Income-Tax Officer, Bareilly, (1970) 2 SCC 355 : AIR 1971 SC 33, wherein the Court observed as under:-

"If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moved in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right-public or private-of a citizen."

24. Thus, even where enabling or discretionary power is conferred on a public authority, the words which are permissive in character, require to be constituted, involving a duty to exercise that power, if some legal right or entitlement is conferred or enjoyed, and for the effectuating the such right or entitlement, the exercise of such power is essential. The aforesaid view stands fortified in view of that fact that every power is coupled with a duty to act reasonably and the Court/Tribunal/Authority has to proceed having strict adherence to the provisions of law. [Vide Julius v. Lord Bishop of Oxford, (1880) 5 Appeal Cases 214; Commissioner of Police, Bombay v. Gordhandas Bhanji,1951 SCC 1088 : AIR 1952 SC 16; K.S. Srinivasan v. Union of India, AIR 1958 SC 419; Yogeshwar Jaiswal v. State Transport Appellate Tribunal, (1985) 1 SCC 725 : AIR 1985 SC 516; Ambica Quarry Works etc. v. State of Gujarat, (1987) 1 SCC 213 : AIR 1987 SC 1073].

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26. In Bongaigaon Refinery & Petrochem Ltd. v. Collector of Central Excise (A), 1994 (69) E.L.T. 193 (Cal.), the Calcutta High Court, while examining a similar issue and placed reliance upon a large number of judgments and held that the phrase "undue hardship" would cover a case where the appellant has a strong prima facie case. The phrase also covers a situation where there is an arguable case in the appeal. If the Appellate Authority forms the opinion that appellant has a strong prima facie case, it should dispense with the pre-deposit condition altogether. However, where it is of the opinion that the appellant has no arguable case, the Appellate Authority must safeguard the interest of the Revenue, as the same also cannot be jeopardised.

27. In Sri Krishna v. Union of India, 1998 (104) E.L.T. 305, Delhi High Court considered the issue of dispensation of pre- deposit condition and the concept of undue hardship while considering the provisions of Section 129E of the Customs Act, 1962 and Section 35 of the Act and held that the Court while considering the case of the appellant should examine as to whether the Appellate Authority or Tribunal have dealt with the plea raised by the appellant before it and have considered as to whether the appellant has a prima facie case on merit. In case the appellant has a strong prima facie case, as is most likely to exonerate him from liability and the Appellate Authority/Tribunal insists on the deposit of the amount, it would amount to undue hardship.

28. In Hoogly Mills Co. Ltd. v. Union of India, 1999 (108) E.L.T. 637, the Calcutta High Court again reiterated the view that if the appellant has a strong prima facie case, he is entitled of waiving the pre-deposit condition and in case the Appellate Authority insists to deposit the amount so assessed or penalty so levied, it will cause undue hardship to the assessee. While considering the said case, the Court placed reliance upon the large number of judgments including Tata Iron & Steel Co. Ltd. v. Commissioner (Appeals), Central Excise, 1998 (98) E.L.T. 50; Hari Fertilizer v. Union of India, 1985 (22) E.L.T. 301 (All.); Re. American Refrigeration Co. Ltd., 1986 (23) E.L.T. 74; and V.I.T. Sea Foods v. Collector of Customs, 1989 (42) E.L.T. 220 (Ker.), wherein the Courts had expressed the similar view.

29. In I.T.C. Ltd. v. Commissioner of Central Excise and Customs (Appeals)ILR 2000 KAR 25, while examining the This is a digitally signed order.

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> "While considering the case of „undue hardship , the authority is required to examine the prima facie on merits of the dispute as well. Pleading of financial disability would not be the only consideration. Where the case is fully covered in favour of the assessee by a biding precedent like that of the judgment of the Supreme Court, jurisdictional High Court or a Special Bench of the Tribunal, then to still insist upon the deposit of duty and penalty levied would certainly cause undue hardship to the assessee. Absence of the financial hardship in such a case would be no ground to decline the dispensation of pre-deposit under the proviso to Section 35F. The power to dispense with such deposit is conferred under the authorities has to be exercised precisely in cases like this type and if it is not exercised under such circumstances then this Court will require it to be exercised. Such like cases where two views are not possible then the condition of pre-deposit before the appeal is heard on merits, can be dispensed with. In case two views are possible on interpretation, based on conflicting judgments of the Tribunal or different High Courts in the absence of the judgment of the jurisdictional High Court then the authorities may pass the order under proviso to Section 35F of the Act keeping in view the facts of the case in hand."
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> 35. In view of the above, the aforesaid authorities make it clear that the Court should not grant interim relief/stay of the recovery merely by asking of a party. It has to maintain a balance between the rights of an individual and the State so far as the recovery of sovereign dues is concerned. While considering the application for stay/waiver of a pre-deposit, as required under the law, the Court must apply its mind as to whether the appellant has a strong prima facie case on merit. In case it is covered by the judgment of a Court/Tribunal binding upon the Appellate Authority, it should apply its mind as to whether in view of the said judgment, the appellant is likely to succeed on merit. If an appellant having strong prima facie case, is asked to deposit the amount of assessment so made or penalty so levied, it would cause undue hardship to him, though there may be no financial restrain on the appellant running in a good financial condition. The arguments that appellant is in a position to deposit or if he succeeds in appeal, he will be entitled to get the refund, are not the considerations for deciding the application. The order of the Appellate Authority itself must show that it had applied its mind to the This is a digitally signed order.

> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/05/2024 at 21:58:44 issue raised by the appellant and it has been considered in accordance with the law. The expression "undue hardship" has a wider connotation as it takes within its ambit the case where the assessee is asked to deposit the amount even if he is likely to exonerate from the total liability on disposal of his appeal. Dispensation of deposit should also be allowed where two views are possible. While considering the application for interim relief, the Court must examine all pros and cons involved in the case and further examine that in case recovery is not stayed, the right of appeal conferred by the legislature and refusal to exercise the discretionary power by the authority to stay/waive the predeposit condition, would be reduced to nugatory/illusory. Undoubtedly, the interest of the Revenue cannot be jeopardized but that does not mean that in order to protect the interest of the Revenue, the Court or authority should exercise its duty under the law to take into consideration the rights and interest of an individual. It is also clear that before any goods could be subjected to duty, it has to be established that it has been manufactured and it is marketable and to prove that it is marketable, the burden is on the Revenue and not on the manufacturer."

19. Though some of the decisions noticed by us hereinabove pertained to pre-deposit prescriptions placed by a statute, the principles enunciated therein would clearly be of relevance while examining the extent of the power that stands placed in the hands of the AO in terms of Section 220(6) of the Act. In our considered opinion, the respondents have clearly erred in proceeding on the assumption that the application for consideration of outstanding demands being placed in abeyance could not have even been entertained without a 20% pre-deposit. The aforesaid stand as taken is thoroughly misconceived and wholly untenable in law."

8. Consequently and for the aforesaid reasons, we find no merit in the challenge which stands raised.

9. The writ petition fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

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