

**Court No. - 1****Case :-** WRIT TAX No. - 416 of 2024**Petitioner :-** Ram Kishan Bairwa**Respondent :-** Central Excise Service Tax Appellate Tribunal And 2 Others**Counsel for Petitioner :-** Mahima Jaiswal, Sr. Advocate**Counsel for Respondent :-** A.S.G.I., Gopal Verma, Parv Agarwal**Hon'ble Shekhar B. Saraf, J.**

1. Heard Sri Shambhu Chopra, learned Senior Counsel assisted by Sri Brijesh Verma and Ms. Mahima Jaiswal, Advocates appearing on behalf of the petitioner and counsel appearing on behalf of the respondents.

2. This is a petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an order dated December 30, 2022 passed by the respondent no.2/Commissioner, Central Goods and Service Tax, Ghaziabad. The alternative prayer of the petitioner is that the petitioner be relegated to appeal jurisdiction under Section 86 of the Finance Act, 1994 and direct the Tribunal to grant waiver of pre-deposit.

3. I have heard counsel appearing on behalf of the parties and perused the materials on record.

4. In my view, an alternative efficacious remedy is available to the petitioner wherein, the petitioner has already filed his appeal. The very fact that the petitioner has already filed the appeal, precludes this Court from now examining this matter in writ jurisdiction. The petitioner cannot be allowed to be sitting on the fence. The filing of this petition is nothing but

an after thought as the petitioner wants to escape the liability of payment of pre-deposit, which is mandated by law.

5. In a catena of judgements, the Supreme Court and various High Courts have categorically held that the condition of the pre-deposit cannot be waived/modified by the High Court in its extraordinary discretionary writ jurisdiction. Any discretion to be exercised by the writ Court is judicial in nature and is required to be exercised only in accordance with law. If the High Courts were to interfere/tinker with the amount of pre-deposit to be deposited, the entire provision of pre-deposit would become otiose. It is to be noted that in the erstwhile period there was no clause of pre-deposit. In those circumstances, the High Court would, after going into the merits waive/reduce the pre-deposit. Such a position does not exist now, and therefore, there is no question of waiver of the pre-deposit.

6. A Division Bench of this Court in **Shri Subhash Jain v. Commissioner of Central Goods And Service Tax** (Central Excise Appeal Defective No.5 of 2023 decided on March 17, 2023 [Neutral Citation No. - 2023:AHC:60846-DB]) has categorically held that in case of Central Excise Act the Courts do not have the power to waive the pre-deposit. The Division Bench of Bombay High Court in **Kantilal Bhaguji Mohite v. Commr of C. Excise & Service Tax, Pune-III** reported in **2020 (371) E.L.T. 829 (Bom.)** has similarly laid down the ratio with regard to waiver of pre-deposit.

7. Counsel appearing on behalf of the petitioner has placed

reliance on the judgement of Supreme Court in **Ravi Gupta v. Commissioner of Sales Tax, Delhi and Another** reported in **(2009) 5 SCC 208** and a coordinate Bench judgement of this Court in **M/s Shukla & Brothers v. Customs, Excise & Service Tax Appellate Tribunal & Ors.** (Central Excise Appeal No.(20) of 2014 decided on December 4, 2014) to buttress his argument that the writ Court has jurisdiction to reduce/waive the condition of pre-deposit in case *prima facie* case is made out by the petitioner due to undue hardship.

8. Upon a perusal of the above judgements, I am of the view that I am bound by the judgements in **Shri Subhash Jain (Supra)** and **Kantilal Bhaguji Mohite (Supra)**. The judgements cited by the counsel appearing on behalf of the petitioner in **Ravi Gupta (Supra)** and **Shukla & Brothers (Supra)** are in relation to the period prior to 2014 wherein the amendments were brought in by the legislature in the respective Acts. Subsequent to the amendments, the law with regard to waiver of the pre-deposit by the High Court has taken a 'U turn' and now the High Courts cannot in any manner exercise any discretion in waiving payment of pre-deposit.

9. In light of the above findings, I find that this writ petition has no merit. The writ petition is, accordingly, dismissed. The petitioner is relegated to the appeal filed before the CESTAT, Allahabad Bench and directed to pay the pre-deposit in accordance with law.

**Order Date :- 15.4.2024 Dev/-**

**(Shekhar B. Saraf,J.)**