

**GIB/OD/ UTKAL UDYOG/30.04.2021/HC-200**

**High Court Category :** MAINTAINABILITY OF APPEAL

**State :** Odisha

**Order No.:** GIB/OD/ UTKAL UDYOG/30.04.2021/HC-200

**Name of Entry :**  
M/S. UTKAL UDYOG

**Date :** 30-04-2021

**Breif Issue :**

**FACTS AND ISSUE OF THE CASE:**

The Petitioner is aggrieved by the requirement under Section 107 of the Orissa Goods and Service Tax Act (OGST Act), read with Rule 108 of Orissa Goods and Service Tax Rules (OGST Rules) that mandates deposit of 10% of the demand as a pre-deposit for the appeal to be considered.

Counsel for the Petitioner submits that since the Petitioner has no financial means at this stage, his is unable to be even upload the appeal without pre-deposit. Relying upon the decision of **Punjab and Haryana High Court in Kelmar (India) Exports v. State of Punjab (CWP No.17975 of 2020 decided on 2<sup>nd</sup> November, 2020)**, he urges that the Court should exercise its power under Article 226 of the Constitution either to waive or reduce the pre-deposit percentage to enable the Petitioner to file the appeal.

**Decision of Advance Ruling Authority :**

**DECISION:**

Section 107 of the OGST Act is a mandatory provision and there is no discretion with the appellate authority to waive the requirement of pre-deposit. Even this Court cannot direct the appellate forum to do so contrary to the statute - It is noticed that under Section 107 of the OGST Act upon making a pre-deposit of 10% there is an automatic stay of the balance 90% of demand, which cannot, in the circumstances, be said to be unfair or unreasonable.

In that view of the matter the Court is not inclined to entertain the present petition - Petition dismissed.