Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 400 OF 2024

M/s In Net India Pvt. Ltd.	]	
Through its Director Gauri Nair,	]	
Age: 71 Years, Male,	]	
Occupation: Business 1202, Cyber One	]	
Plot No. 4 & 6, Sector 30	]	
International Infotech Park,	]	
Vashi – 400703	]	...Petitioner

Versus

1) Union of India	]	
Through The Ld. Secretary,	]	
Ministry of Finance	]	
(Department of Revenue) No.137,	]	
North Block, New Delhi-110001	]	
2) The Commissioner of Central	]	
Tax & Central Excise,	]	
Raigarh (Appeals) 5th Floor,	]	
CGO Complex, CBD Belapur,	]	
Navi Mumbai-400 614	]	
3) Joint Commissioner,	]	
CGST and Central Excise,	]	
1st Floor, CGO Complex,	]	
CBD Belapur,	]	
Navi Mumbai-400 614	]	...Respondents

ALONG WITH
WRIT PETITION NO. 14270 OF 2024

Chembond Chemicals Limited	]	
a company incorporated under	]	
the Companies Act, 2013, having	]	
its office at EL-71, MIDC, Mahape	]	

Electronic Zone,	]	
Navi Mumbai-400705	]	…Petitioner

Versus

1) The Union of India	]	
through the Secretary,	]	
Department of Revenue,	]	
Ministry of Finance,	]	
North Block,	]	
New Delhi 110 001	]	
2) The Commissioner of CGST	]	
& CX, **Belapur Commissionerate**,	]	
Having his office at	]	
1st Floor, CGO Complex, CBD	]	
Belapur, Navi Mumbai – 400614	]	
3) The Commissioner of	]	
Central Tax (Appeals), Raigad,	]	
having his Office at 5th Floor,	]	
CGO Complex, CBD Belapur,	]	
Navi Mumbai – 400614	]	…Respondents

Dr Avinash Poddar, through V.C. a/w Ms Deepali Kamble, for the Petitioner in WP/400/2024.

Mr Y R Mishra, a/w Mr S D Deshpande, Mr Satyaprakash Sharma, for the Respondents in WP/400/2024.

Mr Prakash Shah, a/w Mr Jas Sanghavi i/b PDS Legal, for the Petitioner in WP/14270/2024.

Mr Karan Adik, a/w Ms Niyati Mankad through V.C., Mr Akash Singh, for Respondents 1 to 3 in WP/14270/2024.

CORAM: M.S. Sonak &
Jitendra Jain, JJ.

DATED: 02 December 2024

PC:-

1. Heard learned counsel for the parties.

2. Learned counsel for the parties agree that a common order can dispose of both these petitions.

3. Rule. The Rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.

4. The only issue involved in these petitions is whether the pre-deposits made by the petitioners through their electronic cash ledger should be regarded as valid under Section 83 of the Finance Act, 1994, read with Section 35 of the Central Excise Act, 1944.

5. The record shows, and there is no dispute, that both petitioners made pre-deposits in form DRC-03 through their electronic cash ledger. The appellate authority noted this in the impugned orders and accepted it in the affidavits filed on behalf of the respondents.

6. In Writ Petition No. 14270 of 2024, the Assistant Commissioner of CGST filed an affidavit on 08 November 2024. In paragraph No.6 of this affidavit, the affiant has very fairly stated as follows: -

> "...I say that although in the present case the PETITIONER has made payment from Electronic cash ledger, which is as good as cash payment in the peculiar facts of the present case, I say that using credit ledger could lead to absurd results as ITC and/or the CENVAT CREDIT of a particular tax payer itself can be in dispute in a given case, and if allowing pre-deposits, from a disputed CREDIT POOL is allowed, that itself would amount to non-deposit of any amount."

7. In both petitions, we are not concerned with deposits using the credit ledger, so we are not required to discuss pre-deposits through the credit ledger. However, the affidavit states that payment from an electronic cash ledger is as good as cash payment in the peculiar facts of the case. The learned counsel appearing on behalf of the respondents did not seriously dispute this position.

8. Though the affidavit filed in the connected Writ Petition No. 400 of 2024 is not categorical, it is obvious that the Union of India cannot take a separate stand in this matter.

9. In any event, we are satisfied that the issue raised in these petitions is covered by the decision of the Coordinate Bench in **Reliance Infrastructure Limited vs. Union of India**[1]. Ultimately, the record shows that the petitioners made pre-deposits, whether in one form or another. Accepting the respondents' hypertechnical contention would only mean that the respondents would have to be directed to refund the amount of pre-deposits made by the petitioners so that the petitioners could once again deposit the same amount to the appeal account.

10. For the above reasons and considering the statements in the affidavit, we allow these petitions and direct the appellate authority to accept the pre-deposits made as valid pre-deposits and dispose of the petitioners' appeal on the merits and in accordance with the law.

11. The orders in appeal are accordingly quashed, and the matter is remanded to the appellate authority to dispose of the appeals on merit and in accordance with the law. The

[1] 2023 (69) G.S.T.L. 25 (Bom.)

appellate authority should endeavour to dispose of the appeals as expeditiously as possible.

12. The Rule is made absolute in these petitions without any cost order. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**

Signed by: Darshan Patil
Designation: PA To Honourable Judge
Date: 04/12/2024 10:54:16