**(2017) 01 AHC CK 0235**

**In the Allahabad High Court**

**Case No :** Writ Tax No. 22 of 2017

M/S Bhagwan Vanaspati Ltd. APPELLANT

Vs

State of Uttar Pradesh RESPONDENT

**Date of Decision :** 17-01-2017

**Acts Referred:**

**Citation :** (2017) 95 UPTC 301

**Hon'ble Judges :** Ashwani Kumar Mishra, J.

**Bench :** Single Bench

**Advocate :** Piyush Agrawal, Advocate, for the Petitioner; C.S.C, for the Respondents

**Final Decision :** Disposed Off

# Judgement

Ashwani Kumar Mishra, J.—The order of tribunal dated 31.12.2016, whereby ?rd relief has been allowed upon the waiver application, is under challenge in this petition.

2. It is submitted that the issue as to whether petitioner is entitled to payment of concessional tax upon purchase of diesel is an issue, which has already been settled by the Division Bench of this Court in Shree Bhawani Paper Mills & others v. State of U.P.: 2015 NTN (59) 110, but this aspect has not been considered. It is also stated that there is no prima facie consideration of petitioner''s case nor the relevant aspect of undue hardship had been gone into, and therefore, requirement of deposit of amount as a pre-condition for hearing the appeal is not liable to be sustained.

3. Although learned Standing Counsel has made submissions to defend the order of the tribunal, but it is fairly conceded that there is no consideration on the aspect of strong prima facie case or balance of convenience.

4. From the materials placed, this Court finds that the petitioner has already closed its business venture in October, 2010 and it was stated before the authorities that the condition of deposit of amount at this stage would cause

 

undue hardship, but this aspect although has been noticed but has apparently not been taken into consideration while passing the order. The decision of the Division Bench of this Court in Shree Bhawani Paper Mills (supra) also has not been considered.

5. Considering the facts and circumstances, as have been noticed above, it would be appropriate to direct the tribunal to dispose off petitioner''s pending Second Appeal No.328 of 2016, pertaining to the assessment proceedings for the year 2000-01, at the earliest possible, preferably within a period of three months from the date of presentation of certified copy of this order, without requiring the petitioner to deposit any amount as a pre-condition for hearing of the appeal. Petitioner, however, will furnish security other than cash or bank guarantee before the assessment authority within two weeks from today.

6. Writ petition is accordingly disposed off.

 