Chaitanya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7040 OF 2025

The Commissioner of CGST & Central Excise Belapur Commissionerate 1st floor C.G.O. Complex CBD Belapur, Navi Mumbai … Petitioner

Versus

Tenormac Enterprises Pvt. Ltd. H-Block, Dhirubhai Ambani Knowledge City, Kopar Khairne, Navi Mumbai – 400614. … Respondent

AND

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL (L) NO. 16838 OF 2025

The Commissioner of CGST & Central Excise Belapur Commissionerate 1st floor C.G.O. Complex CBD Belapur, Navi Mumbai – 400614. … Appellant

Versus

Tenormac Enterprises Pvt. Ltd. H-Block, Dhirubhai Ambani Knowledge City, Kopar Khairne, Navi Mumbai – 400614. … Respondent

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Mr Anil C. Singh, ASG a/w Mr Jitendra Mishra, Mr Ram Ochani, Mr Aditya Thakkar, Ms Sangeeta Yadav, Mr Adarsh Vyas, for Petitioner in WP/7040/2025 and for the Appellant in CEXA(L)/16838/2025.

Mr Rafique Dada, Senior Advocate a/w Mr Prakash Shah, Senior Advocate, Mr Mihit Mehta, Mr Jas Sanghavi, Mr Suyog Bhave i/b PDS Legal for the Respondent in WP/7040/2025 and CEXA(L)/16838/2025.

Mr Dhirendra Singh Garbyal, Commissioner CGST a/w Dr Prashant Rokade, Additional Commissioner CGST, Mr Shrikant G. Hosabale, Assistant Commissioner, CGST, are present.

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

Reserved on : 11 June 2025

Pronounced on : 12 June 2025

ORAL ORDER: *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. The Writ Petition challenges CESTAT's Misc. Order No. 85578 of 2025 dated 06 May 2025, which disposes of Service Tax Misc. Application No. 85710 of 2025 in Service Tax Appeal No. 87095 of 2022 and the Appeal challenges CESTAT's Final Order No. 85072 of 2025 dated 24 January 2025, which disposes of the Respondent's Service Tax Appeal No. 87095 of 2022.

3. At the outset, Mr Rafique Dada, learned Senior Advocate for the Respondent objected to the maintainability of the Appeal and the Petition, by pointing out that under Section 35-G of the Central Excise Act, 1944, under which the Appeal was purported to be instituted, an Appeal shall lie to the High Court from the CESTAT Orders, not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or the value of goods for the purposes of assessment. He pointed out that in this case, the issue of rate and valuation was squarely involved, and this was even acknowledged in the Appeal memo. He submitted that apart from the acknowledgement, from the CESTAT's Order, it is apparent that the CESTAT has addressed the issue of rate and valuation, and the Appeal memo contains grounds contesting rate and valuation. Accordingly, Mr Dada submitted that the Appeal would not be maintainable before this Court and the Petitioner/Appellant may have to prefer such Appeal before the Hon'ble Supreme Court.

4. Mr Dada submitted that even the Writ Petition would not be maintainable because the order impugned in the Writ Petition only directs the implementation of the CESTAT's Original Order in a lawful manner. He submitted that the order dated 06 May 2025, which is impugned in the Writ Petition, was made by the CESTAT in exercise of the powers conferred by Rule 41 of the Customs, Excise And Service Tax Appellate Tribunal (Procedure) Rules, 1982 (1982 Rules), which empowers the Tribunal to issue directions for giving effect to its orders. He submitted that such an order must be read and construed to be a part of the CESTAT's Original Order and therefore, appealable before the Hon'ble Supreme Court and not challengeable under Article 226 of the Constitution or in an Appeal that could be instituted before this Court.

5. Mr Dada submitted that even otherwise it would not be appropriate to examine the legality and validity of the order dated 06 May 2025 made to give effect to the CESTAT's Original Order dated 24 January 2025, when, clearly, an appeal against the CESTAT's Original Order dated 24 January 2025 lies before the Hon'ble Supreme Court. He submitted that such a truncated examination or hearing would not be in the interest of justice. He submitted that any interference with the CESTAT's Order dated 06 May 2025 would virtually render the reliefs granted by the CESTAT in the Original Order dated 24 January 2025 meaningless or futile.

6. Mr. Dada relied upon the following decisions in support of his arguments regards maintainability of the Appeal and Writ Petition: -

(1) **Commissioner of Central Excise, Mumbai-V vs Reliance Media Works Ltd**[1]**;**

(2) **The Board of control for Cricket in India (BCCI) vs Commissioner of service Tax-1, Mumbai**[2]**;**

(3) **Principal Commissioner of CGST & CE, Mumbai East vs ICICI Bank Ltd.**[3]**;**

(4) **Pr. Commissioner of C.E. & S.T. vs. Raja Dyeing**[4]**; and**

(5) **Chirag Electronics vs. Commissioner of Central Excise**[5]

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1 2020 (372) E.L.T. 220 (Bom)

2 2023 (8) TMI 543 – Bombay High Court

3 2023 (79) G.S.T.L. 387 (Bom)

4 2017 (5) GSTL 231

5 2017 (350) E.L.T. 349

7. Mr Anil Singh learned ASG submitted that the Appeal was maintainable before this Court. In any event, he submitted that the order dated 06 May 2025 passed by the CESTAT in a separate Miscellaneous Application after it had disposed of Service Tax Appeal No. 87095 of 2023, was a separate order made in the purported exercise of Rule 41 of the 1982 Rules. He submitted that the application under Rule 41, virtually seeking modification of the CESTAT's original order dated 24 January 2025 was not at all maintainable, and consequently the impugned order dated 06 May 2025 made by the CESTAT is wholly without jurisdiction. He submitted that this order overlooks the provisions of the Proviso to section 142 (6)(a) of the CGST Act 2017, which, in terms prohibits refund of any amount of CENVAT credit in cash where the balance of the said amount as on the appointed date has been carried forward under the CGST Act 2017.

8. Mr Anil Singh pointed out that the appointed date for the CGST Act was 01 July 2017. By this date, admittedly, the Respondent had carried forward the amount of CENVAT credit under the CGST Act 2017. He submitted that the subsequent reversal after almost 7 years, i.e. on 17 July 2024, was of no avail, and such a reversal was only an attempt to overcome the Proviso to Section 142(6)(a) of the CGST Act. However, the Proviso is clear that on the appointed date, the CENVAT credit had already been carried forward, there was an absolute embargo for a cash refund.

9. Mr Anil Singh submitted that the Petitioner/Appellant, without prejudice to its contentions in the Appeal, had already offered to re-credit the amount into the Electronic Credit Ledger as was noted by the CESTAT in paragraph 4.2 of its order dated 06 May 2025. However, he submitted that the direction in the CESTAT impugned order dated 06 May 2025 for a cash refund of Rs . 256.45 crores, and that too, by taking aid of Respondents' Miscellaneous Application or by reference to Rule 41 of the 1982 Rules, was an exercise entirely without jurisdiction. He, therefore, submitted that the Petition under Article 226 of the Constitution to challenge such an order, which was wholly without jurisdiction, was maintainable.

10. The rival contentions now fall for our consideration.

11. Section 35-G of the Central Excise Act, 1944 provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 *(not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment)*, if the High Court is satisfied that the case involves substantial question of law.

12. Similarly, Section 35-L of the Central Excise Act, 1944 provides that an appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

13. The CESTAT's Final Order dated 24 January 2025, which is the subject matter of the Appeal, at several paragraphs, including para. No. 8.8 not only discusses the issues of valuation and taxability but also records that both these issues are involved in the matter. From perusal of the Final Order dated 24 January 2025, it is apparent that issues of valuation and taxability are indeed involved in the matter. The Appeal memo also refers to grounds relating to the issues of valuation and taxability. Therefore, having regard to the provisions of Section 35-G and 35-L, we are satisfied that the Appeal will not be maintainable before this Court but may have to be instituted before the Hon'ble Supreme Court.

14. As regards the CESTAT's order dated 06 May 2025, we note that the CESTAT made the same in the purported exercise of powers under Rule 41 of the 1982 Rules. Rule 41 enables the CESTAT to make such orders or give such directions as may be necessary or expedient to give effect or in relation to its orders or to prevent the abuse of its process or to secure the ends of justice. In effect, the order dated 06 May 2025 could be said to either supplement, interpret or aid in the implementation of CESTAT's final order dated 24 January 2025. The decisions relied upon by Mr Dada suggest that even such an order would be appealable under Section 35-L before the Hon'ble Supreme Court and not before this Court under Section 35-G of the Central Excise Act, 1944. This is more so because of the use of the phrase "*among other things*" in Sections 35-G and 35-L of the Central Excise Act, 1944.

15. Even if we were to hold that Mr Dada's objection cannot relate to the issue of "maintainability" because the jurisdiction of this Court under Article 226 is relatively broad, still, there is the issue of "entertainability". The jurisdiction under Article 226 of the Constitution is both plenary and discretionary. The question is whether we should exercise our discretion when we could perhaps, at the highest, deal with only a part of the controversy.

16. Since, as contended by Mr Dada even the order dated 06 May 2025 is appealable before the Hon'ble Supreme Court and further since it would not be appropriate for us to entertain proceedings questioning only a part of the order or addressing only a part of the controversy, we think that this discretionary jurisdiction is best not exercised in the facts of the present case. Truncated proceedings addressing only a part of the controversy would not be in the interest of any of the parties. Furthermore, if this Court is unable to grant complete relief, there is no point in exercising discretionary jurisdiction under Article 226 of the Constitution and examining only part of the controversy. This is why the Petitioners are typically expected to plead and establish that the reliefs claimed in the Petition, if granted, would be complete in themselves.

17. Therefore, we put it to Mr Anil Singh, the learned ASG, as to whether the Petitioner/Appellant would appeal against the CESTAT's orders dated 24 January 2025 and 06 May 2025 before the Hon'ble Supreme Court, within some reasonable period, so that the entire matter could be agitated before the Hon'ble Supreme Court.

18. Mr Anil Singh, the learned ASG, conferred with Mr Dhirendra Singh Garbyal, Commissioner CGST, Dr Prashant Rokade, Additional Commissioner CGST and Mr Shrikant G. Hosabale, Assistant Commissioner, CGST, who were present in the Court and based on their instructions agreed that the Petitioner/Appellant would not press this Petition or the entertainment of this Appeal before this Court but would prefer an Appeal to the Hon'ble Supreme Court to question the CESTAT's orders dated 24 January 2025 and 06 May 2025. However, he requested that the CESTAT's directions to make a cash refund of Rs. 256.45 crores may be stayed for a period of 8 to 12 weeks to enable the Petitioner/Appellant to take necessary steps.

19. Mr Singh submitted that the Hon'ble Supreme Court was on vacation or only partially working, and therefore, there might be some difficulties in immediately filing and circulating the Appeal before the Hon'ble Supreme Court. He pointed out that the directions for a cash refund were *ex facie* without jurisdiction and in contravention of the proviso to Section 142(6)(a) of the CGST Act, 2017. He submitted that if this amount is now paid to the Respondent, a virtually irreversible situation would arise, since it is the Respondent's case that their factories have closed and they are no longer in active business. Mr Singh submitted that though this position about closure of factories etc. is being disputed by the Petitioner/Appellant, still, considering the quantum of the amount, it would be extremely difficult for the Petitioner/Appellant to recover such an amount from the Respondent.

20. Mr. Dada, on instructions, vehemently opposed the grant of any stay. He submitted that a CESTAT's order was in the nature of a money decree and therefore, the same should not be stayed. He submitted that there was nothing wrong with the CESTAT's two orders and therefore, this Court may not grant any protection or stay to the Petitioner/Appellant. He submitted that the Respondent was deprived of this amount for a substantial period, and if the Petitioner's appeal were allowed, restitution was always possible.

21. Upon due consideration of the rival contentions, we think that the interest of the Appellant/Petitioner-Revenue must be protected for some reasonable period. The scope of the proviso to Section 142 (6)(a) warrants serious consideration. Under this proviso, once any amount of CENVAT credit as on the appointed date had been carried forward under the CGST Act 2017, at least *prima facie,* there was an embargo on cash refunds. The Tribunal's Original Order dated 24 January 2025 had not, at least specifically, ordered any cash refund. Only consequential relief was granted without specifying what this consequential relief would be. The relief of cash refund was granted only by the order dated 06 May 2025, disposing of Misc. Application No. 85710 of 2025 and by purportedly exercising the powers under Rule 41 of the 1982 Rules.

22. The prejudice to the Revenue by the refusal of some protection for a limited period would far outweigh the prejudice to the Respondent. If ultimately the Respondent is found eligible for the relief now granted by the CESTAT, there should be no serious difficulty in recovering this amount from the Revenue. However, if any cash refunds are granted to the Respondent and the Revenue succeeds in its Appeal/s, the position may not be as simple, since it is the Respondent's case that it is not undertaking any active business or has closed down its factories.

23. Therefore, we are satisfied that this is a fit case that the CESTAT's direction for cash refund of Rs.256.45 Crores should be stayed for a period of eight weeks from the date of uploading of this order. Accordingly, we order such stay for a period of eight weeks from the date of uploading of this order.

24. All contentions of all parties on the merits are obviously kept open because we have not addressed the merits of the rival contentions.

25. This Petition and the Appeal are disposed of as not pressed with liberty to the Petitioner/Appellant to prefer Appeal/s before the Hon'ble Supreme Court by invoking the provisions of Section 35-G and 35-L of the Central Excise Act, 1944, within eight weeks from the date of uploading of this order. However, the direction in the CESTAT's order for a cash refund of Rs. 256.45 Crores to the Respondent shall remain stayed for eight weeks from the uploading of this order.

26. All concerned can act on an authenticated copy of this order.

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