2025:DHC:11737-DB

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

% *Date of Decision : 22.12.2025*

\+ **W.P.(C) 19495/2025, CM APPL. 81389-90/2025**

CLEARMEDI HEALTHCARE PRIVATE LIMITED .....Petitioner

Through: Mr Aseem Chawla, Sr Advocate with Mr Atulya Sharma, Ms Pratishtha Chaudhary and Ms Sejal Garg, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME-TAX, CIRCLE 4(2), DELHI & ORS. .....Respondents

Through: Mr. Indruj Singh Rai, SSC Mr. Sanjeev Menon, Mr. Rahul Singh, JSCs and Mr. Gaurav Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO , J. (ORAL)

1. The petitioner has filed this petition, with the following prayers:-

> *"a. Issue a Writ of and/or Order and/or Directions in the nature of Certiorari, Prohibition, Mandamus or any other appropriate Writ, Order or Direction for setting aside and/or quashing the Impugned Order dated November 13, 2025 passed by Respondent No. 1, in complete disregard of the stay application(s) filed by Petitioner, and not treat the Petitioner/Assessee as "assessee-in-default" as per section 220(6) of the Act, and keep the demand in abeyance till the appeal assailing the assessment order is adjudicated upon by the Ld. CIT(A), and/or*
> *b. Issue appropriate Writ, Order or Direction in the nature*

of Mandamus and/or any appropriate Writ, Order or Direction directing the Respondent(s) to consider the Application for stay of demand dated November 28, 2025, filed by the Petitioner before PCIT, and till such time keep the demand in abeyance and/or

c. Issue appropriate Writ, Order or Direction in the nature of Mandamus and/or any appropriate Writ, Order or Direction directing the Ld. CIT(A) for expeditious disposal of the Appeal filed by the Petitioner in a time-bound manner and keep demand in abeyance till the disposal of the said appeal and/or

d. Such further or other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The challenge in this petition is primarily to the order dated 13.11.2025 (impugned order) whereby the respondents have rejected the application filed by the petitioner seeking stay of the demand till the disposal of the appeal pending before the Commissioner of Income Tax (Appeals) [CIT(A)]. It is noted that the petitioner filed its ITR for the Assessment Year (AY) 2023-24 on 21.11.2023 declaring a loss of Rs.58,35,700/-, which was selected for scrutiny.

3. The stand of the petitioner as contended by Mr Aseem Chawla, learned Senior Counsel appearing for the petitioner, is that the assessment order is a subject matter of an appeal pending before the CIT(A) and an application was filed for stay of the assessment order till the pendency of the appeal. But the respondent no.1 with the non-speaking impugned order had rejected the application, by merely citing the alleged mandate of payment of 20% in terms of Office Memorandums(OMs) dated 29.02.2016 and 31.07.2017, without considering the application objectively that *prima facie*

case and *balance of convenience* are in favour of the petitioner.

4. He submits that the Assessing Officer (AO) is required to consider the facts and exercise the discretion vested in it under Section 220(6) of the Income Tax Act, 1961 (the Act) to treat the petitioner as not being in default till the time the appeal against the assessment order is pending. He submits that the issue with regard to the powers of the AO while exercising the powers under Section 220(6) of the Act is well settled by the decisions of this Court in ***National Association of Software and Services Companies (NASSCOM) v. Deputy Commissioner of Income-tax (Exemption)Circle 2 (1), Delhi And Ors, 2024:DHC:2078-DB, Centre For Policy Research v. Deputy Commissioner of Income-tax, [2025] 475 ITR 96 (Delhi)*** and also of the Supreme Court in ***Principal Commissioner of Income Tax & Ors. v. LG Electronics India Pvt. Ltd., (2018) 18 SCC 447*** wherein, according to him, it is clearly held that both the OMs dated 29.02.2016 and 31.07.2017 neither prescribe nor mandate 20% of the outstanding demand, as the case may be, as a pre condition for grant of stay. The conclusion drawn by the AO is at variance with the aforesaid decisions.

5. Mr Sanjeev Menon, learned JSC appearing for the respondent would justify the impugned order wherein the petitioner has been directed to deposit 20% of the outstanding demand. We may state here that Mr Menon has not pointed out anything contrary to what has been held by this Court in ***NASSCOM (supra)*** and ***Centre for Policy Research (supra).***

6. At this stage, Mr Chawla, learned Senior Counsel for the petitioner has drawn our attention to paragraphs 12-14 and 19-20 of ***NASSCOM***

(supra) wherein following has been stated:-

> *"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.*
> *13. We note that while dealing with an identical question, we had in Avantha Realty Ltd. v. Pr. CIT [WP (C) 2615 of 2024, dated 21-2-2024] observed as under:*
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> > *"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 v. LG Electronics India Private Limited had held as follows:-*
> > *"1. Delay condoned. Leave Granted.*
> > *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.

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 Pr. CIT v. LG Electronics India (P.) Ltd. [2018] 18 SCC 447, it had been emphasized that the 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.

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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.

20. Undisputedly, and on the date when the impugned adjustments came to be made, the application moved by the petitioner referable to Section 220(6) of the Act had neither been considered nor disposed of. The respondents have thus in our considered opinion clearly acted arbitrarily in proceeding to adjust the demand for AY 2018-19 against

available refunds without attending to that application. This action of the respondents is wholly arbitrary and unfair. The intimation of adjustments being proposed would hardly be of any relevance or consequence once it is found that the application for stay remained pending and the said fact is not an issue of contestation."

7. Even in ***Centre For Policy Research (supra)*** this Court, in paragraph 6 onwards has stated as under:-

"6. As is evident from a reading of the impugned order, it is manifest that the AO has neither considered the prima facie merits of the challenge which stood raised by the writ petitioner and reiterated in its application for stay nor does it deal with the issue of undue hardship. The AO appears to have mechanically proceeded on the premise that since the petitioner had not made a pre-deposit of 20%, the application for stay of demand could not be considered.

7. We note that while dealing with an identical view which was taken, we had in National Association of Software and Services Companies (NASSCOM) v. Deputy Commissioner of Income Tax (Exemption) Circle 2(1), New Delhi & Ors Neutral Citation 2024:DHC:2078-DB enunciated the legal position in the following terms:

> *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.

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.

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 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. <u>The three basic principles i.e. the prima facie case, balance of convenience and irreparable injury have not been considered while deciding the</u>

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 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. ……

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.

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.

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.

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.

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.

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 benefit which the applicant would derive from compliance with it.

14. The word "undue" adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant.

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 other such related factors.

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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 predeposit 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 issue of pre- deposit under Section 35 of the Act, after considering a large number of judgments of the Apex Court and various High Courts, it was held as under:

"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 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. We thus and in light of the legal principles that were propounded in NASSCOM, find ourselves unable to sustain the order impugned.

9. It becomes pertinent to note that Mr. Hossain, learned counsel appearing for the respondents, conceded to the legal position as spelt out in NASSCOM, and the admitted failure of the AO to bear in mind the relevant considerations for grant of stay of demand.

10. In view of the above, and in our considered opinion, there would appear to be no justification to retain the

instant petition on our board. The ends of justice would in fact warrant the matter being remitted to the AO for considering the stay application moved by the writ petitioner afresh.

11. We, accordingly, allow the instant writ petition and set aside the impugned order dated 03 May 2024. The matter shall in consequence stand remitted to the AO who shall examine the application for stay of demand afresh and bearing in mind the legal principles as enunciated in NASSCOM."

8. Noting the position of law, we deem it appropriate to set aside the impugned order dated 13.11.2025, and remit the matter to the AO, who shall examine the application for stay afresh, bearing in mind the legal principles as laid down in ***NASCOMM (supra)*** and ***Centre for Policy Research (supra)*** and pass a fresh order

9. The petition is disposed of, along with pending application(s) in the above terms.

V. KAMESWAR RAO, J

VINOD KUMAR, J

DECEMBER 22, 2025
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