



Tax alert: Pre-deposit under central excise law is mandatory even in case of financial hardship

29 August 2025

The Supreme Court (SC) has dismissed the Special Leave Petition (SLP) filed by the Petitioner against the ruling of the Gujarat High Court (HC), wherein it was held that pre-deposit under central excise law is mandatory for filing appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), even in the case of financial hardship.

In a nutshell



The issue for consideration before the SC was, whether pre-deposit requirements for an appeal before CESTAT, can be waived on the grounds of financial hardship and a *prima facie* case in favour of the petitioner on merit.



The SC dismissed the petition filed against Gujarat HC decision where financial hardship was not accepted as grounds for waiver of pre-deposit.



The Gujarat High Court had also provided guidance as to when it can be concluded that the petitioner has a good *prima facie* case, so as to grant waiver of pre-deposit for filing the appeal.



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Background

- The petitioner¹ was involved in the manufacture of 'Gutkha' under various brand names, with Form, Fill and Seal pouch packing machines (FFS machines). The machines were neither registered with Revenue authorities under the Central Excise Rules, 2002, nor were they declared under the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008.
- A search was conducted at the premises of the petitioner and various gutkha manufacturing/packing machines along with raw materials and semi-finished/finished goods were found during the search.
- After the search operations, two show cause notices were issued to the petitioner. The first notice related to the goods seized and the second notice related to levy of duty and for imposition of penalty. The tax authorities passed an order for confiscation of goods and penalty for the first notice and imposed central excise duty with interest and penalty.
- The erstwhile provisions of section 35F of Central Excise Act, 1944 (Central Excise Act) required that, if a taxpayer intends to file an appeal before CESTAT against any order, a pre-deposit at the rate of 7.5% of the duty demanded, subject to maximum amount of INR 10 crore (as applicable in the instant case), is required to be paid.
- As against filing appeal before the Hon'ble CESTAT, the petitioner filed writ petition before the Gujarat High Court (HC) wherein it was contested as to, whether the petitioner is entitled to get waiver / reduction of the amount of pre-deposit for filing an appeal. The petitioner contended that the phrase "undue hardship" to be not only exclusively related to economic hardship, but also to cover a case where the appellant has strong *prima facie* grounds.
- The HC held that in order to conclude that the petitioner would succeed in the appeal, having a good *prima facie* case and clean conduct so as to grant waiver of the pre-deposit for filing the appeal, the petitioner is required to disclose whether he may have been either subjected to gross injustice and / or misfortune, or if he has been made liable to excessive demand contrary to the facts and evidence on record, or if the impugned orders are perverse.
- Being devoid of merit and provisions of section 35F of Central Excise Act, the High Court declined to entertain the writ petition. Being aggrieved, the petitioner filed the SLP before the Supreme Court (SC).

Decision of the Supreme Court

After hearing the Counsel for the petitioner and going through the materials on record, the SC dismissed the SLP.

Deloitte comments:

The SC order is in the context of section 35F of Central Excise Act which is similar to the provisions relating to appeal before first appellate authority and the appellate tribunal under the GST law.

The order is in line with the judicial position that the pre-deposit requirement for filing an appeal should not generally be subject to waiver. The HC had held that after insertion of section 35F of Central Excise Act, no discretion has been left for granting any waiver/reduction in the amount of pre-deposit.

It is important to note that in the subject proceedings, while the SLP was dismissed, the jurisprudence provides that mere dismissal of SLP does not amount to a binding precedent.

¹ Altafhusen Mayuddin Khatri v. Union Of India [SLP (CIVIL) Diary No.12185/2025 dated 08-08-2025] (SC)

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