IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6220 OF 2022

Sodexo India Services Pvt. Ltd. .....Petitioner

Vs.

The Union of India and Ors. .....Respondents

Mr. Prasad Paranjape a/w. Ms. Dhruvi Shah i/b. Patankar and Associates for petitioner.
Ms. Neeta Masurkar a/w. Mr. Siddharth Chandrashekhar for respondents.
Mr. Dhirendra Lal, Commissioner, CGST present.

CORAM : K. R. SHRIRAM &
A. S. DOCTOR, JJ.
DATED : 3rd OCTOBER 2022

P.C. :

1 Petitioner is impugning four orders all dated 13th April 2022 passed by respondent no.3 in the appeals that petitioner had filed.

2 Petitioner had, as required under Section 85 of the Finance Act, 1994 read with Section 35F of the Central Excise Act, 1944, made a pre-deposit in cash through Form GST DRC-03. The appeals were accepted and registered and appeal numbers were allotted. Thereafter, petitioner was called for personal hearing and petitioner made submissions on merits of the matter.

3 To petitioner's surprise, all the appeals came to be dismissed without going into the merits of the submissions made by petitioner only on the ground that the pre-deposit made by petitioner while filing the appeal was improper. According to respondent no.3, petitioners could not have

made the deposit in the manner they made and, therefore, should be construed to have not complied with the precondition of pre-deposit. Strangely in the order respondent no.3 does not state how the deposit should have been made. According to petitioner, even during the personal hearing respondent no.3 was totally silent and never brought to the notice of petitioner as to how the deposit should have been made.

4 Based on the directions passed by this Court on 26th September 2022, Mr. Dhirendra Lal, Commissioner (Appeals), who had passed the order impugned in the petition, has filed an affidavit dated 29th September 2022. The said Mr. Lal has expressed, in effect, his helplessness since according to him the law as well as the circulars issued does not permit pre-deposit in the manner made by petitioner and even in two cases of petitioner, where he had accepted payment of pre-deposit as made by petitioner, was due to oversight. According to Mr. Lal the proceedings under Central Excise Act, 1944 or Finance Act, 1994 and CGST are separate proceedings and, therefore, payment method used under the old laws, i.e., Central Excise Act, 1944 and Finance Act, 1994 cannot be used for payment under CGST Act. Mr. Lal states that the tools available under the CGST laws may be utilised for making payment under the CGST laws.

5 Without going into the details, Ms. Masurkar informed the Court that if the Court directs respondent no.3 to consider the payment made by petitioner towards the pre-deposit as proper payment, respondent

no.3 will accept that as payment made and hear petitioner on merits and pass fresh orders. We have to also note that in the impugned order respondent no.3 has admitted that payment has been made. Paragraph 7 of the impugned order reads as under :

> *7. Further, from the two appeal memos, I also find that the appellant has deposited the pre-deposit an amount of Rs.13,25,181/- vide ARN No.AD2709210128016 dated 18/09/21 and Rs.5,01,859/- vide ARN No.AD270921 0124504 dated 17/09/21, which was mandatory under Section 35F(i) of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. I find that the Appellant has paid the amount of pre-deposit amounting to Rs.13,25,181/- through DRC-03 vide ARN No.AD270921012 8016 dated 18/09/21 and Rs.5,01,859/- through DRC-03 vide ARN No.AD2709210124504 dated 17/09/21 in two Appeal memos.*

6 We find that this is a matter that requires to be resolved by the Central Board of Indirect Taxes and Customs (CBI & C). From the affidavit filed by Mr. Lal, it appears that many appellants/assessees were paying the pre-deposit under Section 35F of the Central Excise Act, 1944 through service tax challans, whereas few appellants/assessees were using DRC-03 mode under CGST Act, 2017. This, in our view, could be for various reasons. It appears that this problem has been taken up by the CBI & C with the Principal Chief Commissioner, Mumbai CGST & CE Zone by a letter dated 3rd June 2022. The subject itself states "*Non-acceptance of pre-deposit paid through Form GST DRC-03 for appeal under Service Tax law-Request for issuance of instructions to accept such payment as no other option available for making the pre-deposit before filing of appeals-reg.*" Paragraph 2 of the said letter also reads as under :

> *2. Vide said representation, the party has mentioned in their letter that the numerous appeals have been rejected on the ground that the payment made for pre-deposit mandatory under Section 35F of the Central Excise Act, 1944 through CGST cannot be accepted and hence, the appellants have failed to comply with the provisions of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.*

7 Ms. Masurkar also informed the Court, on instructions from Mr. Lal, who is present in Court, that Mr. Lal himself as Commissioner (Appeals) has raised this issue with the Principal Chief Commissioner, CGST and Central Excise by a letter dated 10th February 2022. Ms. Masurkar states that the impugned order passed by Mr. Lal, therefore, should not be viewed as something which has been done without applying his mind. We accept Ms. Masurkar's explanation having considered the letter dated 10th February 2022 that is placed on record.

8 Therefore, it does appear that the confusion seems to be due to there being no proper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act, 1944 through DRC-03. Some appellants are filing appeals after making pre-deposit payments through DRC-30/GSTR-3B. In our view, this has very wide ramifications and certainly requires the CBI & C to step in and issue suitable clarifications/guidelines/ answers to the FAQs. We would expect CBI & C to take immediate action since the issue has been escalated by Mr. Lal over eight months ago.

9 In the circumstances, we hereby quash and set aside the impugned orders dated 13th April 2022 and direct respondent no.3 to hear petitioner *denovo* and pass such orders as he deems fit on merits in accordance with law.

10 Respondent no.3 to dispose the appeals within six weeks of this order being uploaded. Before passing any order, respondent no.3 shall grant personal hearing and notice of personal hearing shall be communicated atleast 7 working days in advance. The order to be passed shall be a reasoned order dealing with all submissions of petitioner.

11 Petition disposed.

12 We clarify that we have not made any observation on the merits of the matter.

13 A copy of this order be forwarded to CBI & C with a direction to the Secretary of CBI & C to place it before the Chairman of the Board immediately for consideration at the first meeting after receiving a copy of this order and the Board shall take a decision and pass suitable instructions in the first meeting that it would hold or within four weeks of receiving the same, whichever is earlier. A copy of this order be also sent to the Principal Chief Commissioner, CGST and Central Excise for necessary follow up action.

(A. S. DOCTOR, J.) **(K. R. SHRIRAM, J.)**