CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86652 of 2016

(Arising out of Order-in-Appeal No. CD/389/Bel/2016 dated 02.03.2016 passed by the Commissioner (Appeals), Central Excise, Mumbai-II)

Jindal Drugs Limited **.... Appellants**
(now Jindal Drugs Private Limited)
Plot No. 111, New Chemical Zone,
MIDC-Taloja, Taluka – Panvel,
Raigad, Maharashtra – 410 208.

Versus

Commissioner of Central Excise, Raigad **.... Respondent**
Kendriya Utpad Shulk Bhawan,
Plot No. 1, Sector -17, Khandeshwar,
Navi Mumbai – 410 206.

Appearance:

Shri Suyog Bhave, Advocate for the Appellants

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85897/2026

Date of Hearing: 01.04.2026
Date of Decision: 16.07.2026

Per: M.M. Parthiban

This appeal has been filed by M/s Jindal Drugs Limited (herein after, referred to as "the appellants", for short) assailing Order-in-Appeal No. CD/389/Bel/2016 dated 02.03.2016 (herein after, referred to as "impugned order" for short) passed by the Commissioner (Appeals), Central Excise, Mumbai-II.

2. Brief facts of the case are that appellants are engaged *inter alia*, in the manufacture of Cocoa Powder/Cocoa Butter falling under Chapter sub-heading No. 1804 0000 and 1805 0000 of the Central Excise Tariff Act, 1985. The appellants had deposited an amount of Rs.4,00,00,000/- (Rupees Four crores) vide challan dated 21.04.2014 in pursuant to the order dated 13.03.2014 passed by the Hon'ble High Court directing them to deposit the said amount in cash with the Department/competent authority and to furnish a Bank Guarantee for an amount of Rs.9.40 crores while granting stay and

remanding the matter back to the Tribunal for deciding the appeal on the disputed issue. Subsequently, vide the Final Order dated 16.04.2015, Co-ordinate Bench of the Tribunal had decided the case in favour of the appellants, by holding that the process undertaken by the appellants in respect of Cocoa butter received from their Jammu factory to their factory situated in MIDC-Taloja, Panvel amounts to manufacture in terms of the Central Excise statute and they are rightly eligible to take CENVAT credit of central excise duty paid on inputs received from their Jammu factory for manufacture of final products and are also eligible for rebate of central excise duty paid, if any, on export of final products. Pursuant to this order of the Tribunal, the Dy. Commissioner of Central Excise, Kalamboli Division, Raigad Commissionerate sanctioned refund of Rs.4,27,74,795/-, which included interest @ 6% amounting to Rs.27,74,795/-, besides the cash deposit of Rs.4 crores made at behest of the order of the Hon'ble Bombay High Court, vide Order-in-Original dated 18.06.2015. The said order of the original authority dated 18.06.2015 was reviewed by the Principal Commissioner on the ground that the provisions of Section 35FF of the Central Excise Act, 1944 as amended w.e.f. 06.08.2014, for grant of interest is not applicable in respect of pre-deposit made prior to 06.08.2014 in view of the proviso clause specified therein and accordingly, directed the Dy. Commissioner to file an appeal before the Commissioner (Appeals). On an appeal filed by the Department, the learned Commissioner of Central Excise (Appeals) vide order dated 02.03.2016 had allowed the appeal filed by the Department and denied payment of interest and ordered the appellants to pay interest amount of Rs.27,74,795/- which was sanctioned earlier incorrectly along with interest to the Department. Accordingly, in the impugned order dated 02.03.2016, the learned Commissioner (Appeals) modified the order of the original authority to the above extent. Against the said impugned order passed by the Commissioner of Central Excise (Appeals), the appellants have filed this appeal before the Tribunal.

3. Learned Counsel appearing for the appellants had submitted that the original authority had sanctioned pre-deposit made by them along with interest in terms of Section 35FF of the Central Excise Act, 1944. In this regard, he claimed that the amended provisions Section 35FF effective from 06.08.2014 is applicable to their case in view of the fact that the refund had arisen from the order of the Tribunal dated 16.04.2015 and pre-deposit was made on 21.04.2014. Further, since they filed refund claim dated 03.06.2015, they claimed that the amended provisions of Section 35FF is applicable to them.

4. Learned Authorized Representative appearing for the Revenue reiterates the findings recorded by the learned Commissioner (Appeals) in the impugned order.

5. The learned Commissioner (Appeals) has recorded the findings while allowing the appeal filed by Revenue, which are reproduced herein below:

> *"7. In this case, the Respondents made the payment of pre-deposit on 21.4.2014. The Hon'ble CESTAT decided the matter in their favour vide its Order dt. 16.4.2015. Under the erstwhile Section 35FF, the interest needs to be paid only after the lapse of 3 months from the date of receipt of Hon'ble CESTAT's Order. The amended Section 35FF is effective only from 6.8.2014 (the date on which the Finance Act, 2014 commenced). The said Section was not given a retrospective effect by the Legislature. Giving effect to this Section 35FF which is effective from 6.8.14 by the Adjudicating Authority is a clear case of misunderstanding the legal provisions. In this case, the Adjudicating Authority sanctioned the refund on 18.6.15, i.e. well within the period of 3 months as stipulated in the erstwhile Section 35FF which is applicable in this case. The Adjudicating Authority is not legally required to sanction any interest in this matter. Sanctioning the interest in this case is not legal and correct. Sanctioning the interest by the Adjudicating Authority is without any authority of law. Accordingly, the Order passed by the Adjudicating Authority sanctioning the interest is liable to be set aside.*
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> *8. In view of above, the Order-in-Original sanctioning interest portion alone is set aside. The Respondent is ordered to repay the interest amount of Rs. 27,74,795/-taken along with interest to the department without delay. Order-in-Original is modified to that extent."*

6. The issue for consideration before the Tribunal are,--

(i) whether the deposit of Rs.4 crores paid by the appellants on 21.04.2014, as pre-deposit made with the Department on the basis of the direction given by the Hon'ble Bombay High Court, is refundable along with interest or not?;

(ii) whether the impugned order modifying the order of the original authority for denial of interest and seeking its repayment, is proper and justified in terms of Section 35FF of the Central Excise Act, 1944 and is legally sustainable?

7. It is an undisputed fact on record that amount of Rs.4 crores was paid by the appellants with the Department in pursuance of the order of the Hon'ble Bombay High Court (supra). The said amount of pre-deposit was refunded vide the order dated 18.06.2015 passed by the original authority and the same is also not under dispute. As regards the issue of payment of

interest, relevant legal provision concerning this issue is provided under Section 35FF of the Act of 1944, which is extracted and given below: -

Section 35FF of the Central Excise Act, 1944
(upto 05.08.2014)

[1]"***Section 35FF. Interest on delayed refund of amount deposited under the proviso to section 35F.***—*Where an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under the first proviso to section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest at the rate specified in section 11BB after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount."*

Section 35FF of the Central Excise Act, 1944
(With effect from 06.08.2014, as amended by Finance (No.2) Act, 2014

रजिस्ट्री सं॰ डी॰ एल॰—(एन)04/0007/2003—14 REGISTERED NO. DL—(N)04/0007/2003—14

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II — खण्ड 1
PART II — Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं॰ 29] नई दिल्ली, बुधवार, अगस्त 6, 2014/ श्रावण 15, 1936 (शक)
No. 29] NEW DELHI, WEDNESDAY, AUGUST 6, 2014/SHRAVANA 15, 1936 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 6th August, 2014/*Sravana* 15, 1936 (*Saka*)

The following Act of Parliament received the assent of the President on the 6th August, 2014, and is hereby published for general information:—

THE FINANCE (No. 2) ACT, 2014

(No. 25 OF 2014)

[*6th August*, 2014.]

An Act to give effect to the financial proposals of the Central Government for the financial year 2014-2015.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

xxx xxx xxx xxx

[1] Prior to 06.08.2014, section 35FF, as inserted by the Finance Act, 2008, w.e.f. 10-5-2008.

Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.".

Substitution of new section for section 35FF.

106. In the Central Excise Act, for section 35FF, the following section shall be substituted, namely:—

Interest on delayed refund of amount deposited under section 35F.

"35FF. 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:

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.".

Amendments to the Central Excise Act, 1944 in Finance Bill (No.2)
(as proposed, as amended by Finance (No.2) Act, 2014

BILL No. 35 OF 2014

THE FINANCE (No. 2) BILL, 2014

(AS INTRODUCED IN LOK SABHA)

THE FINANCE (No.2) BILL, 2014

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

AS INTRODUCED IN LOK SABHA
ON 10TH JULY, 2014

Bill No. 35 of 2014

THE FINANCE (No. 2) BILL, 2014

A

BILL

to give effect to the financial proposals of the Central Government for the financial year 2014-2015.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Finance (No. 2) Act, 2014.

(*2*) Save as otherwise provided in this Act, sections 2 to 71 shall be deemed to have come into force on the 1st day of April, 2014.

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Substitution of new section for section 35F.

98. In the Central Excise Act, for section 35F, the following section shall be substituted, namely:—

Deposit of certain percentage of duty demanded or penalty imposed before filing appeal.

"35F. 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 demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of Central Excise lower in rank than the 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 demanded or penalty imposed or both, 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 demanded or penalty imposed or both, 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.

Explanation.— For the purposes of this section "duty demanded" shall include,—

(*i*) amount determined under section 11D;

(*ii*) amount of erroneous Cenvat credit taken;

(*iii*) amount payable under rule 6 of the Cenvat Credit Rules, 2001 or the Cenvat Credit Rules, 2002 or the Cenvat Credit Rules, 2004.

Amendment of section 35L.

99. In the Central Excise Act, section 35L shall be numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so numbered, the following sub-section shall be inserted, namely:—

"(*2*) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.".

8.1 On perusal of the aforesaid legal provision, as introduced in the Finance Bill, 2014 and as per the Finance (No.2) Act, 2014, it transpires that Section 35FF could have been introduced through official amendment of Finance (No. 2) Bill, 2014 introduced as a part of Union Budget, 2014. It is also noticed that the original amendments to the Central Excise Act, 1944 through the Finance Bill, 2014 vide various clauses 89 to 104 had not contained any proposal for amendment of Section 35FF ibid. However, amendment to Section 35FF was introduced as Section 106 of the Finance (No. 2) Act, 2014 by way of substitution of a new section instead of the earlier legal provision that existed in the Central Excise statute. This provision relates to payment of interest on delayed refund of amount deposited under Section 35F *ibid*. The amended legal provision under Section 35FF *ibid* effective from 06.08.2014 provided for payment of interest at prescribed rate fixed by the Government consequent to any order passed by the appellate authority making a person eligible for refund of deposit made under Section 35F for a period commencing from the date of payment of amount till the date of refund of such amount. The provision that existed prior to 06.08.2014 provided for similar provision involving payment of interest consequent upon the order of the appellate authority, whereby a person is eligible for refund of deposit made under Section 35F *ibid*, only if the said amount is not refunded after expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount. However, the substituted provision with effect from 06.08.2014 provided for payment of interest on refund of pre-deposit made in the appellate forum, from the date of such payment till the date of actual refund of such amount. This distinction, in my considered opinion, is for the reason that the Government for the first time in the Central Excise statute had prescribed mandatory pre-deposit of certain percentage of duty demanded or penalty, if only penalty is in dispute, for entertaining the appeal before the appellate forum. In other words, w.e.f. 06.08.2014, any person aggrieved for filing an appeal was by law required to make pre-deposit before filing an appeal. Whereas, prior to this date, there was discretion with the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, for dispensing with pre-deposit, if they are of the opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, subject to such conditions as they may deem fit to impose so as to safeguard the interest of revenue. Therefore, I am of the considered view that there was a requirement to pay interest in respect of pre-deposit refundable after introduction of mandatory pre-deposit, from the date of such payment. Accordingly, such change was brought forth in the Finance (No. 2) Act, 2014 by introducing amendment to the Finance (No.2) Bill, 2014 already introduced. Further, a proviso clause was also introduced in the said Section 35FF ibid w.e.f. 06.08.2014 to the effect that the erstwhile provision of Section 35FF ibid, as it existed prior to 06.08.2024, to continue to apply in respect of pre-deposits made prior to that date i.e., 06.08.2024; and for applying the substituted provision only in respect of pre-deposits made on or after 06.08.2024.

8.2 On careful reading of the amendment made under Section 35FF *ibid*, I find that the proviso clause has been added to the said Section providing for application of Section 35FF *ibid* as it stood before the commencement of

Finance (No. 2) Act, 2014 i.e. prior to 06.08.2014 in respect of deposit made prior to such date. It is a fact on record that the appellant has deposited the amount of Rs. 4 crores on 21.04.2014, i.e., prior to 06.08.2024. Therefore, the unamended provision of Section 35FF ibid alone will be applicable to the present case. Further, the facts are not under dispute that the case was decided in the appellants' favour in the Final Order dated 16.04.2014 passed by the Tribunal and the refund of pre-deposit was sanctioned by the concerned authority on 18.06.2015 i.e., within a period of three months stipulated in erstwhile Section 35FF ibid and in terms of proviso clause of the amended Section 35FF ibid. Therefore, I am of the view that payment of interest does not arise in the present case, in terms of the applicable legal provisions of Section 35FF *ibid.*

9. In view of the aforesaid discussions, I am of the view that the impugned order dated 02.03.2016 upholding the sanction of refund, but denying the payment of interest and ordering its repayment does not require any interference. Accordingly, the impugned order is sustained and appeal filed by the appellants is dismissed.

(Order pronounced in open court on 16.07.2026)

(M.M. Parthiban)
Member (Technical)

Sinha