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**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 1019 of 2023

M/s Active Ads
-versus
The State of West Bengal & Ors.

Mr. Dhiraj Lakhotia
Ms. Radhika Agarwal
... For the petitioner

Mr. Taran Banik
Mr. Saptarshi Banik
...For the respondents CGST

Affidavit of service filed in Court today is taken on record.

The grievance of the petitioner is that he filed an appeal before the Commissioner, Central Goods and Services Tax (CGST) and CX (Appeal), Siliguri Appeal Commissionerate. The appeal requires a pre-deposit of 7.5% of the duty demanded in terms of Section 35F of the Central Excise Act, 1944 as applicable in service tax under the provisions of Section 83 of the Finance Act, 1994. The petitioner was, therefore, required to pay a sum of Rs.2,30,949/-, being 7.5% of the demand, i.e. Rs.30,79,330/-. The Commissioner of Appeal rejected the appeal by an order dated 28th March, 2023 only on account of failure to pay the mandatory pre-deposit. Being aggrieved by the said order, the petitioner has filed the instant writ petition.

On behalf of the respondents (CGST Authorities), it is submitted that several letters were issued to the petitioner to deposit the amount as required under Section 35F of the Central Excise Act, 1944, but the petitioner wilfully failed and deliberately neglected to deposit the money. As a consequence whereof, the appeal was dismissed. The matter, therefore, requires to be heard on affidavits.

After considering the submissions made by the parties and the materials on record, I find that this matter does not warrant to be heard on affidavits. The appeal was dismissed only on the ground of failure of the petitioner to make the pre-deposit. Taking a lenient view as to the default as the same will non-suit the petitioner but will not cause any serious prejudice to the revenue if the appeal is heard on merits, I am inclined to set aside the order. The revenue will be able to recover the unpaid demand if it ultimately succeed that too with interest and penalty for the delay, on the other hand the petitioner cannot assail the demand for having defaulted in making the pre-deposit.

After hearing the parties, I find that justice will be subserved if I set aside the order and direct the petitioner to make the deposit of the pre-deposit amount required under the provisions of Section 35F of the Central Excise Tax, 1944 within a period of ten days from date so that the Commissioner of Appeal, Siliguri

Appeal Commissionerate, can hear out the appeal on merits.

As such, the order dated 28th March, 2023 passed by the Commissioner, CGST and CX (Appeal), Siliguri Appeal Commissionerate, is set aside.

The petitioner shall deposit a sum of Rs.2,30,949/- within 12th May, 2023, failing which the order dated 28th March, 2023 shall revive and the appeal shall stand dismissed.

In the event, the amount is deposited in terms of this order, the Commissioner of appeal, Siliguri Appeal Commissionerate, shall hear the appeal on merits.

I make it clear that while I am setting aside the order, I have not gone into the merits of this order and all points are kept open for being decided by the Appellate Authority.

With the aforesaid observation, the writ petition, being WPA 1019 of 2023, stands disposed of.

All parties, including the Commissioner, CGST and CX (Appeal), Siliguri Appeal Commissionerate, shall act on a server copy of this order duly downloaded from the official website of this Court without insisting upon production of certified copy thereof.

There shall be no order as to costs.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arindam Mukherjee, J.)