**(1999) 02 AHC CK 0161**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition (Tax) No. 147 of 1999

Alchochem Organics (I) Pvt. Ltd. — APPELLANT

Vs

Commissioner (A) C. Ex. — RESPONDENT

**Date of Decision :** 26-02-1999

**Acts Referred:**
Central Excises and Salt Act, 1944 — Section 35F

**Citation :** (2000) 118 ELT 22

**Hon'ble Judges :** P.K. Jain, J

**Bench :** Single Bench

**Advocate :** M. Manglik, for the Appellant; S.P. Kesharwani, for the Respondent

**Final Decision :** Disposed Of

## Judgement

P.K. Jain, J.—Heard Sri M. Manglik, learned Counsel for the petitioner and Sri S.P. Kesharwani, learned Standing Counsel, appearing for the respondent.

2. The petitioner availed Modvat credit in view of the provisions contained in the Central Excise Act and the Rules framed thereunder. The said credit was however disallowed by the Assistant Commissioner (Central Excise) after serving notice upon the petitioner and hearing him. An appeal was preferred against the order of the Assistant Commissioner in which an application for waiver of the condition of pre-deposit of one-third of the disputed amount at the time of filing of the appeal was moved. The appellate authority allowed waiver of condition of pre-deposit of one-third of the disputed amount of the extent of 50% only.

3. It is this order which is being challenged in this writ petition. The submission of the learned counsel for the petitioner is that a number of documents were produced before the appellate authority showing hardship of the petitioner. The appellate authority did not consider financial condition of the petitioner. Learned counsel has referred to the documents filed with this writ petition viz., copy of its bank account, copy of the notice served by the Financial Corporation as contained in Annexure 7 and the statement relating to decline in business and

 

sale of the petitioner. The learned Commissioner (Appeals) allowed 50% waiver by observing that considering the financial difficulty the appellants are directed to deposit 50% of the amount and Rs. 50,000/- towards penalty imposed. Learned Standing Counsel submits that this is enough to show that the documents were considered.

4. Having heard learned Counsel for the parties, I am of the view that in view of the provisions contained u/s 35F of the Central Excises & Salt Act while disposing of an application for waiver of the condition of the pre-deposit of the disputed demand and penalty the appellate authority is required to consider if undue hardship has been caused to the person directed to deposit the said amount. The opinion with regard to the hardship has to be formed objectively on the basis of the material produced by the appellant. In the impugned order there is no mention as to what material was considered by the petitioner. In the circumstances it cannot be said that the order was passed after considering the material objectively.

5. Consequently the matter has to be sent back to the appellate authority for a fresh decision of the waiver application after objectively considering the material produced by the petitioner.

6. In view of the foregoing discussions, the petition is finally disposed of with a direction to the appellate authority to decide the question of waiver of the condition of pre-deposit after considering the material produced by the petitioner objectively.

Let a copy of this order be supplied to the petitioner''s counsel on payment of usual charges within 48 hours from the date of making such application.