

# TAX INFO

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Latest update on GST Law: Information regarding **No waiver of Pre-deposit amount is allowed due to financial hardships of Petitioner** given in **Judgment by Kerala High Court.**

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<b>Name of Petitioner</b>	Santhosh Kumar
<b>Name of Respondent</b>	Commissioner - Central GST And Central Excise
<b>Court</b>	Kerala High Court
<b>Date of Judgement</b>	24.03.2022
<b>Appeal No.</b>	WP(C) NO. 25453 OF 2021

## **Brief Facts of the Case Law:**

The petitioner had executed job works for the Power Grid Corporation of India by laying of power lines. An order was issued on 13.5.2019 levying penalty and service tax upon the petitioner under five different heads, imposing a huge liability upon the petitioner. Petitioner challenged the order of the Adjudicating Authority before the CESTAT. As per the provisions of Section 86 of the Finance Act, 1994 r/w Section 35F of the Central Excise Act, 1944, petitioner was bound to pay as pre-deposit an amount equivalent to 7.5% of the quantum of tax under dispute which amounted to Rs.18,06,057/- . Petitioner deposited an amount of Rs.12,50,000/- leaving Rs.5,56,057/- as balance unpaid towards the pre-deposit.

Since the petitioner found it financially impossible to make the balance of the mandatory pre-deposit, he has approached this Court seeking relief from such a pre-deposit. The huge quantum of pre-deposit due from the petitioner is too onerous and makes it practically impossible for the petitioner to pursue its statutory remedy.

## **Contention of Revenue:**

The Department contended that after the amendment in 2014 to Section 35F of the Central Excise Act 1944, the power to waive the mandatory pre-deposit is no longer available and in several decisions the Supreme Court has categorically held that the High Court should not interfere with the mandate of the Statute.

## **Decision of the Court:**

A perusal of the statutory provisions reveals that the amendment to section 35F of the Central Excise Act r/w Section 86 of the Finance Act, 1994, clearly manifest the intention of the legislature that the waiver of pre-deposit, which was being resorted to, quite often by the courts of law, needed to be amended to make the pre-deposit mandatory. Thus, after the Amendment Act came into force, no discretion is available with the courts of law to waive the mandatory requirement of pre-deposit of 7.5%. Law does not permit such waiver and when the Statute does not provide for waiver of a pre-deposit, this Court cannot act in contrary to the legislative intention merely on the plea of financial hardships. **The Supreme Court in case of Oil and Natural Gas Commission vs. Gujarat, [2017 (5) SCC 42]**, held that the High Court cannot disregard the statutory mandates. Therefore, the writ petition was dismissed without giving waiver of balance pre-deposit amount.

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