

CASE NO.:
Appeal (civil) 4347 of 2002

PETITIONER:
PYLOFF PACKAGING PVT. LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 29/07/2002

BENCH:
Syed Shah Mohammed Quadri & S.N.Variava.

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

Heard learned counsel for the parties.
Leave is granted.

This appeal is from the final order passed by the High Court of Judicature at Bombay in Writ Petition No.2368 of 2001 on November 6, 2001. By the said order a Division Bench of the High Court directed the appellant to deposit 25% of the amount of duty [which is the subject-matter of appeals in respect of twenty two show cause notices pending before the Commissioner of Central Excise (Appeals), Bombay, the fifth respondent], by way of pre-deposit.

The facts, insofar as they are relevant for disposal of this appeal, may be noticed here. On May 2, 1994, the appellant was issued a show cause notice by the Additional Commissioner of Central Excise, Bombay-III, the third respondent, invoking extended period raising a demand of Rs.4,82,280.11 on various grounds (covering the period from April 1, 1989 to July 31, 1993). That notice was replied to by the appellant and the matter was pending consideration before the third respondent. The Superintendent, Central Excise served various notices on the appellant on different dates (they are twenty one in number) raising a total demand of Rs.50,26,029.89 to show cause to the Assistant Collector of Central Excise, Division-X, Bombay. Six out of the twenty one cases were pending before him after remand. While so, on March 23, 2001 and March 27, 2001, the case relating to show cause notice dated May 2, 1994 was taken up for consideration by the third respondent who, however, adjudicated the said twenty show cause notices also and confirmed the demand raised in all the twenty two cases by order dated March 30, 2001. Dissatisfied with the said order, the appellant filed appeal before the fifth respondent herein and also sought waiver of the pre-deposit of the amount in demand. The fifth respondent ordered that the whole amount of duty, namely, Rs.55,08,310 and penalty of Rs.5,00,000 be deposited within 15 days. The appellant assailed that order in Writ Petition No.2368 of 2001 before the High Court of Judicature at Bombay. By the impugned order dated November 6, 2001, the High Court reduced the amount of pre-deposit to 25% of the

amount of duty in question in all the appeals. It is that order of the High Court which is brought under challenge in this appeal. An order declining to grant waiver of pre-deposit or a percentage thereof is a discretionary order and this Court would not ordinarily interfere in such an order. It is only in the rarest of the rare case, when due to improper exercise of discretion, the interests of justice get defeated that this Court would grant appropriate relief. From the facts stated above, it is evident that though the case under consideration of the third respondent was in respect of show cause notice dated May 2, 1994, in the final order he, however, proceeded to confirm the demand which was the subject-matter of all the twenty two show cause notices. In such a case, the amount in question in all the twenty two appeals should not be the basis to counter the question of pre-deposit. In our view, a sum of Rs.4,82,280.11 deposited by the appellant pursuant to the interlocutory order of this Court dated January 25, 2001 and which represented the amount in demand pursuant to show case notice dated May 2, 1994, would be sufficient compliance of requirement of pre-deposit in the bunch of appeals and would also meet the ends of justice. The impugned order of the High Court varying the order of the Commissioner of Central Excise (Appeals), Bombay, is accordingly modified. The fifth respondent is directed to dispose of the appeals in accordance with law uninfluenced by any observations made by this Court in this order. The appeal is accordingly allowed. No costs.