CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

SERVICE TAX APPEAL NO. 51163 OF 2025

[Arising out of Order-in-Appeal no. 216/2024-25 dated 30.1.2025 passed by the Commissioner of Central Tax Appeal-II Delhi]

M/S. VODAFONE IDEA LIMITED **... APPELLANT**
(Formerly known as Idea Cellular Ltd)
2nd Floor, A-19, MCIE, Mathura Road,
New Delhi-110044

VERSUS

COMMISSIONER OF CGST COMMISSIONERATE,
DELHI SOUTH **... RESPONDENT**
Plot 2-B, 3rd Floor, EIL Annexe,
Bhikaji Cama Place,
South Delhi-110066

APPEARANCE:

Shri Sidharth Nanda, Advocate for the Appellant

Shri Rohit Issar, Authorised Representative for the Revenue

CORAM:
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 13/08/2026
DATE OF DECISION: 24/08/2026

FINAL ORDER NO. 51388 /2026

P V SUBBA RAO

I have heard Shri Sidharth Nanda, learned counsel appearing for the appellant and Shri Rohit Issar, learned authorised representative for the Revenue and perused the records.

2. The undisputed facts of the case are that the appellant had appealed against a demand of Service Tax confirmed by the Commissioner by Order dated 30.5.2014. After making a pre-deposit on 12.11.2014 under section 35F of the Central Excise Act, 1944 made applicable to the service tax by section 83 of the

Finance Act, 1994, the appellant appealed to this Tribunal but lost the appeal. On further appeal, the appellant succeeded before the High Court in CEAC 4/2018 in which the High Court passed the judgment and order dated 31.10.2018. Five years after the judgment of the High Court, the appellant sent a letter to the department on 1.4.2024 asking for refund of the pre-deposit along with interest under section 35FF of the Excise Act.

3. By order dated 31.5.2024, the pre-deposit was refunded to the appellant along with interest at the applicable rate for a period of 1449 days i.e., from the date of pre-deposit till the date of the judgment of the High Court. No interest was paid for over five years after the judgment which the appellant took to send a letter to the department.

4. The case of the appellant is that it is entitled to interest under section 35FF for a period of 3498 days i.e., from the date of pre-deposit up to the date of payment of refund. The case of the department is that the appellant is not entitled to interest for its over five year delay in sending a letter with copy of the judgment of the High Court to the department. Both the lower authorities have followed the Board's circular no. 984/08/2014-CX dated 16.9.2014 which states that no refund application is required for refund of pre-deposit and a simple letter along with a copy of the judgement would suffice and the refund should be granted within 15 days. Since the appellant had not given the letter along with a copy of the judgment immediately, the lapse of more than five years undoubtedly is on account of the appellant itself. No reasons for the delay in submitting the letter have also been specified by the appellant and the appellant

cannot, according to the Revenue, profit from it's own lapse and claim interest for over five years of delay on it's part.

5. I have considered the submissions advanced by both sides. There is undoubtedly an unexplained and inordinate delay of over five years on the part of the appellant after the judgment of the High Court. All that the appellant had to do was send a simple letter with a copy of the judgment which, by no stretch of imagination, should take over five years. I now proceed to examine the relevant legal provisions. Section 35FF of the Excise Act as applicable to the Service tax during the relevant period reads as follows:

> **"Section 35FF. Interest on delayed refund of amount deposited under section 35F.** -
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> Where an amount deposited by the appellant under section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent. and not exceeding thirty-six per cent. per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount **from the date of payment of the amount till, the date of refund of such amount**:
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> **Provided** that the amount deposited under section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of section 35FF as it stood before the commencement of the said Act."

6. As per Section 35FF interest has to be paid from the date of payment of the amount as pre-deposit till the date of its refund. The intervening period may be short or long and may have been due to any reason whatsoever. Through neglect or with intent, the appellant delayed sending a letter informing the department about the judgment of the High Court and asking for refund. Nevertheless, it is still entitled to interest under section 35FF for the delay which it itself had caused. It is true that it is unfair that the appellant should profit from its own actions but

equity has no place in taxation and the law must be applied regardless of the hardship or gain to the assessee.

7. In addition to section 35FF, there are also other provisions relating to interest within the Excise Act itself which, on the face of it, are inconsistent with fairness and equity but they must be applied as such. For example, interest is the time value of money and the person who enjoys someone else's funds has to pay interest to the other. If the tax payer has to pay interest under section 11AA, it will be at a rate notified by the Government between 10% and 36%. If the department has to pay interest on refunds under section 11BB, it will be at a rate notified by the Government between 5% and 30%.

8. The inequity does not end with the rates of interest under section 11AA and 11BB of the Excise Act. Under section 11AA, the tax payer has to pay interest from the date on which the duty was due till the date of actual payment. Under section 11BB, the department has to pay interest only after 3 months from the date of the application for refund. The difference is much larger than 3 months as would appear at a first glance. Let us say, there is a dispute and the disputed duty or tax was not paid by the assessee and a demand notice was issued under section 11A and the matter finally gets settled by High Court or Supreme Court after ten years in favour of the Revenue. Since the duty was to be paid in the month after the goods were cleared from the factory, as per section 11AA, the assessee has to pay interest for the entire ten years. On the other hand, if the disputed duty or tax was already paid and the matter is finally decided after ten years in favour of the assessee, he can then apply for refund

under section 11B and if the refund is sanctioned within 3 months, no interest has to be paid. Thus, the assessee will not get any interest for the entire ten years during which he had paid the duty which it was not required to.

9. Evidently, although interest is only time value of money, neither the rate of interest nor the period for which interest has to be paid are equal under section 11AA of the Act (if the assessee has to pay interest) and section 11BB of the Act (if the department has to pay interest to the assessee). Nevertheless, equity has no place in law and the legal provisions must be applied as they are.

10. Likewise, Section 35FF provides for interest from the date of pre-deposit till the date of refund of the pre-deposit regardless of the reasons for the intervening delay and what or who caused it. For this reason, the appellant in this case, is entitled to interest for the entire period from the date of pre-deposit till the date of refund including over five years delay through neglect or intent by the appellant itself.

11. The appeal is allowed and the impugned order is modified accordingly with consequential relief to the appellant.

[Order pronounced on **24/08/2026**]

P.V. SUBBA RAO
MEMBER (TECHNICAL)

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