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

\+ **W.P.(C) 10176/2025**

DEEPT SWAROOP AGGARWAL .....Petitioner

Through: Mr. Naveen Malhotra & Mr. Ritvik Malhotra, Advs.

versus

COMMISSIONER OF CUSTOMS ICD TKD NEW DELHI AND ORS .....Respondents

Through: Mr. Atul Tripathi, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>O R D E R</u>

% 11.08.2025

1. This hearing has been done through hybrid mode.

2. This is a petition seeking refund of an amount of Rs.15,00,000/- which was deposited as a pre-deposit for filing of an appeal before Customs, Excise & Service Tax Appellate Tribunal *(hereinafter 'CESTAT')*. The said deposit was made on 26th October, 2006 and *vide* the final order dated 06th June, 2025, the CESTAT has decided the appeal in favour of the Petitioner. The Petitioner has now made an application for refund on 23rd June, 2025.

3. It is submitted by the ld. Counsel for the Petitioner that in terms of clause 5.1 of the circular dated 16th September, 2014 (hereinafter "*the 2014 circular*"), refund of this nature has to be issued within a period of 15 days. The relevant clauses of the said circular are extracted hereunder for ready reference:

> "***<u>5.1 Where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount deposited along with the interest at the prescribed rate from the date of making the deposit to</u>***

<u>the date of refund in terms of Section 35FF of the Central Excise Act, 1944 or Section 129EE of the Customs Act, 1962.</u>

<u>5.2 Pre-deposit for filing appeal is not payment of duty. Hence, refund of pre-deposit need not be subjected to the process of refund of duty under Section 11B of the Central Excise Act, 1944 or Section 27 of the Customs Act, 1962. Therefore, in all cases where the appellate authority has decided the matter in favour of the appellant, refund with interest should be paid to the appellant within 15 days of the receipt of the letter of the appellant seeking refund, irrespective of whether order of the appellate authority is proposed to be challenged by the Department or not.</u>

<u>5.3 If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable unless such order is stayed by a competent Appellate Authority.</u>

5.4 In the event of a remand, refund of the pre-deposit shall be payable along with interest.

5.5 In case of partial remand where a portion of the duty is confirmed, it may be ensured that the duty due to the Government on the portion of order in favour of the revenue is collected by adjusting the deposited amount along with interest.

<u>5.6. It is reiterated that refund of pre-deposit made should not be withheld on the ground that Department is proposing to file an appeal or has filed an appeal against the order granting relief to the party. Jurisdictional Commissioner should ensure that refund of deposit made for hearing the appeal should be paid within the stipulated time of 15 days as per para 5.2 supra.</u>”

4. On the last date *i.e.*, 18th July, 2025, notice was issued and Mr. Atul Tripathi, ld. SSC was requested to seek instructions.

5. Today, Mr. Tripathi, ld. SSC submits that he has not received any instructions.

6. In the opinion of the Court this is a clear matter where the refund amount has to be reimbursed to the Petitioner along with interest. There can be no justification in holding back the pre-deposit amount, once the appeal has been decided in favour of the Petitioner. Accordingly, it is directed that the refund be paid to the Petitioner along with the statutory interest in terms of the 2014 circular within a period of four weeks from today, failing which, interest at the rate of 12% would be liable to be paid by the Customs Department.

7. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

8. Let this matter be listed before the Joint Registrar for compliance on 15th September, 2025.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 11, 2025

Rahul/msh