

Writ jurisdiction cannot grant a waiver of statutory pre-deposit condition for filing appeal

The Hon'ble Supreme Court in the case of *Kantilal Bhaguji Mohite v. Commissioner, Central Excise and Service Tax-Pune III [Special Leave to Appeal (C) No. (s). 11203/2019 dated February 14, 2024]* dismissed the Petitioner's Special Leave Petition ("SLP") against the Hon'ble Bombay High Court judgment, which dismissed the writ petition against the Tribunal order which denied the waiver of mandatory pre-deposit condition for filing a statutory appeal. The Hon'ble Bombay High Court found no merit in the Petitioner's plea that this Court, in writ jurisdiction, can waive this condition or relax or dilute its rigors.

Prior to the Judgment of the Hon'ble Bombay High Court, the Petitioner had advanced an argument that the CESTAT is not empowered to dismiss the appeal without adjudication on merits simply because the condition imposed by Section 35-F of the Central Excise Act, 1944 ("**Central Excise Act**") to obtain interim stay or relief against recovery is not complied with.

The Hon'ble Bombay High Court held that the Petitioner desired to have an adjudication on merits without complying with this condition, and once the Tribunal found that condition was not complied with, it was not open to adjudicating the matter on merits. The High Court also observed that writ jurisdiction is not meant to benefit parties like the Petitioner or to enable him to get over the statutory condition of pre-deposit for filing appeal imposed by Section 35-F of the Central Excise Act. The language of the Section clearly states that the Tribunal or Commissioner (Appeals), as the case may be, shall not entertain any appeal unless the pre-condition mandate is satisfied. Therefore, the Hon'ble Supreme Court held that they are not inclined to interfere in the matter.

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