2025:DHC:12001-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:22nd December, 2025

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\+ **W.P.(C) 13260/2024 & CM APPL. 55400/2024**

M/S ARMY WELFARE HOUSING ORGANISATION .....Petitioner

Through: Mr. V. Lakshmikumaran, Mr. L. Badri Narayanan, Mr. Charanya Lakshmikumara, Mr. Yogendra Aldak, Mr. Kunal Kapoor, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Shubham Tyagi, SSC. Ms. Rupali Bandhopadhya, CGSC with Mr. Abhijeet Kumar, Ms. Amisha Gupta and Mr. Amit Peswani, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The short question that has arisen for consideration in this case is whether CENVAT Credit, which was lying in the account of the Petitioner prior to the coming into effect of the GST regime *i.e.* prior to 1st July, 2017, and was transitioned into the electronic credit ledger of the Petitioner after the GST regime, can be used for making pre-deposit in respect of an appeal to be filed before the Customs Excise and Service Tax Appellate Tribunal

(hereinafter, 'CESTAT').

3. The original order, which has been challenged in this case, is the order dated 23rd June, 2023 by which the service tax demand to the tune of Rs. 84,95,49,572/- was raised against the Petitioner along with penalty.

4. The Petitioner filed an appeal before CESTAT, which was decided on 13th March, 2024. The same was dismissed on the ground that the proper pre-deposit was not made. The Petitioner had sought to use the credit in DRC-03 for the purpose of pre-deposit, which was not permitted by CESTAT, hence, the appeal of the Petitioner stood rejected. The observations of CESTAT in this matter in the order dated 13th March, 2024 is as under:

> *" 12. It is noticed that the decision of the Tribunal in the case of **M/s Saphire Cables & Services Pvt. Ltd. & Ors. (supra)** also holds that the Circular would be applicable although prospectively and not retrospectively. The argument of Learned Counsel appearing for M/s Army Welfare Housing Organisation also argued on the same line as arguments given in the Tribunal in the case of **M/s Saphire Cables & Services Pvt. Ltd. & Ors. (supra).***
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> *13. In the decision of Tribunal, in the case of **M/s Saphire Cables & Services Pvt. Ltd. & Ors. (supra)** reliance on placed on the fact that the relief was granted by the Hon'ble Bombay High Court in the case of **Sodexo India Services Pvt. Ltd. (supra)**. **The Hon'ble High Court in the said case has clearly observed that there is no provision for using credit in DRC-03 for the purpose of pre-deposit. It is obvious that the relief was granted by the Hon'ble High Court in exercise of writ jurisdiction. The Tribunal does not have that liberty. In this background, the decision of the Tribunal in the case of M/s Saphire Cables & Services Pvt. Ltd. & Ors. (supra) cannot be applied to the instant case.***
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> ***14. In view of above relying on the decisions of the Principal Bench of the Tribunal, the applications seeking admission on the strength of pre-deposit made using through DRC-03***

are rejected. Ms Army Welfare Housing Organization are at liberty to file appeal after paying pre-deposit in any permissible manner."

5. The submission of Mr. Yogendra Aldak, Id. Counsel appearing for the Petitioner is that it is a well settled position that prior to the coming into effect of the GST regime, CENVAT credit could be used for the purpose of pre-deposit. In support thereof, a circular issued by CESTAT dated 28th August, 2014 is relied upon by him.

6. Thereafter, however, the said benefit is sought to be stopped after the transition to the GST regime.

7. Ld. Counsel for the Petitioner has further placed reliance on the decision of CESTAT, Mumbai in ***M/s Saphire Cables & Services Pvt. Ltd. V. Commissioner of CST & CE Belapur, Service Tax Appeal No. 86243 of 2021*** which is affirmed by the Bombay High Court in ***The Commissioner of CGST and Central Excise, Belapur Commissionerate v. Saphire Cable and Services Pvt. Ltd. 2024:BHC - OS:13245 - DB*** wherein the Court observed that the pre-deposit amount can be adjusted from the DRC-03 as well.

8. Ld. Counsel for the Petitioner also submits that a similar view was also taken earlier by the Bombay High Court in ***Sodexo India Services Pvt. Ltd. v. The Union of India and Ors., 2022 (382) E.L.T. 476 (Bom.).***

9. On the other hand, Mr. Tyagi, ld. SSC appearing for the Department has relied upon the instructions in ***Circular No. CBIC-240137/14/2022-SERVICE TAX SECTION-CBIC*** dated 28th October, 2022, wherein it has been clarified that DRC-03 under the CGST regime would not be a valid mode for making payment of pre-deposits. The said circular, therefore, barred use of CENVAT credit post transition to GST for the purpose of pre-deposit.

10. Mr. Tyagi, ld. SSC further submits that by the time ***Sodexo India Services (supra)*** was decided, the circular/instructions had not been issued. In ***Sodexo India Services (supra)*** the High Court directed CBIC to take a decision and issue a circular in this regard. In ***Saphire Cables (supra),*** the circular, though discussed, was not considered on the ground that the circular was issued subsequent to filing of the appeal.

11. On behalf of the Petitioner, it is also emphasised that the proceedings, which had commenced under the unamended act, would continue under the same enactment and in any case, the benefit of CENVAT credit earlier being given cannot be denied to the Petitioner, even after the GST regime has been brought into force.

12. In furtherance to the submissions made by the ld. Counsels for the parties on the last date to hearing, today, the Court has further heard the parties and has also perused the relevant provisions.

13. A perusal of Section 140 of the Central Goods and Service Tax Act, 2017 *(hereinafter, 'the CGST Act)* would show that any person who had CENVAT credit in the earlier regime could carry forward the same, after transitioning into the GST regime. The said provision reads as under:

> ***"140. Transitional arrangements for input tax credit.—***
> ***(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed****: Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—*
> *(i) where the said amount of credit is not admissible as input tax*

credit under this Act; or
(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government."

14. In addition to this, Rule 142(3) of the CGST Rules further provides as under:

"142. Notice and order for demand of amounts payable under the Act.-
xxxxx
(3) Where the person chargeable with tax makes payment of tax and interest under subsection (8) of section 73 or, as the case may be, ***tax, interest and penalty*** *under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), he shall* ***intimate the proper officer of such payment in FORM GST DRC-03*** *and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice."*

15. Hence, in terms of Section 140(1) of the CGST Act, the said CENVAT credit is thus available to any person for the purpose of paying any tax, interest or penalty by filing a form DRC-03. This is clear from Rule 142(3) of the CGST Rules. A conjoint reading of Section 140 of the CGST Act, read with Rule 142(3) of the CGST Rules would, in effect, mean that CENVAT credit under the old regime could be transitioned into the new regime by all such persons who had such credit available in their ledger and the same could be utilised for the purpose of payment of any tax, interest or penalty under the new regime as well.

16. The concept of pre-deposit is primarily nothing but payment of a part

of the amount demanded, which would be tax, interest or penalty for the purpose of filing an appeal.

17. The Court further notes that payment of pre-deposit in this case is mandated under Section 35(F) of the Central Excise Act, 1944, which is also applicable to service tax matters in terms of Section 83 of the Finance Act, 1994. The said relevant provisions read as under:

Section 35(F) of the Central Excise Act, 1944

> ***"Section 35F. 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;*
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> *(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;*
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> *(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…."*

Section 83 of the Finance Act, 1994

> ***"Section 83 – Application of certain provisions of Act 1 of 1944:***
>
> ***"The provisions of the following sections of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise:—***
>
> *[sub-section (2A) of section 5A,] [sub-section (2) of section 9A], 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, [15A, 15B,] [31, 32, 32A to 32P (both inclusive),] 33A, 34A, [35EE,] 35F] [, 35FF] to 35-O (both inclusive), 35Q, [35R,] 36, 36A, 36B, 37A, 37B, 37C, 37D [38A] and 40."*

18. Under Section 35(F)(ii) of the Central Excise Act, 1944, the pre-deposit that is required to be made is 7.5% of the disputed amount. Thus, the pre-deposit is nothing but a component of tax, interest and penalty itself and cannot be treated as a separate species of deposit.

19. This position is also considered by various Courts, including the Gujarat High Court in ***M/s Yasho Industries Limited v. Union of India & Anr. [2022:GUJHC:56517]*** where the amount lying in the electronic credit ledger has been permitted to be used for the purpose of pre-deposit under the GST regime. The said decision of the Gujarat High Court reads as under:

> *"Considering the facts of the present case, the amount paid by the petitioner as pre-deposit in compliance of section 107(6)(b) of the CGST Act utilizing the amount of Electronic Credit Ledger is required to be considered valid and impugned letter dated*

25.04.2023 issued by the respondent No. 2 directing the petitioner to pay pre-deposit amount through Electronic Cash Ledger is therefore, hereby quashed and set aside. ***Therefore, the appeal filed by the Petitioner is required to be heard on merits by considering the payment of pre-deposit by the Petitioner from Electronic Credit Ledger as a sufficient compliance of the provisions of Section 107(6)(b) of the CGST Act. The petition is accordingly disposed of."***

20. The SLP against the said order has been dismissed by the Supreme Court in ***Union of India vs. Yasho Industries (SLP 1754/2025 dated 19th May, 2025)*** in the following terms:

> *"We have heard learned counsel for the petitioner(s)/ Department. The Department's contention is that since similar matters are pending before this Court, this case also may be tagged with those cases.*
>
> *As already noted, the aforesaid cases initially filed before this Court are of the Accessees and not of the Department. In the circumstances, we find that the impugned order passed by the High Court in R/SCA No. 10504/2023 would not call for any interference."*

21. Similarly, in ***The Commissioner of CGST and Central Excise, Belapur Commissionerate v. Saphire Cable and Services Pvt. Ltd.2023 (7) TMI 544 ,*** the Bombay Bench of the CESTAT has also observed as under:

> *"6. We have heard from both the sides at length and also gone through the written notes filed by both the sides with relied upon judgements. At the outset we would like to mention here that the contesting parties have not argued about the genesis or the basis on which mandatory pre-deposit was introduced and if the same is a component of disputed tax amount since the Form prescribed for filing of pre-deposit is same as the Form used for payment of tax dues. However, going by the judgment of the Hon'ble Orissa High*

Court in the case of M/s. Jyoti Construction, cited supra that pre-deposit is not "output tax" as defined under Section 2(82) of the Odisha GST Act and Section 107 of OGST Act that prescribed for pre-deposit is not a "machinery provision". We are restraining ourselves from entering into the domain of GST Act since it is outside the jurisdiction of this Tribunal but coming to the fundamental question of requirement of pre-deposit, we consider it proper to rely upon the Constitutional Bench judgment of the Hon'ble Supreme Court passed in the case of Seth Nand Lal Das & Anr Vs. State of Haryana & Ors. reported in 1980 AIR 2097 in which one of the objects stated for making pre-deposit as a conditions precedent for filing of appeal was "obviously to prevent frivolous appeals/revisions that impede the implementation of the policy". In the said judgment it was also made clear that right of an appeal is a creature of the statute but there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory.

7. Therefore, the basic main objective of pre-deposit being prevention of filing of frivolous appeals by putting financial burden on the Appellant and the same being deposited in the Government account, we find no reason to dispute it on the ground that the same is taken out from the cash balance or credit balance (which was accrued through payment of cash only) and it is questioned so seriously.

8. In the instant case what is observed is that in two appeals pre-deposits were adjusted against payment made during investigation and in two other appeals it is made from the credit ledger, to which Appellants surplus CENVAT Credit were transited into. Now going by the close reading of the Section 174 sub-Section 1(f) repeal of Central Excise Act or amendment of Finance Act, 1994 would not affect any proceeding relating to an appeal instituted after the commencement of GST Act and a deeming friction is brought

into service by stating that to continue such proceedings under the Amended Act (Finance Act) or Repealed Act (Central Excise Act), it would be taken as if the CGST Act had not come into force and such amendment or repeal had not taken place. This being the dictate of the Statute, CENVAT Credit that was available with Appellant on 01.07.2017, would be treated to have been in existence during filing of the appeal as if no transition to TRAN-1 had taken place. It is needless to mention here that Appellants had huge CENVAT Credit available with them and since Section 35F is silent about the mode of payment though long practice and judicial decisions, permitted payment made at the time of investigation, payment made upon own assessment of tax liability and debit from the CENVAT Credit account as proper mode of pre-deposits when Central Excise Act and Finance Act were in force and, therefore, they are deemed to have been inforce even at the time of filing of appeal, as if no transition of credits had occurred.

8.1 Apart from the statutory provisions, we also find that the entire dispute concerning acceptance or non-acceptance of pre-deposit from input tax credit account is based on the erstwhile (deleted) provision available under Rule 41 sub-Rule 2 of the CGST Act 2017, bare text of which is reproduced below:-

> *"Section 41 Claim of input tax credit and provisional acceptance thereof*
> *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.*
>
> *(2) The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax as per the return referred to in the said sub-section."*

(Underlined to emphasise)

The use of the word in sub-Clause 2 that the credit shall be utilised only for payment of self-assessed output tax had been interpreted as restriction on payment for any other purpose including pre-deposit.

But this provision has been deleted and substituted with new Section 41 with effect from 01.10.2022 vide Finance Act, 2022 (6 of 2022). It is interesting to know that the circular in question on which heavy reliance is placed by the Respondent-Department was issued on 20.10.2022 without reference to this amendment or by referring to Rule 108(1) of the CGST Rules, 2017 that prescribes form and provides option for filing of appeals under the CGST Act and not under the Central Excise Act, except observing in the negative that the payment through DRC-03 is not a valid mode of payment under Section 35F of Finance Act despite the fact that Rule 108(1) of the CGST Rules, 2017 permits payment through electronics cash as well as credit ledger, as could be noticed from para 2 of the Circular/Instructions of CBEC dated 28.10.2022 itself. This being the fact on record, we would go by the judicial precedent set by the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bangalore Vs. M/s. Mysore Electricals Industries Ltd. reported in 2006 (204) ELT 517 (SC) wherein it has been clearly mentioned that a beneficial Circular has to be applied retrospectively while oppresive circular has to be applied prospectively. This Circular/Instruction being issued after filing of the appeals by these Appellants, enforcement of the same can only have prospective effect. Hence the order.

THE ORDER

9. Pre-deposit made by the Appellants from electronic credit ledgers are in compliance to Section 35F of the Central Excise Act and the registration of appeals made by the Registry is valid. The appeals are admitted for hearing and

> ***early hearing applications be listed on 30.08.2023 for a decision on out of turn hearing."***

22. The said decision passed by CESTAT, Mumbai, has been upheld by the Division Bench of Bombay High Court in ***2024:BHC - OS:13245 - DB*** titled ***The Commissioner of CGST & Central Excise, Belapur Commissionerate v. Sapphire Cable & Services Pvt. Ltd.*** in the following terms:

> *"4. After hearing the parties, preliminary objections by revenue was rejected because the CESTAT rightly concluded that the circular had come into force only on 28th October 2022 and the appeal had been filed much before the circular came into force. Relying upon the judgment of the Hon'ble Apex Court in Commissioner of Central Excise, Bangalore vs. M/s. Mysore Electricals Industries Ltd. 2006 (204) ELT 517 (SC), the CESTAT held that the circular would apply only prospectively.*
> ***5. In fact, this court in Oasis Realty vs. Union of India (2023) 3 Centax 86 (Bom) decided on 16th September 2022 has held that assessee may utilize the amount available in the Electronic Credit Ledger to pay 10% of the amount of tax in dispute under Section 107 (6) of the Maharashtra Goods and Services Tax Act, 2017.***
> ***6. We should also note that the High Court of Karnataka in Union of India vs. Vikrant Tyres Ltd. 1999 taxmann.com 362 (Karnataka) while dealing with the pre-deposit under Section 35F of the Act has taken a similar view.***
> *7. Therefore, Appeal dismissed."*

23. Further, in ***Sodexo India Services Private Limited vs. Union of India and Ors. WRIT PETITION NO.6220 OF 2022,*** the Bombay High Court has also considered a case where there was no proper legal provision to accept payment of pre-deposit under 35(F) of the Central Excise Act, 1944, and the CBIC was asked to look into the matter as under:

> ***"8. Therefore, it does appear that the confusion seems to be due to there being no proper legal provision to accept payment of pre-deposit under Section 35F of the Central Excise Act, 1944 through DRC-03. Some appellants are filing appeals after making pre-deposit payments through DRC-30/GSTR-3B. In our view, this has very wide ramifications and certainly requires the CBI & C to step in and issue suitable clarifications/guidelines/ answers to the FAQs. We would expect CBI & C to take immediate action since the issue has been escalated by Mr. Lal over eight months ago."***

24. On a query to Mr. Shubham Tyagi, ld. Counsel for the Respondent, it is submitted that there is no specific decision that has been taken by the CBIC in this regard. After ***Sodexo India Services Private Limited (supra),*** it is submitted that instructions in ***Circular No. CBIC-240137/14/2022-SERVICE TAX SECTION-CBIC*** dated 28th October, 2022 have been issued by the CBIC to the following effect:

> *"In view of the above, it is clarified that* ***payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposits under Section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994, read with Section 35F of the CEA.*** *There exists a dedicated CBIC-GST Integrated portal, https:/cbic-gst.gov.in {Board's Circular No. 1070/3/2019-CX, dated 24th June, 2019 refers in this regard}, which should only be utilized for making pre-deposit under the Central Excise Act, 1944 and the Finance Act, 1994."*

25. These instructions, in effect, hold that filing of DRC-03 under the CGST regime is not a valid mode of payment for making a pre-deposit under Section 35(F) of the Excise Act, 1944, read with Section 83 of the Finance

Act, 1994. These instructions were issued on 28th October, 2022 and in ***M/s Saphire Cables & Services Pvt. Ltd. & Ors.***, the appeals were filed prior to these instructions. Hence, according to Mr. Tyagi the same is distinguishable.

26. The short question for consideration is whether CENVAT credit can now be utilised for the purpose of making pre-deposit or not. In the opinion of this Court, CENVAT credit has been recognised under Section 140 of the CGST Act for the purpose of transitioning to the electronic ledger. After the GST regime has been put in place, there is no rationale on the basis of which it can be held that DRC-03 payment cannot be utilized for the purpose of making pre-deposit.

27. Rule 142 of the CGST Rules is clear that payments can be made through DRC-03 of any tax, interest or penalty. Pre-deposit is nothing but an advance deposit of the demanded amount, which in this case would be tax, interest or penalty.

28. Under such circumstances, the Petitioner, being the Army Welfare Board, which is a society set up with the objective of providing affordable dwelling units to serving and retired army personnels and widows, in any event, ought to be permitted to utilise the CENVAT credit for the purpose of pre-deposit.

29. A perusal of the Electronic Credit Ledger of the Petitioner in this case would show that the Petitioner had transitioned approximately Rs.17,40,16,737/-. Needless to add, that the availment of a portion of transitioned CENVAT credit for the purpose of pre-deposit is being permitted in the present case which is a rare one, where the Petitioner body is a charitable, no profit, no loss organisation.

30. It is stated that the Petitioner's pre-deposit would be sufficiently

satisfied if the CENVAT Credits pertaining to the Haryana GST registration of the Petitioner is utilised for the purpose of pre-deposit alone.

31. Ordered accordingly, Let the form DRC-03 be filed within 15 days and a proof of the said filing be placed before CESTAT. Upon the said proof being filed, the appeal of the Petitioner being Defect Diary Number 52111/2023 and 52128/2023 shall be restored. The appeal shall then be numbered by CESTAT and be listed for further proceedings on 28th January 2026.

32. Let a copy of this order be communicated to the Registry, CESTAT.

33. The present petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 22, 2025*/kp/ss*