

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL**

MUMBAI

WEST ZONAL BENCH, MUMBAI

Service Tax Appeal No. 86647 of 2023

(Arising out of Order-in-Appeal No. CSM/241/RGD-APP/2022-23 dated 27.03.2023 passed by the Commissioner of Central Tax, Raigad (Appeals).

**Commissioner of Central Goods And
Service Tax-Navi Mumbai,**
10th Floor, Satra Plaza,
Palm Beach Road, Sector 19 D,
Vashi, Navi Mumbai, Maharashtra-400705.

Appellant

VERSUS

Toyo Engineering India Pvt. Ltd.
Toyo House, LBS Marg,
Kanjur Marg (West), Mumbai-400078.

Respondent

APPEARANCE:

Shri Arun Bhaskar, Superintendent, Authorised Representative for the
Appellant
Shri Jalpesh Vora, Chartered Accountant for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85864/2026

Date of Hearing: 14.05.2026

Date of Decision: 08.07.2026

In this appeal, legality of the order passed by the Commissioner (Appeals), as above, in allowing pre-deposit to be refunded to the assessee appellant after it succeeded before the Commissioner (Appeals) against allegedly inadmissible credit

availed by it, is assailed by the Respondent Department through its Jurisdictional Commissioner.

2. Facts of the case would go to reveal that appellant had availed input credits in respect of services received in its Branch Offices, which were not registered under the Service Tax Department, that was held by EA-2000 Audit as inadmissible for which it had to suffer adjudication process that confirmed the demand raised in the Show-cause-cum-Demand Notice but subsequently it got necessary relief from the Commissioner (Appeals) on 31.05.2021 in an appeal preferred by it that set aside the confirmed demand of Rs. 4,44,968/- alongwith interest and other penalties. While filing appeal before the Commissioner (Appeals), in compliance to Section 35F of the Central Excise Act 1944, equally applicable to Service Tax matters, appellant had paid 7.5% of duty towards pre-deposit that is required under this statute as mandatory for filing of the appeal and upon appeal being decided in its favour, it sought for refund of the said amount with applicable interest. That 7.5% amount which was worked out to Rs. 33,373/- was deposited by appellant through DRC-03 challan on 15.05.2021, which challan was meant for filing of appeal in GST matters and on this sole ground, refund of pre-deposit was denied to the appellant by the Refund Sanctioning Authority.

3. Assessee Appellant therein challenged the said order before the Commissioner (Appeals) who allowed the appeal. Being aggrieved with the order passed by the Commissioner (Appeals) appellant Department, who was the Respondent before the Commissioner (Appeals), has filed this appeal before the Tribunal.

4. I have heard from both the sides at length on the issue and perused the case records as well as precedent decisions filed in the matter. Before going to assess the legality of the order, it would be imperative to reproduce the ground of rejection of refund with interest, as referred in the Order-in-Original passed by the Refund Sanctioning-cum-Adjudicating Authority, as noted in para 3.5 to 3.7 of his order, It reads;

3.5 I also find that the claimant has submitted the documents as prescribed under Circular No. 984/08/2014-CX dated 16.09.2014 for processing of refund of pre-deposit. The said circular states that where the appeal is decided in favour of the party/assessee, he shall be entitled to refund of the amount pre-deposited irrespective of whether order of the appellate authority is proposed to be challenged by the department or not.

3.6 In view of the foregoing, I find that the claimant is ineligible for the refund of pre-deposit amount of Rs. 33,373/- as the pre-deposit is paid in the manner and form/challan (DRC-03) prescribed for the GST not in the manner and challan prescribed for the Service Tax.

3.7 On perusal of the application submitted, the Claimant also sought interest under Section 35FF of the Central Excise Act, 1944. In this regard, I find that as per Section 35FF of the Central Excise Act, 1944, amount deposited under Section 35F of the Central Excise Act, 1944 is refunded consequent upon the order of the appellate authority and interest shall be paid on such amount from the date of making deposit to the date of refund. Section 35FF of the Central Excise Act 1944 stipulates for interest on delayed refund of amount deposited under Section 35F upon the order of the appellate authority. The interest shall not below five per cent and not exceeding thirty-six percent per annum. further, I also find that vide Notification No. 24/2014-C.E.(N.T.) dated 12.08.2014, the rate of interest is fixed at six (06) percent per annum for the purpose of Section 35FF of the Central Excise Act, 1944.

5. When the matter was agitated before the Commissioner (Appeals), he took a contrary view and passed the following order, relevant paragraph-14 is reproduced here for ready reference.

14. I observe that the appeal was accepted by the Commissioner (Appeal) and the order was issued. Once the appeal is accepted and finalized by the higher authority, it is obvious that the higher Appellate Authority accepted the pre deposit made in the form of DRC 03. Whenever in a case the judgments of higher Courts are cited the court is bound to consider the judgment of higher courts and to follow the same in principle. This is called the doctrine of Judicial Discipline. It amounts to judicial indiscipline if the lower court does not follow the judgments of higher courts even if they are put before the Court for their consideration. In the case of Union of India & Ors. Vs. Kamlakashi Finance Corporation Ltd – AIR (1992) 711 (SC), it was stated that "it cannot be too vehemently emphasized that it is of utmost importance that in disposing of the quasi-judicial issues before them, revenue officers are bound by the decision of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department – in itself an objectionable phrase – and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessee and chaos in administration of tax laws.' Thus, I order that the amount of pre deposit is to be disbursed to the Appellant alongwith the applicable interest.

(Underline d to emphasise)

5.1 As could be noticed from the above noted contradictory orders, one thing is quite noticeable in the order passed by the Refund Sanctioning Authority, Mr. M. Sree Harsha, then Assistant Commissioner Division-2, CGST & Central Excise, Navi Mumbai on dated 25.05.2022, that he was aware of the circular issued by the Board on 16.09.2014, noted above, wherein it has been clearly mentioned in para 5.2 that pre-

deposit for filing of an appeal is not a payment of duty and need not be subjected to the process of refund of duty under Section-11B of the Central Excise Act, (equally applicable to Service Tax matters), and 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 fifteen days on receipt of the letter of the appellant seeking refund, irrespective of the fact that whether department would go to challenge the same or not. Therefore, it appears that it has exceeded its jurisdiction in not following the clear instruction contained in the said circular issued by the Board on dated 16.09.2014, apart from the fact that it was a gross violation of the judicial precedent and amounted to judicial indiscipline as has been rightly noted in the order passed by the Id. Commissioner (Appeals), who also gave a clear and proper finding that when appeal is accepted and finalized by the Commissioner (Appeals), it is obvious that the Higher Authority had accepted the pre-deposit made in the form of DRC-3 challan.

6. During course of hearing, Id. Authorised Representative of the Department Mr. Arun Bhaskar, was requested to apprise the Bench as to why this appeal should not be withdrawn by the Department as the same is filed much below the threshold prescribed for filing of the appeal as contained in instruction under F. No. 390/Misc./116/2017-JC dated 22.08.2019, to which he responded in referring to the Appeal Memorandum content referred in para 13 and para 14 that permits the Revenue Department to continue with the appeal and contest the issues involving substantial question of law as prescribed in para 1.3 of instruction dated 17.08.2011 in F.No. 390/Misc.163/2010-JC. To him, it authorised them to continue with the appeal against an adverse judgment relating the Notification/Instruction/Order or Circular that has been held

illegal or ultra-virus, but in the instant case, the said circular of 16.09.2014 has not been held as ultra-virus. Further the CBIC Circular/Instruction on Service Tax issued vide F.No. 240137/14/2022-ST on dated 28.10.2022 that guides the Department not to accept pre-deposit in Service Tax & Excise matters if paid under DRC-3 challan, on which Department has placed its reliance, has been held by Hon'ble Bombay High Court on dated 28.08.2024 as applicable only *post facto* and not retrospectively, while confirming the order passed by this Tribunal on dated 07.07.2023 in the case of M/s. Sapphire Cables & Services Pvt. Ltd. Vs. Commissioner of CGST & CE, Belapur, Navi Mumbai on the issue. This being the fact on record, the entire proceedings initiated against the assessee Respondent by the Department including denial to refund pre-deposit with interest, to which assessee Respondent is entitled to has been unnecessarily initiated apparently to harass the genuine Tax payer through protected litigation, for which Assessee/Respondent has also sought for litigation cost through additional submissions made on 10.01.2026.

6.1 On the issue of pre-deposit, this is not for the first time the Board on Indirect Taxes has issued circulars but series of circulars were issued on the same instructing field formations to promptly refund pre-deposits, which are not honoured by most of the officials and apparently for this reason vide Circular No. 802/35/2004-CE issued on dated 08.12.2004 by the CBEC, it was clearly instructed that delay beyond a period of three months in granting such refund under Section 35F would be viewed adversely and appropriate disciplinary action would be initiated against the concerned Defaulting officers. Its para-5 would go to show that there was direction to all concerned that default will entail an interest liability, if such liability accrues by reason of any order of CESTAT/Court, such order will have to be complied with and it may be recoverable from the concerned

officers, but what is noticeable from the above noted factual developments, knowing fully about such Board circulars, some officers are in the habit of harassing assesseees without just cause despite the fact that even several courts including Hon'ble Supreme Court order dated 28.08.2024 in the case of Sandvik Asia Limited Vs. CCE [2006 (196) ELT 257 (SC)] has held that amount deposited during pendency of the appeal must be refunded and any retention thereafter is unauthorized.

6.2 In the instant case, pre-deposit was made by the assessee before the Commissioner (Appeals) under DRC-3 challan, which was just a Bank deposit slip kind of thing required for deposit of amount in the Government account and the amount had admittedly gone into the Appellant's account. The legality of pre-deposit is supposed to be scrutinized by the Commissioner (Appeals) at the time of admission of appeal who never disputed such deposit nor even raised any objection regarding payment made through any improper challan, if any. There is series of judgments available on this issue concerning failure to make pre-deposit due to improper maintenance of integrated Portal for making such deposits after introduction of Goods and Service Tax region. Even Hon'ble Bombay High Court had given instruction to the Board in the case of SODEXO India Services (P) Ltd Vs. Union of India (2022 SCC OnLine Bom 11975) that to avoid confusion being crept in for improper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act 1944 through DRC-3, a clear instruction should have been issued by the Board and Hon'ble Delhi High Court in the case of DD Interiors Vs Commissioner of Service Tax & Another in W.P.(C) 877/2025 & CM Appeal No. 4241/2025 passed on dated 21.02.2025 had reiterated its earlier finding made on dated 23.01.2025 that a mere deposit in the wrong account, that to, 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 even rejection of the appeal on the ground of defects. However, in the instant case appeal was admitted for hearing that would imply that pre-deposit was validly made since Section 35F of the Central Excise Act 1944, applicable to Service Tax matters too had made it mandatory for admission of appeal with a pre-deposit. Therefore, while confirming the order passed by the Commissioner (Appeals) for refund of pre-deposit with applicable interest as per law, I am of the view that the entire exercise made in these proceedings by the Department for a meager amount of Rs. 33,373/- appears to have been made to cause harassment to the Assessee/Respondent who has suffered undue hardship and financial burden for such a protected litigation that must have caused severe mental agony to the Respondent. Therefore, in following precedent decision passed by Hon'ble Supreme Court in numerous cases including the one reported in 2022 (57) GSTL 97 (SC) in the case of Assistant Commissioner (ST) Vs. Satyamshivam Papers Pvt Ltd and the one passed recently on 21.10.2024 in the case of S.P. Pandey Vs. Union of India and Ors in Civil Appeal No. 6186 of 2018 that stated that when undue harassment was meted out to the assessee with blatant abuse of power of concerned officer, imposition of cost was justifiable by the Tribunal, which is not otherwise empowered to award mandatory compensation. Hence the order.

The Order

7. The appeal is dismissed and order passed by Commissioner (Appeals) for grant of pre-deposit with applicable interest vide Order-in-Appeal No. CSM/241/RGD-APP/2022-23 dated 27.03.2023, is hereby confirmed. The Respondent Commissioner is hereby directed to pay the amount with interest in terms of Section 35FF of the Central Excise Act, applicable also to Service

Tax matters, within two months of receipt of this order. He/ She may recover the same from the concerned officer who failed to comply with Circular dated 08.12.2004 vide No.802/35/2004-CE. Additionally appellant is entitled to compensatory litigation cost, at the minimum of Rs. 50,000/- from the Respondent Commissioner, who is directed to pay the same also within two months of receipt of this order.

(Order pronounced in the open court on 08.07.2026)

(Dr.Suvendu Kumar Pati)
Member (Judicial)

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