CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70229 of 2023

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-87-23-24 dated 26.05.2023 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s L. G. Electronics India Pvt. Ltd., ...Appellant
(Plot No.51, Udyog Vihar, Surajpur Kasna Road,
Greater Noida U.P.)

VERSUS

**Principal Commissioner of Central Excise &
CGST, Gautam Buddh Nagar ....Respondent**
(3rd Floor, Wegmans, Business Park, KP-III,
Gautam Buddh Nagar-201306)

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70443/2025

DATE OF HEARING : 05.03.2025
DATE OF PRONOUNCEMENT : 02.07.2025

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-002-APP-87-23-24 dated 26.05.2023 passed by the learned Commissioner (Appeals) CGST & Central Excise, Noida, to the extent it is prejudicial to the interest of Appellant as it held that the Appellant is not entitled to any interest on the pre-deposit amount of Rs.47,82,819/-.

2. The facts of the case in brief are that the Appellant was engaged inter alia in the manufacture of Colour Televisions[1], Refrigerators, Air Conditioners and Washing Machines classifiable under Chapter 84 & 85 of the Central Excise Tariff Act, 1985[2].

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[1] CTVs
[2] CETA

Appellant cleared these finished goods on payment of appropriate excise duty or exports them under bond. The Appellant was also manufacturing chassis sub assembly of CTVs within their factory which is also known as Printed Circuit Board[3]. Apart from the manufacture of CTVs in its factory, the Appellant also sent the sub-assembly and various others parts of CTVs to their Original Equipment Manufacturers[4] located all over the country. The Appellant cleared the sub-assemblies/parts of CTV sets to other manufacturers as well. The Appellant classified the sub-assemblies and parts of CTV cleared to the OEM under tariff heading 85.29 as parts of CTV and paid excise duty @ 16% based on sale price of such sub-assemblies and parts to OEM. In the light of the above factual matrix, an investigation was initiated and during the investigation, the Appellant undisputedly deposited the amount of Rs.47,82,819/- before the issuance of Show Cause Notice and the same was appropriated vide Order-in-Original dated 25.11.2004. The Appellant preferred appeal before the Tribunal against the Order-in-Original dated 25.11.2004. The Tribunal vide final order dated 07.08.2013 remanded the matter to the Adjudicating Authority. In the remand proceedings, the Commissioner, Central Excise, Noida-II vide Order-in-Original No.30-32/Commissioner/Noida-II/2015-16 dated 31.03.2016 again confirmed the demand. Being aggrieved, the Appellant preferred appeal before the Tribunal. In the said appeal the amount of Rs.47,82,819/- was forming part of the total pre-deposit of Rs.8,58,23,726/- which was 7.5% of the total demand in dispute. The Tribunal vide Final Order dated 18.08.2022 allowed the appeal. Pursuant to the Tribunal's order the Appellant claimed refund vide letter dated 25.08.2022 submitting that since the appeals have been allowed vide Final Order No.70138-70140/2022 and thus the pre-deposit amount considered for filing of such appeals is required to be refunded. The refund of whole amount including of Rs.47,82,819/- has been granted as the same was considered as pre-deposit.

[3] PCB
[4] OEM

Further, interest on whole of the amount was granted except no interest was granted on amount of Rs.47,82,819/-. The Commissioner (Appeals) though has not disputed that such amount is toward pre-deposit, however, he wrongly relied on the proviso to Section 35FF, which came in force from 06.08.2014. Hence, the present appeal before the Tribunal.

3. Heard both the sides and perused the appeal records.

4. I find that by this appeal the Appellant has challenged the denial of interest on the pre-deposit amount of Rs.47,82,819/-. The proviso to Section 35FF is reproduced as follows:-

> ***"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."*

5. I find that the amended provision came into operation on 06.08.2014 whereas appeal was filed subsequently on 01.07.2016 and pre-deposit was made in compliance of Section 35F as stood on 01.07.2016. The said proviso comes into play in respect of appeals, which were decided subsequent to 06.08.2014, but the same were filed before 06.08.2014 and accordingly in such appeals pre-deposit was also made in terms of Section 35F as stood prior to commencement of Finance (No.2) Act, 2014. However, in case where appeal is filed

subsequent to 06.08.2014, the pre-deposit is also made under the new Section 35F and accordingly the proviso to Section 35FF will not come into picture. In the present appeal, as the appeal has been filed subsequent to 06.08.2014, therefore, it cannot be said that the pre-deposit was made under Section 35F prior to the commencement of Finance (No.2) Act, 2014. Unless an Order, against which an appeal is filed, is passed, the question of making pre-deposit under Section 35F prior to commencement of Finance (No.2) Act, 2014 does not arise. Thus, in such cases, where stage of pre-deposit came into effect after 06.08.2014, the deposit is made under new Section 35F only and thus the proviso will not operate. I find that the interest on refund of pre-deposit is to be made from the date of deposit of such amount under the Section 35FF as effective from 06.08.2014.

6. I find that even the Circular No.984/8/204-CX., dated 16.09.2014 issued by the CBIC clarified as follows:-

> ***"3. Payment made during investigation:***
> *3.1 Payment made during the course of investigation or audit, prior to the date on which appeal is filed, to the extent of 7.5% or 10%, subject to the limit of Rs. 10 crores, can be considered to be deposit made towards fulfillment of stipulation under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962. Any shortfall from the amount stipulated under these sections shall have to be paid before filing of appeal before the appellate authority. As a corollary, amounts paid over and above the amounts stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, shall not be treated as deposit under the said sections.*
> *3.2 Since the amount paid during investigation/audit takes the colour of deposit under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962 only when the appeal is filed, the date of filing of appeal*

shall be deemed to be the date of deposit made in terms of the said sections.

3.3 In case of any short-payment or non-payment of the amount stipulated under Section 35F of the Central Excise Act, 1944 or Section 129E of the Customs Act, 1962, the appeal filed by the appellant is liable for rejection.

Xxxxxxxxxx xxxxxxxx xxxxxxxxxxx

5. Refund of pre-deposit:

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

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.

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."

7. The above referred Circular though has treated the date of filing of appeal as deemed to be the date of deposit made in terms of Section 35F. So, undisputedly in any case without prejudice to other submissions, the interest is accruing from the date of filing of appeal, if not before that. However, I find that

the deeming fiction which has been envisaged in the above referred circular has no legal backing thus, I find that once the amount is considered as pre-deposit under new Section 35F in terms of para 3.1 and 3.2 of the above Circular, then, the new Section 35FF will come into play with full force and the interest should be paid from the date of deposit of amount.

8. In any case the decision in the matter of Jeevan Diesels and Electricals Ltd. Vs. C., GST & C. EX., Pondicherry Reported in 2019 (370) E.L.T. 1311 (Tri.-Chennai), relied upon in the impugned order has no applicability in the present matter because in that case pre-deposit was in old Section 35F (effective before 06.08.2014) as the appeal was filed in 2006 whereas in the present case the appeal has been filed after 06.08.2014 therefore, it will be deemed that the pre-deposit was made and considered under the new Section 35F. This is also evident from the fact that no stay application could have been filed seeking waiver of pre-deposit further, all the Appellant was required to comply to make mandatory pre deposit under the provision of new Section 35F after 06.08.2014. In such a view, the pre-deposit was made only under the new Section 35F and accordingly the proviso to Section 35FF has no application, thus, interest is payable from the date of deposit only in terms of Section 35FF.

9. In view of the above discussion the appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on - **02.07.2025**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS