CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Early Hearing Application No.70078 of 2025
(On behalf of the Appellant)

In

Excise Appeal No.70194 of 2024

(Arising out of Order-in-Appeal No. 456-457-ST-ALLD-2022, dated 22/09/2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s Vikrant Chemico Industries Pvt Ltd .....Appellant
(49 Govt. Industrial Estate, Kalpi Road
Fazalganj, Kanpur Nagar
Uttar Pradesh 208005)

VERSUS

Commissioner, CGST & Central Excise, Kanpur
....Respondent
(117/7, Sarvodya Nagar.
Kanpur Nagar, Uttar Pradesh 208005)

AND

Excise Early Hearing Application No.70079 of 2025
(On behalf of the Appellant)

In

Excise Appeal No.70196 of 2024

(Arising out of Order-in-Appeal No. 456-457-ST-ALLD-2022, dated 22/09/2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Allahabad)

M/s R K Gupta, Director .....Appellant
(49 Govt. Industrial Estate, Kalpi Road
Fazalganj, Kanpur Nagar
Uttar Pradesh 208005)

VERSUS

Commissioner, CGST & Central Excise, Kanpur
....Respondent
(117/7, Sarvodya Nagar.
Kanpur Nagar, Uttar Pradesh 208005)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70113-70114/2025

DATE OF HEARING : 04.03.2025
DATE OF DECISION : 04.03.2025

SANJIV SRIVASTAVA:

These applications for Early Hearing has been filed by the Appellant-Assessee.

2. Have heard Shri Atul Gupta learned counsel for the Appellant and Shri Manish Raj learned Authorized Representative for the Revenue.

3. Learned counsel for the Appellant submits that

- these applications for early hearing have been filed as the issue involved is in very narrow compass. The appeal was dismissed by the Commissioner (Appeals) for want of pre-deposit, as he did not considered the pre-deposit made through DRC-03 as proper pre-deposit.
- Subsequently, for filing this appeal they have made the deposit of entire 10% in cash before the Tribunal.
- As there is no order on merits the matter needs to be remanded back to the Commissioner (Appeals) for decision on merits.

4. Learned Departmental Representative has no objection.

5. For the reasons stated in the applications for early hearing are allowed and with the consent of both the sides appeals are taken for consideration and disposal.

6. From the impugned order it is observed that the appeals have been dismissed for want of mandatory pre-deposit. Commissioner (Appeals) has recorded as follows:-

> *4.2 Further, I find that Section 35F of the Central Excise Act, 1944, with effect from 06.08.2014 (i.e., the date of enactment of the Finance (No.2) Act, 2014), provides, as under:*
>
> *"Section 35 F: Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal-*
>
> *(i) under sub-section (1) of section 35, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the Principal Commissioner of Central Excise or Commissioner of Central Excise;*
>
> *(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 35B, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*
>
> *(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 35B, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:*
>
> *Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:*
>
> *Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014.*
>
> *4.3 I also find that Hon'ble High Court of Mumbai in the case of Nimbus Communications Limited vs. Commissioner of S.T., Mumbai-IV reported as 2016 (44) S.T.R. 578 (Bom.), held, as under:*

Stay/Dispensation of pre-deposit Mandatory pre-deposit under amended Section 35F of Central Excise Act, 1944 w.ef. 6-8-2014-Second proviso to Section 35F ibid clearly indicates that the requirement of mandatory pre-deposit shall not apply to stay applications and appeals which were pending prior to 6-8-2014 Amended Section 35F ibid required to Be complied with when appeal filed after 6-8-2014 even if show cause notice issued prior to such amendment Appeal not maintainable for failure to deposit mandatory amount [2015 (39) S.T.R. 177 (All.), 2016 (43) S.T.R. 25 (Mad.) relied onJ. [paras 21, 22, 23, 24)

Pre-deposit-Section 35F of Central Excise Act, 1944 as amended on 6-8-2014 Constitutionality of Mandatory requirement of pre-deposit of 7.5% is a reasonable condition and in no way affects vested right of appeal - Amended Section 35F ibid merely ensures that interests of Revenue are secured and so not unconstitutional. (paras 21, 24]

4.3.1 Similarly, the Hon'ble High Court of Kerala in the case of Muthoot Finance Limited vs. Union of India reported as 2016 (44) S.T.R. 569 (Ker.), held, as under:

Pre-deposit - Section 35F of Central Excise Act, 1944-As amended by Finance Act, 2014 w.e.f. 6-8-2014-Constitutional validity of Restriction on Tribunal or Commissioner (Appeals) not to entertain appeal unless pre-deposit, with second proviso clarifying that it will not apply to stay applications and appeals pending before any appellate authority prior to commencement of Act-HELD: When statute itself makes it clear that right of appeal is subject to certain restrictions with effect from particular date, general rule that law relating to appeal which is vested right that accrues to litigant as on date of commencement of lis will not be applicable It was more so as C.B.E. & C. Circular No. 984/08/2014-CX, dated 16-9-2014 clarifled that amendment applies to appeals filed after 6-8-2014-Hence, assessee was liable to deposit 7.5% or 10%, as case may be, for preferring appeals. [paras 11, 17]

Pre-deposit-Service Tax - Section 83 of Finance Act, 1994 stipulates itself that provisions of Central Excise Act, 1944 were applicable in relation to Service Tax as they applied in relation to duty of Excise Hence, plea about non-applicability of Section 35F of Central Excise Act, 1944 to Service Tax rejected. [para 20]

Appeal Nature of It is continuation of proceedings However, it is a right which can be taken away by statute. [para 11]

4.3.2 I further observe that the Hon'ble CESTAT, Allahabad in the case of M/s. Johnson Matthey Chemical India Pvt. Ltd. Versus Assistant Commissioner CGST, Central Excise, Kanpur vide DEFECT DIARY No. 701942022 dated 23.08.2022 has held, as under:

It has to be held that mandatory deposit under section 35F of Excise Act cannot be made by way of debit in the Electronic Credit Ledger maintained under CGST Act. To that extent, we hold that the defect is not cured. [Para 22]

4.4 Since the instant appeals have been filed on 18.05.2022, after 06.08.2014, i.e., the date from which the amended Section 35F of the Act came into effect, without complying with the statutory requirement of pre-deposit, when the Commissioner (Appeals) had no jurisdiction to entertain or admit the appeals, I, therefore, find that this appeal is not maintainable in terms of Section 35F of the Act and in the light of the aforementioned judicial pronouncements."

7. As Commissioner (Appeals) has dismissed both the appeals for want of pre-deposit which is now been made by the Appellants before the Tribunal, we find that the matters are fit to be remanded back to the Commissioner (Appeals) for decision on merits. In case of D D Interiors [Order Dated 21.02.2025 in W.P (C) 877/2025] Hon'ble Delhi High Court has held as follows:

"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."

8.1 Appeals are allowed. Matter is remanded back to Commissioner (Appeals) for decision on merits without revisiting the issue of mandatory pre-deposit.

8.2 Appellant should not claim the refund of any amount pre-deposited for filing these appeals till the disposal of the appeals in de-novo proceedings by the Commissioner (Appeal).

(Dictated and pronounced in open court)

Sd/-

(AJAY SHARMA)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal