

**2022 (12) TMI 473 - DELHI HIGH COURT****MS SERENDIPITY INFOLABS PRIVATE LTD NOW KNOWN AS MS ANI TECHNOLOGIES PVT LTD.  
VERSUS UNION OF INDIA & ORS.**

W.P.(C) 16613/2022

**Dated: - 2-12-2022**

**Maintainability of petition - seeking waiver of pre-deposit in the appeal filed by the Petitioner against Order-in-Original No. 30/2022-ST dated 28.01.2022 without insistence of payment of pre-deposit of 7.5% - levy of service tax - whether the petitioner is required to pay service tax on the commission received or the gross amount for the taxi service?**

HELD THAT:- The learned counsel appearing for the petitioner states that during the previous two years, the petitioner could hardly generate any revenue; in fact, the petitioner has suffered huge losses and therefore today is not in a position to make the mandatory pre-deposit quantified at Rs.1.45 crores for filing an appeal before the Customs, Excise and Services Tax Appellate Tribunal (CESTAT). The insistence of pre-deposit in this case would under the remedy of appeal, illusory.

Given the mitigating circumstances and the financial condition of the petitioner, this Court considers it apposite to direct that if the petitioner makes the pre-deposit of a sum of Rs.50,00,000/- within a period of two weeks, the petitioner's appeal in respect of its service tax liability for the period December, 2011 to February, 2015 shall be heard by CESTAT on merits.

Petition disposed off.

**Judgment / Order**

**HON'BLE MR. JUSTICE VIBHU BAKHRU AND HON'BLE MR. JUSTICE PURUSHAINDR KUMAR  
KAURAV**

**Petitioner: Mr. Tushar Jarwal, Mr. Rahul Sateja & Mr. Priyojeet Chatterjee, Adv.****Respondents: Ms. Pratima N. Lakra, Adv., Mr. Harpreet Singh & Ms. Suhani Mathur, Adv.****ORDER****CM No.52296/2022 (for exemption)**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

**W.P.(C) 16613/2022**

3. The petitioner has filed the present petition, inter alia, praying as under:

*“(a) This Hon'ble Court be pleased to issue appropriate writ, direction or order in nature of Writ of Mandamus declaring waiver of pre-deposit in the appeal filed by the Petitioner against Order-in-Original No. 30/2022-ST dated 28.01.2022 without insistence of payment of pre-deposit of 7.5%;*

*(b) this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus directing Customs Excise and Service Tax Appellate Tribunal to accept, admit & hear the appeal to be filed by the Petitioner against Order-in-Original No. 30/2022-ST dated 28.01.2022 without insistence of payment of pre-deposit of 7.5% of the disputed tax liability; and/or"*

4. The petitioner claims that it is carrying on the business under the name and style of "Taxi for Sure", which entails the service of connecting customers to other taxi operators. According to the petitioner, it receives commission on the gross amount receive by various taxi operators.
5. There appears to be no dispute that the petitioner has deposited the service tax in respect of the commission received.
6. The learned counsel appearing for the petitioner states that the limited controversy is whether the petitioner was liable to pay service tax on the gross amount (which the petitioner has never received) for the period December, 2011 to February, 2015. It is stated that in the month of February, 2015, a separate service, namely, 'Rent-a-Cab' was introduced with effect from 01.03.2015. With the introduction of such a service, an aggregator providing 'Rent-a-Cab' service was required to pay service tax on the entire gross amount. The petitioner states that post 01.03.2015, there is no dispute that the petitioner is liable to pay service tax on the gross amount.
7. Prima facie, the controversy in the present petition is not in relation to any question of fact but to a question of law – whether the petitioner is required to pay service tax on the commission received or the gross amount for the taxi service.
8. The learned counsel appearing for the petitioner states that during the previous two years, the petitioner could hardly generate any revenue; in fact, the petitioner has suffered huge losses and therefore today is not in a position to make the mandatory pre-deposit quantified at Rs.1.45 crores for filing an appeal before the Customs, Excise and Services Tax Appellate Tribunal (CESTAT). The insistence of pre-deposit in this case would under the remedy of appeal, illusory.
9. Given the mitigating circumstances and the financial condition of the petitioner, this Court considers it apposite to direct that if the petitioner makes the pre-deposit of a sum of Rs.50,00,000/- within a period of two weeks, the petitioner's appeal in respect of its service tax liability for the period December, 2011 to February, 2015 shall be heard by CESTAT on merits.
10. The petition is disposed of in the aforesaid terms.