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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15th April, 2025

+ **W.P.(C) 4662/2025 & CM APPL. 21564/2025**

**M/S IMPRESSIVE DATA SERVICES PRIVATE
LIMITED**

.....Petitioner

Through: Mr. Pranay Jain, Adv.

versus

**COMMISSIONER (APPEALS-I), CENTRAL TAX
GST, DELHI**

.....Respondent

Through: Mr. Ruchesh Sinha, Adv. for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner– M/s Impressive Data Services Private Limited seeking exemption from the pre-deposit requirements mandated in terms of Section 107(6) of the Central Goods and Services Tax Act, 2017 (*hereinafter, the Act*).
3. The case of the Petitioner is that a Show Cause Notice No. 11/2022-23 vide C.No. GEXCOM/AE/VRFN/OTH/157-AE/O/o/Commr-GST-Delhi(E)/1593 dated 14th June, 2022, was issued by the Respondent- Department– Commissioner (Appeals-1) Central Tax GST in respect of wrongful availment of Input Tax Credit (*hereinafter, ITC*) by the Petitioner during the period 2017-18, 2018-19 and 2019-20.



4. The submission of the Petitioner is that there were some mistakes in the Returns filed, at the time when the transition took place into the GST regime and due to such mistakes on part of the accountant of the Petitioner, wrong turnover was mentioned, though, ITC was never availed on the said amount. Secondly, it is submitted that in respect of two of the entities being M/s DST Kumar Traders and M/s Vinay Sales Corporation, the Petitioner had never availed the ITC during the relevant period. Thus, both the amounts which are being raised are incorrectly being raised by the Respondent-Department, hence the prayer for pre-deposit waiver.

5. The submission on behalf of the Petitioner by Id. Counsel is that the Petitioner is a supplier to various Government entities and the Petitioner has to recover more than Rs. 6.4 crores from Government Departments. In addition, the bank statement of the Petitioner is relied upon to argue that some securities to the tune of Rs.4 crores are also lying with Government Departments. Hence, the Petitioner may be granted a waiver of pre-deposit.

6. Ld. Counsel for the Respondent submits that the Petitioner relies upon the decision in *Shubh Impex v. Union of India*, (2018) 361 ELT 199 (Del) in support of its petition. However, the said decision in *Shubh Impex (Supra)* is no longer being followed by the Coordinate Bench of this Court which has followed the earlier judgment of *Anjani Technoplast Ltd. v. CCE*, (2017) 348 ELT A132 (SC) which has also been upheld by the Supreme Court. Thus, it is the contention of the Respondent that the decision in *W.P.(C) 10091/2019* titled *Diamond Entertainment Technologies (P.) Ltd. v. Commissioner of Central Goods and Tax Commissionerate, Dehradun & Anr.* would therefore, be



applicable.

7. The Court has considered the matter. The question raised herein is whether the requirements mandated in terms of Section 107(6) of the Act for pre-deposit can be waived or not. Section 107(6) of the Act reads as under:

“(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,] in relation to which the appeal has been filed.

[Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant]”

In terms of the above provision, insofar as the admitted tax, interest or penalty is concerned, the entire amount would have to be deposited. In so far as the disputed amount is concerned, 10% of the tax would have to be deposited as a pre-deposit along with the appeal. The said provision does not, in the opinion of this Court, give discretion for waiver of the pre-deposit. In any event in ***Diamond Entertainment (supra)*** in the context of the Excise Act, the Court has clearly observed as under:

“12. In Pioneer Corporation v. Union of India, (2016) 340 ELT 63, Shubh Impex v. Union of India, (2018) 361 ELT 199 (Del) and Manoj Kumar Jha v. DRI, (2019) 365 ELT 166 (Del), this Court, even while dealing with cases in which the appeal had been filed before the CESTAT after



6th August, 2014, nevertheless, allowed the appeal to be prosecuted on payment of partial pre-deposit, given the financial stringency in which the respective appellants, before it, were placed; a reading of these decisions would reveal, that the attention of this Court had not been invited to its earlier judgment in *Anjani Technoplast (supra)* which set out, in clear and unambiguous terms, that every appeal, before the CESTAT, filed after the amendment of Section 35F/129E would be maintainable only if mandatory pre-deposit were made.

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15. In view of the aforesaid merger, of the judgment of the Division Bench of this Court in *Anjani Technoplast (supra)* with the order passed by the Supreme Court in appeal thereagainst, we are bound, by Article 141 of the Constitution of India, to follow the law laid down in *Anjani Technoplast (supra)*, in preference to that laid down in *Pioneer Corporation (supra)*, *Manoj Kumar Jha (supra)* and *Shubh Impex (supra)*.

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21. Inasmuch as the judgment in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha (supra) are contrary to the law laid down in Anjani Technoplast (supra) as well as to the law laid down in Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra (supra), A.B. Bhaskara Rao v. C.B.I. (supra), Manish Goel v. Rohini Goel (supra) and State of Bihar v. Arvind Kumar (supra), none of which have been noticed in the said decisions, it is not possible for us to follow the decisions in Pioneer Corporation (supra), Shubh Impex (supra) and Manoj Kumar Jha (supra), on which learned counsel places reliance.”

8. In view of the settled legal position, the prayer for waiver of pre-deposit



cannot be entertained. However, if there is any amount lying with the Government entities which the Petitioner wishes to rely upon as being part of the pre-deposit, the Petitioner is free to make such a prayer before the concerned Appellate Authority. It is also submitted on behalf of the Petitioner that Rs. 20 lakhs is also lying with the Department out of a total of Rs. 64 lakhs which is to be deposited by the Petitioner. This submission may also be made before the concerned Appellate Authority.

9. The Petitioner is accordingly relegated to the Appellate authority under Section 107 of the Act. All contentions are left open. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

10. Needless to add, this Court has not considered the merits of the matter.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

APRIL 15, 2025

dj/ss