

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Service Tax Appeal No. 86167 of 2022

(Arising out of Order-in-Appeal No. DL/237/RGD APP/2021-22 dated 14.02.2022 passed by the Commissioner of Central Tax (Appeals), Raigad)

Reliance Jio Messaging Services Ltd.

Appellant

Building o. 5B, 1st Floor,
Reliance Corporate Park, T.B. Road,
Ghansoli, Navi Mumbai 400 701.

Vs.

Commissioner of C.Ex. & Service Tax, Raigad

Respondent

4th Floor, GST Bhavan, Plot No.01, Sector 17,
Khandeshwar, New Panvel 410 206.

Appearance:

Shri Akshit Malhotra, Advocate, for the Appellant
Shri A.P.S. Parihar, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 04.06.2025

Date of Decision: 13.06.2025

FINAL ORDER No. 85893/2025

Brief facts of the case are that the appellant filed an appeal before learned Commissioner (Appeals) challenging order-in-original dated 25.03.2021 through which cenvat credit of service tax amounting to Rs.6,28,023/- was disallowed with equal penalty. Appellant paid mandatory pre-deposit required to be paid under Section 35F of Central Excise Act, 1944 made applicable to service tax matters, by debiting Rs.47,102/- from DRC-03 by debiting the electronic credit ledger. The said appeal was decided by learned Commissioner (Appeals) through impugned order-in-appeal. Learned Commissioner (Appeals) has recognized payment of Rs.47,102/- paid through electronic credit ledger by debit entry dated 04.06.2021 and held that DRC-03 cannot be used for payment of pre-deposit for compliance of the provisions of the said Section 35F. He concluded that the mandatory pre-deposit was not made and, therefore, he rejected the appeal filed

by the appellant before him as non-maintainable for want of pre-deposit. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that this Tribunal in the case of Saphire Cables & Services Pvt. Ltd. reported at 2023 (7) TMI 544 – CESTAT Mumbai has held that if pre-deposit is made by debit through DRC-03 before 20.10.2022, then the same is valid as compliance to the said Section 35F. He has further submitted that the said interim order of this Tribunal was affirmed by Hon'ble Bombay High Court through their order dated 28.08.2024 reported at 2024 (8) TMI 1403 – Bombay High Court.

3. Heard the learned AR. Learned AR has left the decision to the discretion of this court.

4. I have carefully gone through the record of the case and submissions made. I note that learned Commissioner (Appeals) has not decided the appeal before him on merit and held that the appeal before him was not maintainable for non-compliance of the provisions of the said Section 35F, even when 7.5% of the adjudged dues was paid through debit into electronic credit ledger on 04.06.2021. I note that Hon'ble Bombay High Court has affirmed the interim order dated 07.07.2023 passed by this Tribunal in the case of Saphire Cables and Services Pvt. Ltd. (supra). I note that this Tribunal in the said interim order has held that if debit is made in electronic credit ledger, i.e. DRC-03, before 28.10.2022 towards payment of pre-deposit under the said Section 35F, then such debit is valid and it is to be concluded that the provisions of the said Section 35F have been complied with. I note that in the present case the debit was made on 04.06.2021. Therefore, I consider that the appellant had made mandatory pre-deposit as required under the said Section 35F. I, therefore, set aside the impugned order and remand the matter to learned Commissioner (Appeals) to decide the appeal before him on merit.

5. In above terms, appeal is allowed by way of remand after setting aside the impugned order.

(Pronounced in court on 13.06.2025)

(Anil G. Shakkarwar)
Member (Technical)

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