



2025:DHC:1223-DB



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 21st February, 2025*

+

W.P.(C) 877/2025 & CM APPL. 4241/2025**M/S DD INTERIORS**

.....Petitioner

Through: Mr. Ruchir Bhatia, Adv.

versus

COMMISSIONER OF SERVICE TAX & ANR.Respondents

Through: Mr. Atul Tripathi, SSC, CBIC and Mr. Shubham Mishra, along with IO in person Mr. Lal Dev Rajak, Assistant Commissioner, CGST and Mr. Himanshu Dubey, Inspector.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Petitioner-M/s DD Interiors under Article 226 of the Constitution of India challenging the impugned order dated 8th November, 2024, by which the Customs, Excise & Service Tax Appellate Tribunal (*hereinafter* 'CESTAT') has returned the appeal due to non-compliance of the pre-deposit condition mandated under Section 35F of the Central Excise Act, 1944.
3. Admittedly, the pre-deposit was made by the Petitioner way back on 13th August, 2018 and 17th August, 2018 itself for a sum of Rs. 1,60,600/- and Rs. 4,750/- respectively. The Petitioner has also submitted the challans



showing the deposit. The ground taken in the impugned order is that the same was deposited in a wrong account and therefore credit cannot be given of the pre-deposit and hence the appeal does not deserve consideration on merits.

4. The case of the Petitioner is that, Good and Services Tax regime (*hereinafter* 'GST') was recently enacted at the time of payment, and that there was considerable uncertainty and confusion with respect to levied rate of taxes, modes of payment.

5. Mr. Ruchir Bhatia, the Id. Counsel for the Petitioner, has pointed out the instructions given by the Ministry of Finance dated 28th October, 2022, as per which, the Central Board of Indirect Taxes & Customs (*hereinafter* 'CBIC') has clarified that the pre-deposits have to be made in the integrated portal. The Petitioner also relies upon the Bombay High Court judgment in ***Sodexo India Services Pvt. Ltd. vs. Union of India*** (2022 SCC OnLine Bom 11975) where under similar circumstances, the High Court had allowed the writ petition and ordered the appeals to be heard on merits by the CESTAT. The relevant paragraphs are read as under:

"2. Petitioner had, as required under Section 85 of the Finance Act, 1994 read with Section 35F of the Central Excise Act, 1944, made a pre-deposit in cash through Form GST DRC-03. The appeals were accepted and registered and appeal numbers were allotted. Thereafter, petitioner was called for personal hearing and petitioner made submissions on merits of the matter. To petitioner's surprise, all the appeals came to be dismissed without going into the merits of the submissions made by petitioner only on the ground that the pre-deposit made by petitioner while filing the appeal was improper. According to respondent No. 3, petitioners could not have made the deposit in the manner they made and, therefore, should be construed



to have not complied with the precondition of pre-deposit. Strangely in the order respondent No. 3 does not state how the deposit should have been made. According to petitioner, even during the personal hearing respondent No. 3 was totally silent and never brought to the notice of petitioner as to how the deposit should have been made.

7. Therefore, it does appear that the confusion seems to be due to there being no proper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act, 1944 through DRC-03. Some appellants are filing appeals after making pre-deposit payments through DRC-30/GSTR-3B. In our view, this has very wide ramifications and certainly requires the CBI & C to step, in and issue suitable clarifications/guidelines/answers to the FAQs. We would expect CBI & C to take immediate action since the issue has been escalated by Mr. Lal over eight months ago.

8. In the circumstances, we hereby quash and set aside the impugned orders dated 13th April 2022 and direct respondent No. 3 to hear petitioner de novo and pass such orders as he deems fit on merits in accordance with law.”

6. Mr. Ruchir Bhatia, Id. Counsel also relies upon a recent decision of the CESTAT, Allahabad, where Sodexo has been followed and the CESTAT Allahabad Bench has also held that such non-hearing on merits would amount to denial of substantial justice. The relevant portions of the CESTAT Allahabad order in *M/s Shri Krishna Road Carrier (Proprietor Vijay Kumar Gupta) vs Commissioner of Central Excise & CGST, Meerut, 2024 (6) TMI 188* are as under :



“5. We find that the learned Commissioner (Appeals) could have granted the refund of amount of pre-deposit wrongly made by DRC-03 to the Appellant and given an opportunity to deposit the said amount on its Integrated Portal instead of dismissing the appeal in limine. Because dismissing the appeal filed by the Appellant, even after making the pre-deposit, merely on the ground that it has not been deposited in the prescribed manner or by the prescribed Form, amounts to denial of substantial justice and the Commissioner (Appeals) has erred in shirking from its responsibility of deciding the appeal on merits. CBIC has issued another Circular/Instruction dated 18.04.2023, by which it has clarified the earlier Instruction dated 28.10.2022. It has been provided that DRC-03 is a prescribed mode for payment of pre-deposit under the GST Act. From perusal of paragraph 3 of the Instruction dated 28.10.22, it is evident that the tax under the existing law (Service Tax) shall be recovered as an arrear of tax under the CGST Act and the pre-deposit is neither in the nature of duty nor can be treated as arrears under the Service Tax law. Thus, when the service tax could be recovered as an arrear of Service Tax under CGST Act, after commencement of the CGST Act, then pre-deposit made through DRC-03 prior to 28.10.22 has to be treated as sufficient compliance, in view of the subsequent Instruction dated 18.4.23.

6. In view of the above discussion and by respectfully following the decision of the Hon'ble High Court, we find it appropriate to remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further visiting the aspect of pre-deposit. Needless to mention all issues are kept open. Appellant would not seek refund of the pre-deposit till the appeal is finally decided by the learned Commissioner



(Appeals). The appeal filed by the Appellant is allowed by way of remand to the Commissioner (Appeals)."

7. In the present case, the deposit of the 7.5% was made in an account when the integrated portal was not fully functional. This Court had on the last occasion *vide* order dated 23rd January, 2025 observed as under :

"6. A mere deposit in the wrong account, that too, when the integrated portal might not have been fully functional or the existence of the same was not within the knowledge of the Petitioner, cannot result in a rejection of the appeal on the ground of defects. The matter in the opinion of this Court deserves consideration on merits by the CESTAT.

7. Ld. Counsel for the Respondents submits that he would seek instructions as to since when the integrated portal has been made operational and has been informed to the assessee/s publicly.

8. Let a competent official from the Respondent-Department be present on the next date of hearing with the instructions.

9. In the meanwhile, no coercive step shall be taken against the Petitioner."

8. Further to the previous order, the Counter Affidavit was filed by the Department, wherein it is accepted as under :

"14. That the new payment system, which started in July 2019, was not available before that. Therefore, the system for making pre-deposits through the CBIC-GST Integrated portal did not exist in 2018, when the petitioner made the 7.5% pre-deposit for the first appeal. The taxpayer followed the process allowed at that time, which was accepted by the Appellate Authority during the first appeal.

15. That the appellant initially deposited 7.5% of the disputed amount, which was accepted by the Appellate Authority for the first appeal. Later, the appellant deposited 2.5% of the disputed amount via DRC- 03 when filing the appeal before the Appellate Tribunal."



9. Therefore, there is no dispute about the fact that 7.5% was initially deposited before the Commissioner (Appeals) at that time when the integrated portal did not exist. Thereafter, while approaching the CESTAT, the remaining 2.5% has been deposited by the Petitioner. Thus, in effect the entire 10% which is the pre-deposit amount, stood deposited.

10. Considering these circumstances, the appeal could not have been rejected merely on the ground that it was deposited on a wrong account especially when the said integrated portal was not even available for the Petitioner at the time of the initial deposit.

11. Following the decision of the Bombay High Court in *Sodexo India Services Pvt. Ltd. vs. Union of India*, this Court is, therefore, inclined to direct that the appeal would now be heard by CESTAT on merits without any further deposit being insisted upon. The deposit already made shall be treated as satisfaction of the pre-deposit condition.

12. In view of the above discussion, the present writ petition is allowed. The order dated 08th November, 2024 passed by CESTAT is set aside. The petition of the Petitioner is restored to its original number before CESTAT and shall now be heard on merits without any further pre-deposit.

13. At this stage, Mr. Bhatia, Id. Counsel submits that CESTAT has returned the appeal papers. If so, the Petitioner is permitted to re-present the same before CESTAT within 30 days. The same shall not be dismissed on the ground of limitation and shall now be heard on merits.



2025:DHC:1223-DB



14. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

FEBRUARY 21, 2025/nd/am

Signature Not Verified

Digitally Signed
By: RAHUL
Signing Date: 27.02.2025
19:06

W.P.(C) 877/2025

Page 7 of 7