THE HON'BLE SRI JUSTICE DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.24870 of 2003

ORDER: (per the Hon'ble Sri Justice Dilip B.Bhosale)

The petitioner, in the instant Writ Petition under Article 226 of the Constitution of India, seeks to challenge order dated 08.01.2003 passed by the first respondent, whereby he refused to grant interest from the date of pre-deposit of Rs.25 lakhs made by him (petitioner) till the date of its refund.

2. The only question raised by the petitioner for our consideration is whether the pre-deposit made as a pre-condition for the hearing of the appeal under the Central Excise Act was, on the assessee being ultimately successful, refundable to the assessee with interest. The petitioner claimed interest on the deposit from the date of deposit till it was refunded.

3. The Hon'ble Supreme Court considered the identical question in **Commissioner of Central Excise, Hyderabad V. ITC Ltd.**[1] holding that payment of interest in such a situation is not necessary, if the pre-deposit is returned within three months from the date of order passed by the Appellate Tribunal/Court or other Final Authority.

4. The learned counsel for the petitioner fairly states that the question raised in the instant Writ Petition, is squarely covered by the judgment of the Hon'ble Supreme Court in **ITC Ltd.** (supra). The relevant observations made by the Hon'ble Supreme Court in the said case read thus.

> " 1. The issue in this appeal and in several other appeals is whether the predeposit made as a precondition for the hearing of the appeal under the Central Excise Tariff Act, 1985 was, on the

> assessee being ultimately successful, refundable to the assessee with interest. The learned Solicitor General has taken instructions and has stated before this court that the Central Board of Excise and Customs proposes to issue a circular in connection with the payment of interest on all such predeposits. A draft copy of the proposed circular has been handed over to this Court. Having regard to the contents of the draft circular we direct compliance with the final order impugned before us and payment of interest in terms of the draft circular. The draft circular shall be appended to and the contents form part of this order. The appeal is disposed of. In view of this order any judgment of any High Court holding to the contrary will no longer be good law."

5. The learned counsel for the Revenue also placed on record the Circular dated 08.12.2004 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise & Customs. From the contents of the Circular, it is clear that it was issued after the judgment of the Hon'ble Supreme Court in **ITC Ltd.** (supra) and perhaps in view of the statement made by the learned Solicitor General in that case.

6. In the present case, the CEGAT, Bangalore, allowed the appeal with the consequential relief in final order No.1164 of 2002 dated 03.09.2002 under Section 129-A of the Customs Act, 1962, Section 35-B(1) of the Central Excise and Salt Act, 1944 and Section 87 of the Gold (Control) Act, 1968, which had been accepted by the Commissioner of Central Excise, Visakhapatnam, vide order dated 17.10.2002 and by the Tribunal vide order dated 30.10.2002 to return the pre-deposit amount paid by the assessee and the same was returned in terms of the Board's letter dated 02.01.2002. In view thereof, the return of the pre-deposit amount of Rs.25 lakhs was allowed by way of credit into the assessee's PLA Account. Hence, the petitioner, in terms of the judgment of the Hon'ble Supreme Court in **ITC Ltd.**, is not entitled for interest.

7. In the result, the Writ Petition is dismissed. Miscellaneous petitions pending, if any, stand disposed of. There shall be no order as

to costs.

DILIP B.BHOSALE, J

A.RAMALINGESWARA RAO, J

Date: 17.03.2015
TJMR

[1] (2005) 13 SCC 689