IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL (CEL) NO. 07 OF 2019

Reliance Industries Limited,
a Company incorporated under the
Companies Act, 1956, having registered
office at Maker Chambers – IV Nariman
Point Mumbai 400 021, and its
manufacturing plant at village Mauda,
Dist. Nagpur, Maharashtra } **.. Appellant**

Versus

The Commissioner of Customs
And Central Excise,
Kendriya Utpad Shulka Bhawan,
Nagpur : 440001 } **.. Respondent**

Mr. Vishal Agrawal (through V.C.) a/w Mr. Tejas Deshpande, Advocate for appellant.
Mr. S.N.Bhattad, Advocate for respondent.

CORAM : ANIL L. PANSARE AND SIDDHESHWAR S. THOMBRE, JJ.

DATED : SEPTEMBER 19, 2025

ORAL JUDGMENT (Per : ANIL L. PANSARE, J.)

(1) Heard. The appeal has been '**Admitted'** on following questions of law :-

> *(1) Whether the CESTAT was correct in holding that the Appellant becomes entitled to refund of pre-deposit only when the Appellate Authority decides the Appeal finally in its favour and that no such right accrues to the Appellant if the Appeal is decided by way of a remand, back to the adjudicating authority ?*

(2) Whether the CESTAT was correct in holding that the judgments cited before it was not relevant as in these cases, the appeal was decided finally even though in cases of Voltas Limited reported in 1999(112) ELT 34 (Del) and Nelco Limited reported in 2002(144) ELT 56 (Bom) the matter was remanded ?

(2) Learned counsel for the appellant has invited our attention to Section 35F of the Central Excise Act, 1944 (hereinafter referred to as the ***'Act of 1944'***), to contend that the pre-deposit referred to in Section 35F is in relation to appeal filed before the Commissioner (Appeal) or the Appellate Tribunal.

(3) In this proceeding the appellant questioned before the Commissioner (Appeal), the order passed by Adjudicating Authority. The Commissioner (Appeal) upheld the order passed by Adjudicating Authority. The appellant then approached the Appellate Tribunal. The Appellate Tribunal vide its order dated 05/03/2004 relegated the matter back to the original Adjudicating Authority to examine the appellant's claim of MODVAT Credit and to recalculate the duty by treating the value as cum-duty.

(4) Learned counsel for the appellant then referred to the judgment passed by the Division Bench of this Court in the case of ***Nelco Limited vs. Union of India,*** reported in ***2002 (144) E.L.T. 56 (Bom.),*** where in identical situation the Court held thus :-

5. We are, therefore, of the view that from 24th January, 1997 there was no justification for the Respondents to hold on to the amount of Rupees Twenty lakhs deposit under Section 35-F of the Act as this amount ought to have been returned to the Petitioner *the day the Appeal was disposed of by the authority. In our judgment, a deposit made under Section 35-F of the Act is liable to be adjusted towards the claim for duty, in case the Appeal fails and it needs to be returned to the Appellant, in case the Appeal succeeds, whether fully or partly. In any event, looking at the facts and circumstances of the present case, it appears to us that the Respondents were wrong throughout. They proceeded to demand duty from the Petitioner in a clearly time barred case and because the Department took a wrong view of the matter, we see no reason why the Petitioner should be made to suffer loss of interest on the large amount of Rupees Twenty lakhs for a period of almost three years and more.*

6. Mr. Jetley made an effort to persuade us that the consequence of the CEGAT's order was that the Petitioner would continue to be liable for the duty demanded initially and that the deposit was legitimately and rightfully withheld by the Respondents. We are unable to accept this contention. The CEGAT's order dated 24th January, 1997 remands the matter for re-adjudication by the adjudicating authority. In other words, the parties were put back to the situation of a show cause notice against the Petitioner being adjudicated by the authority Mr. Jetley fairly conceded that there is no provision in the Act which requires deposit of any amount at the stage of adjudication and that the only provision which requires deposit is Section 35F of the Act after the adjudication has quantified the liability towards duty. If these are the circumstances, then we see no reason how the Respondents were entitled to hold on to the money merely because the adjudication was proceeding on the original show cause notice, that too on demands which were hopelessly time barred, as subsequently pointed out by the Supreme Court.

7. In these circumstances, we are of the view that the Petitioner is entitled to interest at the rate of fifteen per cent per annum on Rupees Twenty lakhs between 24th January 1997 to 15th September, 2000.

8. In the result, the writ Petition is allowed and it is directed as follows :

(a) The Respondents shall pay simple interest at the rate of fifteen per cent per annum on the amount of Rupees Twenty lakhs for the period 24th January, 1997 to 15th September, 2000.”

(5) As could be seen, the Court held that the pre-deposit made under Section 35-F of the Act, 1944 is liable to be adjusted towards the claim for duty, in case the Appeal fails and it needs to be returned to the Appellant, in case the Appeal succeeds, whether fully or partly. In the said case also the Appellate Tribunal had remanded the matter back to the Adjudicating Authority and since the deposit was not returned back, interest @ 15.00%p.a. was imposed. In the present case also the Appellate Tribunal had remanded the matter back to the Adjudicating Authority.

(6) Learned counsel further submits that the Central Board of Indirect Taxes (earlier referred to as GST-ExCus), thereafter, issued a Circular on 02/01/2002 directing all concerned to adopt uniform procedure to refund the pre-deposit made before the Appellate Authority. The Central Board then, issued updated Circular dated 08/12/2004, wherein following directions were given :-

> *4. Accordingly, the contents of the Circular No. 275/37/2000-CX. 8A dated 2-1-2002 [2002 (139) E.L.T. T38), as to the modalities for return of the pre-deposits are reiterated. It is again reiterated that in terms of Hon'ble Supreme Court's order such pre-deposit must be returned within 3 months from the date of the order passed by the Appellate Tribunal/Court or other Final Authority unless there is a stay on the order of the Final Authority/CESTAT/Court, by a superior Court.*
>
> *5. Delay beyond this period of three months in such cases will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers. All concerned are requested to note that default will entail an interest liability, if such liability accrues by reason of any orders of the CESTAT/Court, such orders will have to be complied with and it may be recoverable from the concerned officers.*

(7) Thus, the Board has taken note of the judgment of the Hon'ble Supreme Court, wherein directions were given to return the pre-deposit within three months in the cases covered by the said judgment. The Circular further indicates that delay beyond the period of three months in returning the amount will be viewed adversely and appropriate disciplinary action will be initiated against the concerned defaulting officers.

(8) Despite the aforesaid position of law and Circulars having been issued and despite the fact being as clear as noted above, wherein the Appellate Tribunal had remanded the matter back to the original Adjudicating Authority, the respondent had refused to return the pre-deposit amounting to Rs.1 Crore which was due for return within 3 months from the date of Tribunal's order. The respondent, however, had returned the deposit on 01/09/2005. The appellant requested for the interest @12.00% p.a. from the date it was due till the amount of pre-deposit was actually paid, which according to the appellant comes to Rs.14,89,315/-.

(9) As such, learned counsel for the respondent made an attempt to justify withholding the amount of interest, however, considering the position of law and the Circulars issued by the Board, we are of the view that the appellant was entitled for the refund of pre-deposit within three months from the date of order of remand i.e. 05/03/2004. The deposit having been withheld till 01/09/2005, for no valid reason, the respondent is liable to pay the appellant interest @12.00%p.a. for the delayed payment. Accordingly, both the questions of law are answered in the negative.

(10) Resultantly, the appeal is allowed in terms of prayer clause (b) which reads thus :-

> (b) that this Hon'ble Court be pleased to quash and set aside the impugned Final Order No. A/86432/17/SMB dated 06.01.2017 pronounced on 17.03.2017 by the Appellate Tribunal and allow the appeal;

(11) The respondent is directed to pay to appellant interest @12.00%p.a. for the amount of pre-deposit withheld beyond 05/06/2004 till its realization. No order as to costs.

[SIDDHESHWAR S. THOMBRE, J.] **[ANIL L. PANSARE, J.]**

KOLHE