

**(1999) 04 AHC CK 0236**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 390 of 1999

Salora International Ltd.

APPELLANT

Vs

Commr. (A) of Cus. and C. Ex.

RESPONDENT

**Date of Decision:** April 21, 1999

**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35F
- Constitution of India, 1950 - Article 226

**Citation:** (1999) 65 ECC 884 : (1999) 84 ECR 836 : (2000) 120 ELT 600

**Hon'ble Judges:** M.C. Agarwal, J

**Bench:** Single Bench

**Advocate:** A.P. Mathur, for the Appellant; Surya Prakash Kesharwani, for the Respondent

### **Judgement**

M.C. Agarwal, J.

Though the impugned order is common, it deals with four applications under the proviso to Section 35F of the Central Excise and Salt Act, 1944. Therefore, four sets of Court-fee are payable. Petitioner's Counsel agrees to make up the deficiency good.

2. By this petition under Article 226 of the Constitution of India, the petitioner challenges an order dated 27th January, 1999 as modified by an order dated 1st February, 1999 passed in Appeal Nos. 423, 424, 425 and 426-C.E./Appl/ MRT/98 whereby in the aforesaid first appeals the Commissioner (Appeals) Customs and Central Excise, Ghaziabad was rejected the petitioner's application for waiver of the conditions of pre-deposit in exercise of powers under the proviso to Section 35F of the Central Excise and Salt Act 1944.

3. I have heard Shri A.P. Mathur, learned Counsel for the petitioner and Shri Surya Prakash, learned Standing Counsel for the respondents.

4. The dispute is about the Modvat credit which the petitioner availed and which has been denied by the Assistant Commissioner on the allegation of some procedural deficiency. The dues adjudicated against the petitioner are involved in the aforesaid appeals are as under:

Appeal No. 423	Rs. 52,79,509.02 Paise.
Appeal No. 424	Rs. 18,26,956.00
Appeal No. 425	Rs. 11,193.00
Appeal No. 426	Rs. 52,546.07 Paise.

5. The petitioner applied to the Tribunal to waive the conditions of pre-deposit as it would cause undue hardship to it. The learned Commissioner rejected the application observing that the balance of convenience is in favour of the department and the company is backed by the multi-national company and financial hardship was not pleaded as a ground for waiver of pre-deposit. The averment that financial hardship was not pleaded as a ground for waiving the conditions of pre-deposit is not correct as the copies of the applications which have been filed as annexures to the writ petition over that the financial condition of company is not sound and if the stay was not granted it would cause grave and irreparable financial hardship to the appellant. Copy of the annual report for the year 1997-98 containing inter alia the balance sheet and the profit and loss accounts were also annexed with the memorandum of appeals to show that the petitioner's net result after the provision for taxes and depreciation was loss. The fact that a multinational company was a major share holder in the petitioner was not relevant as the petitioner is an independent legal person. In my view therefore, there was no justification for rejecting the petitioner's applications in the appeals and requiring it to deposit the whole of the amount which is more than Rs. 71 lacs.. The petitioner is bound to suffer undue hardship if it is required to deposit the whole of the amount even at the first appellate stage.

6. The writ petition is, therefore partly allowed and the order passed by the Commissioner in so far as Appeal Nos. 423 and 424 are concerned is set aside and it is ordered that in case the petitioner deposits within a month from today Rs. 13 lacs towards the adjudicated dues involved in Appeal No. 423 and Rs. 4.5 lacs towards the adjudicated dues involved in Appeal No. 424, the conditions of pre-deposit of the balance shall stand waived. The amount involved in Appeal Nos. 425 and 426 are not very large and hence no interference is required in the Commissioner's orders in respect thereof.