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

Date of decision: 01st September, 2026

\# **CNR No. DLHC010138882025**

\+ CEAC 4/2025

M/S KASHISH PRODUCTS IMPEX PVT. LTD.
KHASRA NO.915-916,
RITHALA INDUSTRIAL AREA,
DELHI

...APPELLANT

Through: Mr. Rajesh Rawal, Mr. Juvas Rawal, Advocate.

Versus

DEPUTY COMMISSIONER
GOODS & SERVICE TAX, CENTRAL TAXES,
DELHI WEST, DIVISION - ROHINI,
CGO COMPLEX, LODHI ROAD, NEW DELHI

…RESPONDENT

Through: Mr. Aditya Singla, SSC, CBIC

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. The present appeal is filed under section 35G of the Central Excise Act, 1944, (hereinafter referred to as the "***Act***"), challenging the impugned orders dated 02nd May, 2024 and Misc. order dated 23rd September, 2024 passed by the respondent-Central, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the "***CESTAT***").

2. The Appellant, engaged in the manufacturing of PVC compounds and PVC masterbatches, among other products, had allegedly issued invoices without actually supplying the said goods, to its buyers. It is further alleged that the Appellant had received only invoices from its suppliers without the actual receipts of inputs. According to the respondent-Revenue, the entire transaction is a transaction without there being any transaction in reality. Same has resulted in the wrongful availment of CENVAT credit by the Appellant. Based on these allegations, the respondent-Department initiated an investigation which has culminated in issuance of a Show Cause Notice dated 12th February, 2007, based on which the Adjudicating Authority, vide *Order-in-Original* dated 2nd December, 2010, confirmed a demand of Rs. 9.73 crores against the Appellant, along with interest thereon, and further imposed a penalty.

3. Being aggrieved by the *Order-in-Original* dated 2nd December, 2010, the Appellant filed an appeal (Appeal No. E/577/2011) along with a stay application before the ***CESTAT***.

4. The stay application was disposed of with a direction to the Appellant to deposit a sum of Rs. 1.5 crores as pre-deposit. Besides, during the course of the investigation, the Appellant claims to have deposited a sum of Rs. 15,00,000/- in addition to Rs. 1.5 crores as stated above. As per the Appellant, the total amount deposited came to Rs. 1.65 crores.

5. *Vide* order dated 2nd February, 2018, the Learned Tribunal allowed the appeal preferred by the Appellant.

6. Pursuant to the above, the Appellant submitted an application dated 09th April, 2018 seeking refund of the pre-deposit amount of Rs.1.65 crores along with interest payable thereon.

7. The Revenue Department, vide order dated 10th May, 2018, decided the Appellant's refund application holding as under:-

> *"The party has submitted Copies of the Challan Nos. 00064 dated 17.05.2013, 00062 dated 17.05.2013 for Rs. 1.0 Crore and Rs. 50 lakhs respectively. Also, party submitted copies of Demand Draft and Cheque in support of Rs. 15 Lakhs deposited during the investigation evidencing payment of the total amount claimed by them to the tune of Rs. 1.65 Crores. The interest at this amount calculated @ 6% p.a. comes out to be Rs 55,80,263/- effective from the date of deposit of pre deposit amount and date of deposit of amount during the period of investigation till the date of its payment. Hence, the total refundable amount comes to Rs 2,20,80,263/-, as per the calculation below.*
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> *"I hereby sanction the refund claim of Rs. 1 ,65,00,000/~ (Rupees One crore and Sixty Five lakhs only) alongwith a total interest of Rs. 55,80,263/- (Rupees Fifty Five lakhs Eighty thousands Two hundred and Sixty Three only) to" M/s Kashish Products Impex Pvt. Ltd., Khasra No. 915-916, Rithala, Delhi-110085 in accordance with the Hon'ble CESTAT's Final Order No. A/50465-50481/2018-EX (DB) dated 02.02.2018. The sanctioned amount of Rs. 1,65,00,000/- along with an interest of Rs. 55,80,263/- comes to a total of Rs. 2,20,80,263/- (Rupees Two crores Twenty lakhs Eighty thousands Two hundred and Sixty Three only), which is to be paid through cheque #563224 dated 10.05.2018."*

8. Subsequently, *vide* Corrigendum dated 14th May, 2018, the interest amount was reduced to Rs. 51,30,986/- while the refund of the principal amount of Rs. 1.65 crores remained unchanged. The reason assigned in the said Corrigendum for reducing the interest amount was in respect of the sum of Rs. 15,00,000/- deposited during

the course of the investigation, the interest would be calculated from the date of filing of the appeal and not from the date of deposit of the said amount.

9. Against the said orders dated 10th May, 2018 and 14th May, 2018, the Revenue preferred an appeal before the Commissioner of Central Tax (Appeals-II), Delhi.

10. The appellate authority passed an *ex-parte order* dated 7th January, 2019, on the basis of the material available on record, and remanded the matter back to the Original Authority for the re-consideration of interest payable to the Appellant. The relevant portion of order dated 07th January, 2019 reads as under:-

> *"Personal Hearing has been granted to the appellant (Revenue) and the respondent on 06.12.2018, 11.12.2018 & 13.12.2018. No one appeared for the same. Since none of the parties involved has appeared for Personal Hearing despite providing sufficient opportunity for the same, I proceed to decide the matter ex-parte on the basis of facts on record.*
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> *4(ii) From the perusal of impugned order, I find that the pre-deposit has been made by the respondent during February/March 2006 and May 2013. During that time, Section 35(FF) of CEA, 1944 provides payment of interest on delayed refund of pre-deposit "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." Undisputedly the impugned order has been passed after the amendment in Section 35FF ibid, but at the same time, it is to be borne in mind that in terms of proviso below amended Section 35(FF) of CEA, 1944, the payability of interest on pre-deposit made prior to 06.08.2014 shall be governed by pre-amended Section 35(FF) of CEA, 1944. Neither amended Section 35 (FF) of CEA, 1944 nor any of the circulars relied upon by the Adjudicating Authority to decide the admissibility /quantum of interest is applicable on the issue in hand. In view of clear-cut statutory provisions cited above, I hold that the appeal is allowable. For such conclusion, I place reliance on CCE Vs ITC Ltd. [2005 (179) ELT 15 (SC)] wherein the Supreme Court has ordered payment of interest on pre-deposit upon expiry of 3 months from the date of final disposal. This judgment has also been relied upon by the*

Hon'ble Supreme Court in UOI Vs Tata SSL Ltd. [2007 (218) ELT 493 (SC)]. Circular No. 802/35/2004-CX dated 08.12.2004 issued by Central Board of Excise and Customs (CBEC) also provides that interest is payable only upon expiry of 3 months from the final disposal of dispute, Applying the ratio of these judgments/instructions on peculiar facts and circumstances of issue in hand, while allowing the appeal, the matter is referred back to Adjudicating Authority for limited purpose to re-quantify the interest payable to the respondent in the light of discussion made above and pass a reasoned order thereafter following the law of natural justice. In view of discussion, analysis and judgements cited above, the appeal is disposed of as per para 4(ii) above."

11. Being aggrieved, the appellant preferred an Appeal contending that the impugned order dated 07th January, 2019 was passed in violation of the principles of natural justice and prayed that the matter be remanded for fresh adjudication by keeping all issues open for consideration. The appellant also contended that it had never received the notice of personal hearing and in fact on 13th December, 2018. According to him, on the very same day he had appeared before the same Appellate Authority in an appeal preferred by him thereby furnishing the details of the same. According to the Appellant, he would have definitely appeared and participated in the hearing, in case, the notice of hearing was served. He would urge that there was no justifiable reason for him to avoid the hearing.

12. The appeal preferred by Appellant was dismissed by the learned Tribunal *vide* order dated 02nd May, 2024 *inter alia* holding that the amount was pre-deposited by the Appellant in February–March 2006 and May 2013. The relevant provisions of Section 35FF applicable at the said time entitled the Appellant to the interest only from the expiry of three months from the date of communication of the order passed by

the appellate authority, until the date of actual refund of the deposited amount.

13. Thereafter, the Appellant preferred an application seeking rectification of the order dated 02nd May, 2024, *inter alia*, on the ground that the controversy before the Learned Tribunal was confined to the issue of violation of the principles of natural justice and the consequentially sought remand of the matter for fresh adjudication with keeping all issues open. It was submitted that the Learned Tribunal exceeded the scope of the controversy by adjudicating the matter on merits, despite the fact that the was never argued by the Appellant on the merits, as such, opportunity was never offered.

14. However, the Learned Tribunal, vide order dated 23rd September, 2024, dismissed the application filed by the Appellant seeking rectification of the mistake apparent on the face of the record.

15. The issue raised before this Court pertains to the period from which the Appellant would be entitled to interest as regards amount deposited by the Appellant in compliance with statutory mandate as a pre-deposit before the learned Tribunal.

16. Heard learned counsel for the parties.

17. The question of law this Court contemplates to consider in the aforesaid background is as to whether the *CESTAT* as well as the Commissioner (Appeals) were justified in passing the impugned order thereby recording a finding that, the notices of personal hearing were though served, particularly, when there was no acknowledgment of service of the notice on the record of the respondents, thereby resulting in denial of an opportunity of hearing, the Appellant had chosen not to appear in the matter.

18. In the proceedings before the Commissioner of Central Tax (Appeals-II), it was observed, *vide* order dated 7th January, 2019, that notices of hearing dated 11th December, 2018, 13th December, 2018 and 16th December, 2018, had been duly served upon the appellant, who had failed to appear in the matter.

19. As against above, the case of the appellant is that such notices were never received by it.

20. The facts of the present case, prompted this Court to pass the order dated 11th February, 2026, so as to enable the learned counsel for the respondent to verify the aforesaid facts from the record of the Commissioner (Appeals).

21. Learned counsel for the appellant has submitted that a specific ground to that effect was raised before the learned Customs, Excise and Service Tax Appellate Tribunalwhich reads thus:-

> "*B.The learned Commissioner Appeal passed the impugned order without giving a fair opportunity of personal hearing. The hearing as per the impugned Order-in-Appeal is statedto have been given on 06.12.2018, 11.12.2018 & 13.12.2018 and it is stated that none from the Appellant or Respondent had appeared on those dates. The appellant had not received the Letters of hearing. The fact is clear from the Order-in-Appeal No.298/Central Tax/ Appi-11/Delhi/2018 dated 07.01.2019. One of the dates stated to be given in the present case is 13.12.2018. On 13.12.2018 itself representatives of the appellant appeared before the learned Commissioner Appeal in the case of appellant itself decided Vide the Order-in-Appeal. No. 298/Central Tax/ Appi-11/Delhi/2018 dated 07.01.2019. Had the appellant been intimated about hearing on 13.12.2018 in present case also the representative of the appellant would have attended the hearing in this case also as he had appeared in the above cited case on the same day. The impugned order is liable to be set aside/ remanded on this ground alone.*"

22. Relevantly, para 3 of the order dated 07th January, 2019 holds

that personal Hearing was granted to the appellant (Revenue) and the respondent (appellant herein) on 06.12.2018, 11.12.2018 & 13.12.2018, however, since none had appeared despite providing sufficient opportunity, the matter was decided *ex-parte*.

23. Learned counsel for the appellant has stated, in categorical terms, that on the very same day *i.e.* on 13th December,2018, Appellant had appeared before the respondent in another case filed by it, wherein a copy of which is placed on record as *Annexure A-9.* wherein *paragraph 3* of the said order reads thus:-

> *"3.Personal Hearing dated 13.12.2018 has been attended by Sh. Rajesh Rawal (Advocate) on behalf of the appellant. He has reiterated the submissions made earlier in the grounds of appeal. No one appeared on behalf of Respondent (Revenue)."*

24. The appellant has pleaded that both matters were listed on the same day before the Commissioner (Appeals) between the same parties; hence, it is difficult to believe that the counsel appeared in one matter but not in the other matter.

25. As against the above, a perusal of the written submissions of the respondent reveals that what is claimed by them is the issuance of personal hearing notices dated 16th December, 2018, 11th December, 2018 and 13th December, 2018. The aforesaid was the statutory requirement under Section 35A(3) of the Central Excise Act,1944.

26. What is sought to be demonstrated by the appellant is that although the notices were issued, the respondents have failed to place on record any acknowledgement evidencing service of the aforesaid notices upon the Appellant. Consequently, denial of personal opportunity of hearing can be inferred as respondents have failed to

demonstrate the service of notice of personal hearing.

27. There being no document placed on record by the respondent demonstrating service of notices dated 16th December, 2018, 11th December, 2018 and 13th December, 2018 upon the Appellant, we are left with no other option but to accept the contentions raised by the counsel for the Appellant that notices were not served upon the Appellant. The contentions of the Appellant of having appeared for personal hearing in another case between the same parties on the very same day before the Commissioner (Appeals) furthermore establishes the case of the appellant of having not received the notices of personal hearing.

28. A perusal of orders *Annexures A-9* and *AnnexuresA-6*, passed by the Commissioner (Appeals), dealing with appeals involving the very same parties on the very same date, wherein learned counsel for the Appellant, *Mr. Rawal*, had appeared in one of the matters, it cannot be said that the counsel for the Appellant appeared in one matter and chose not to appear in the other matter.

29. In such an eventuality, the contentions of the Appellant cannot be faulted about his non-appearance, as the notices of hearing, even if presumed to have been issued to Appellant, have not been established to have been served upon him.

30. Apart from above, the fact remains that it was expected from the *CESTAT* to deal with the aforesaid issue while dealing with the claim of the Appellant as regards grant of opportunity of hearing to the Appellant. The Tribunal, however, proceeded to decide the matter on merits without dealing with the aforesaid issue. As such, impugned order of CESTAT also results in denial of opportunity.

31. Accordingly, we hold that the notices of personal hearing dated 16th December, 2018, 11th December, 2018 and 13th December, 2018 as contemplated under Section 35A(3) of the Act, were not served upon the Appellant.

32. We as such direct the Commissioner (Appeals) to consider the appellant's claim afresh.

33. The Appellant undertakes to appear before the Commissioner (Appeals) on ***21st September, 2026 at 02:30 P.M***.

34. The appeal accordingly stands partly allowed.

35. Pending application(s), if any, also stand disposed of.

36. A copy of this Judgment be uploaded on the website of this Court.

NITIN WASUDEO SAMBRE
(JUDGE)

AJAY DIGPAUL
(JUDGE)

SEPTEMBER 1, 2026/*sky/ok*