IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 1 OF 2024

The Commissioner of CGST And Central
Excise, Belapur Commissionerate ....Appellant

V/s.
Sapphire Cable and Services Pvt. Ltd. ...Respondent

Mr. M.P. Sharma for Appellant.
Mr. Prakash Shah a/w Mr. Mihir Mehta and Mr. Jas Sanghavi i/b PDS Legal for Respondent.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 28th AUGUST 2024

P.C. :

1. This appeal filed under Section 35G of the Central Excise Act, 1944 (the Act) impugning an order dated 7th July 2023 passed by the Customs Excise and Service Tax Appellate Tribunal, Mumbai (CESTAT). By the said order, in the appeal that was filed by Respondent, Appellant had raised a preliminary objection that the pre-deposit made by the Electronic Credit Ledger was not valid as due compliance to Section 83 of the Finance Act, 1994 read with Section 35F of the Act. Under these legal provisions pre-deposit was a pre-condition for entertaining any appeal. This appeal therefore is against the decision taken by the CESTAT rejecting appellant's preliminary objections.

2. Mr. Shah states the appeal is still pending. The provisions of Section 35G of the Act is pari materia to Section 260 A of the Income Tax

Act, 1961. The Division Bench of this court in ***Chem Amit vs. Assistant Commissioner of Income Tax***[1] held that the expression "an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal" obviously refers to such order disposing the appeal. If the legislature intended to provide an appeal to the High Court from each and every order passed by the Tribunal, the legislature would have used the expression "an appeal shall lie to the High Court from every order passed by the Tribunal and not from every order passed in appeal by the appellate Tribunal". Therefore, on this ground alone the appeal is not maintainable.

3. Be that as it may, appellant has relied upon a Circular dated 28th October 2022 issued by the Central Board of Indirect Tax and Customs (CBIC) to submit that the pre-deposit made by respondent by utilizing credit ledger account (ITC) ledger maintained in the SNGST regime is not a valid payment in compliance of Section 35F of the Act.

4. After hearing the parties, preliminary objections by revenue was rejected because the CESTAT rightly concluded that the circular had come into force only on 28th October 2022 and the appeal had been filed much before the circular came into force. Relying upon the judgment of the Hon'ble Apex Court in ***Commissioner of Central Excise, Bangalore vs. M/s. Mysore Electricals Industries Ltd.***[2], the CESTAT held that the circular would apply only prospectively.

1 2004 SCC OnLine Bom 976
2 2006 (204) ELT 517 (SC)

5. In fact, this court in ***Oasis Realty vs. Union of India***[3] decided on 16th September 2022 has held that assessee may utilize the amount available in the Electronic Credit Ledger to pay 10% of the amount of tax in dispute under Section 107(6) of the Maharashtra Goods and Services Tax Act, 2017.

6. We should also note that the High Court of Karnataka in ***Union of India vs. Vikrant Tyres Ltd.***[4] while dealing with the pre-deposit under Section 35F of the Act has taken a similar view.

7. Therefore, Appeal dismissed.

(JITENDRA JAIN, J.) **(K.R. SHRIRAM, J.)**

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3 (2023) 3 Centax 86 (Bom)
4 1999 taxmann.com 362 (Karnataka)