IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.39009 of 2025
and
W.M.P.Nos.43692 & 43693 of 2025

Dover India Private Limited,
Represented by its Authorised Signatory
Prakash Indoria, General Manager
S.No.385/ID. No.33,
Mavalurkuppam B Village
Pazhanchur, Chennai – 600056. ... Petitioner

Vs.

1. Commissioner of (Appeals-II)
   Newry Towers: No.2054-1
   II Avenue: Anna Nagar
   Chennai – 600040.

2. Assistant Commissioner of GST and Central Tax
   Poonamallee Division,
   Chennai Outer Commissionerate
   R-40, A-1, 100 Feet Road,
   Mogappair, 2nd Floor,
   Chennai – 600037. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records relating to the impugned order no. 107/2024 dated 23.08.2024 with the DIN: 20240859KU000083928A on the files of Respondent No.1 and quash the same.

For Petitioner : Mr.Shiva Kumar
For M/s.S.Thvija

For Respondents : Mr.Rajendran Raghavan
Senior Standing Counsel

ORDER

Mr.Rajendran Raghavan, learned Senior Standing Counsel, takes notice for the respondents.

2. With the consent of the learned counsel for the petitioner and learned Senior Standing Counsel for the respondents, this Writ Petition is being disposed of at the time of admission.

3. In this Writ Petition, the petitioner has challenged the impugned Order-In-Appeal No. 107/2024, dated 23.08.2024 passed by the 1st respondent as an appellate authority. Although the petitioner has an appeal remedy before the Appellate Tribunal in terms of Section 86 of the Finance Act, 1994, read with Section 35B of the Central Excise Act, 1944, the petitioner has challenged the impugned Order-In-Appeal No. 107/2024, dated 23.08.2024 passed by the 1st respondent.

4. By the impugned Order-In-Appeal No.107/2024, dated 23.08.2024, the appeal of the petitioner was dismissed on the ground that the petitioner had not made the mandatory pre-deposit under Section 35F of the Central Excise Act, 1944, as made applicable to appeals under the provisions of the Finance Act, 1994.

5. Section 35F of the Central Excise Act, 1944 is reproduced hereunder:

"***[Section 35F. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. -***

The Tribunal or the Commissioner (Appeals) , as the case may be, shall not entertain any appeal -

(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the 2 [Principal Commissioner of Central Excise or Commissioner of Central Excise];

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;
(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten

per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

***Provided** that the amount required to be deposited under this section shall not exceed rupees ten crores:*

***Provided** further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.*

***Explanation**. - For the purposes of this section "duty demanded" shall include, -*
(i) amount determined under section11D;
(ii) amount of erroneous Cenvat credit taken;
(iii) amount payable under rule 6 of the Cenvat CreditRules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.]"

6. A reading of Sl.No.5A and Sl.No.6 of FORM ST-4 indicates that the petitioner has already pre-deposited a sum of Rs.35,00,000/-. The petitioner is required to deposit only 7.5% of Rs.36,97,948/-. Since the petitioner has already pre-deposited the amounts over and above 7.5% of Rs.36,97,948/-, the question of insisting the petitioner to pre-deposit further 7.5% of the disputed tax cannot be countenanced.

7. The issue is now no longer *res integra.* The issue has been settled by the decision of the Gujarat High Court in ***Cadila Health Care Pvt Ltd. v.***

Union of India [2018 (11) TMI 80], wherein, in Paragraph Nos.6 & 7, it has been held as under:-

> *"6. At the outset, we may dispose of the primary objections to the maintainability of the writ petition raised by the respondents. The decision of the Commissioner (Appeal) which is challenged by the petitioners can perhaps be categorized as mere communications. We wonder whether such communications can be termed as orders which are appelable. There is no dispute about the petitioners' liability to predeposit 7.5% of the disputed dues. The only dispute is whether such pre-deposit can be made only by cash or also by availing credit in cenvat account. It appears that Commissioner had not even put the petitioners to notice about the decision that he took in this regard. This was thus not a case of by parte hearing culminating into a quasi judicial decision formed by the Commissioner which was a mere communication of his opinion that such pre-deposit must be made in cash. Even otherwise, it is well settled that mere availing of alternative remedy is not a bar to entertain a writ petition, Even the ground of delay is not valid. The petitioners after receiving the communications in question made detailed correspondence with the departmental authorities trying to persuade them that the pre-deposit as well can be made with the aid of cenvat credit, Having failed in receiving the positive response, this petition came to be filed.*
>
> *7.Coming to the central issue, the Commissioner does not appear to be correct in his stand. Essentially, credit in an assessee's cenvat account is a duty he has already suffered which he can encash for specified purposes subject to conditions laid down under the Rules. As observed by Division Bench of Jharkhand High Court in case of Akshay Steel Works Pvt. Ltd (supra) there is nothing in the Rules preventing an assessee from availing such cenvat credit for the purpose of pre-deposit. Similar view was taken by the learned Single Judge of Allahabad High Court in case of India Casting Company (supra). Petitioners had also pointed out that even departmental authorities have been accepting such formula."*

8. In fact, this Court has also taken an independent view, taking note of a few decisions of other High Courts, in ***Exelan Networking Technologies Pvt. Ltd. v. Commercial Tax Officer [2020 (2) TMI 683]***.

9. Considering the same, the impugned Order dated 23.08.2024 passed by the 1st respondent / appellate authority is quashed and the case is remitted back to the 1st respondent to pass a fresh order, without insisting on any further pre-deposit in cash.

10. The attachment of the bank account of the petitioner shall also stand automatically vacated, in view of the above observation.

11. With the above directions, this Writ Petition stands disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

15.10.2025

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Neutral Citation : Yes / No

To

1. The Commissioner of (Appeals-II)
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2. The Assistant Commissioner of GST and Central Tax
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C.SARAVANAN, J.

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