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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ MISC. APPEAL(PMLA) 4/2025

M/S KRBL LTD ....Petitioner

Through: Mr. Anirudh Bakhru, Mr. Ahmad Ammar, Mohd. Umar, Ms. Archana Mahlawat and Mr. Shadman Ansari, Advs.

versus

DEPUTY DIRECTOR, ENFORCEMENT DEPARTMENT .....Respondent

Through: Mr. Zoheb Hossain & Mr. Vivek Gurnani, Spl. Counsels E.D. with Mr. Kanishk Maurya and Mr. Sai M. Sud, Advs..

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **04.03.2025**

1. The appellant is aggrieved by the order passed by the **Appellate Tribunal**[1] and which has essentially refused to consider its request for the amount of INR 11.13 crores presently held in deposit being refunded. While dealing with the aforesaid prayer, the Tribunal has essentially observed as follows:

> " The para of the order passed by the High Court has been quoted to indicate not only that the restoration of the possession was made on the condition of deposit of a sum of Rs. 11.13 crores but appellant had agreed to deposit the amount, if he is permitted to use the godown.
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> The order of the High court aforesaid is explicit and has not given a room to modify it. It is also a fact that amount aforesaid was deposited by the appellant pursuant to the order. The order of the high court dated 23.10.2020 was not till the next date of hearing or subject to further order by the Tribunal. Thus, we are unable to pass an order going contrary to order passed by the high

[1] Tribunal

court though we are made aware of the order passed by the high court recently on 22nd August, 2024 to take a call whether the amount of Rs. 11.13 crores is to be released or to be retained with the FD earning interest.

In light of the facts given above, we would not like to pass an order to release the amount lying in the FD in pursuance to the order dated 23.10.2020. This Tribunal has also passed the order for the restoration of the possession of the property.

We otherwise find that no prayer for refund of the amount has been made in the application addressed by us, thus, we are of the opinion that amount already deposited pursuant to the direction of the high court cannot be allowed to be refunded at this stage rather it would remain subject to this disposal of the appeal. The application is disposed of with the aforesaid."

2. In order to evaluate the challenge which stands raised, it would be pertinent to take note of the following background facts. Originally, an appeal came to be preferred before this Court by the Enforcement Directorate aggrieved by a direction of the Tribunal for restoration of the property which had been attached. During the pendency of that appeal, we had in terms of our order dated 23 October 2020 permitted the petitioner the use of warehouses forming the subject matter of attachment, provided a deposit of INR 11.13 crores was made. The relevant parts of our order of 23 October 2020 are reproduced hereinbelow:

"3. It is further submitted by Mr. Nayyar that the warehouses are already under attachment by this appellant, but the use of the warehouses may be permitted upon a condition that this applicant is ready and willing to deposit Rs.11.13 crores (which is the value of the warehouses, as assessed by the appellant authorities) with this appellant, which will be without prejudice to the rights and contentions of this applicant in the present appeal, and the deposit of the aforesaid amount shall not be treated as admission of any facts on the part of the applicant and all the contentions raised by the applicant in the pending appeal shall be permitted to be raised. Thus, this applicant is ready to deposit the aforesaid amount so that the use of the warehouses is permitted by this appellant freely. The warehouses shall not be transferred to anyone in any manner whatsoever. This applicant wants to use the warehouses in a lawful manner for its lawful business.

> 4. Having heard learned counsel for both sides and looking to the facts and circumstances of the case, we hereby modify our order dated 11.06.2020 in MISC. APPEAL(PMLA) 2/2020 and we hereby permit this applicant to deposit Rs.11.13 crores with this appellant. This applicant is permitted to use the warehouses for removal of the goods already stocked there, if any, and also for putting the new goods in the warehouses and for removal thereof. The new goods are to be stored in the warehouses for the sale thereof. The deposit of the aforesaid amount of Rs.11.13 crores will not prejudice the rights and contentions of the parties to this MISC. APPEAL(PMLA) 2/2020. Neither the deposit of the amount, nor the acceptance of this amount shall be treated as admission of any facts by the parties to this appeal and will not prejudice their rights and contentions to this appeal.
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> 5. The aforesaid amount shall be deposited within two weeks from today i.e. on or before 05.11.2020.
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> 6. This applicant shall be permitted to use the warehouses which are mentioned at Sr.No.4, 6 and 7 of paragraph 1 of this application with effect from 26.10.2020 for storing and removing the new goods and the amount of Rs.11.13 Crores will be deposited on or before 05.11.2020.
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> 7. The aforesaid warehouses shall not be transferred by this applicant, in any manner whatsoever, to anybody and no third party interest shall be created in any manner."

3. Ultimately and when the appeal of the Enforcement Directorate came up for consideration before the Court on 22 August 2024, we took note of the position in law that taking over of possession of attached properties is a drastic measure and should be resorted to only in exceptional situations. The Court, in this regard, appears to have drawn sustenance from the pertinent observations rendered by the Supreme Court in **Vijay Madanlal Chaudhary & Ors. v. Union of India & Ors.**[2]

4. The appeal ultimately came to be disposed of in the following terms:

> "15. Under such circumstances, the direction for restoring the

[2] (2022) SCC OnLine SC 929

possession of the properties cannot be faulted with on merits. Moreover, even the order dated 24th December, 2019 directed that the Appellant/Department was restrained from taking the possession of the properties. The stand of the Appellant is that notices were issued on 18th December, 2019 and 19th December, 2019 and the time period as prescribed in the PMLA Rules were adhered to. These issues would have to be now resolved in the Appellate Tribunal.

> 16. The possession of all the seven properties shall now remain with the Respondent subject to the order of attachment in terms of paragraph 19 of the impugned order dated 17th January, 2020.
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> 17. In addition, a sum of Rs. 11.13 crores which is lying deposited with the Appellant/department shall be deposited in a separate interest bearing fixed deposit, details of which shall be filed before the ld. Appellate Tribunal. The Appellate Tribunal shall decide the application for interim relief of the Respondents within a period of two weeks from 14th October, 2024. The Tribunal shall also take a view on whether the amount ought to be refunded to the Respondents or not.
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> 18. Needless to add, nothing said in the ad-interim order dated 17th January, 2020 (impugned herein) and the orders passed in this appeal would bind the final adjudication of either the interim application or the appeal before the ld. Appellate Tribunal."

5. In our considered opinion, the Tribunal appears to have proceeded on the basis that the order of 23 October 2020 was to remain untouched and that during the operation of that order, it would be inappropriate for it to examine the prayer for refund. However, that view is clearly rendered untenable in light of the positive direction which the Court had come to frame in paragraph 17.

6. We also bear in consideration the contention of the appellant in that appeal and where it had agreed to affecting the deposit without prejudice to its rights and contentions. On this limited score alone, we find ourselves unable to sustain the order impugned before us.

7. We are further of the considered opinion that the mere absence of a specific prayer for refund having been addressed would not have

absolved the Tribunal of its obligation to undertake the requisite consideration in light of the directions which were framed and stand mirrored in para 17 of our order of 22 August 2024.

8. We accordingly allow the instant appeal and set aside the order of 14 October 2024. We leave it open to the Appellate Tribunal to examine the prayer for the refund of INR 11.13 crores in accordance with law.

9. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J

MARCH 04, 2025/*akc*