

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.1344 of 2023

IN THE MATTER OF:

**Assistant Commissioner of CGST &
Central Excise, Division Hingna, Nagpur-I**

...Appellant

Versus

**Devendra Singh
Liquidator in Venus Rolling Mills Pvt. Ltd.**

...Respondent

Present:

For Appellant: Ms. Sangeeta Mishra, Advocate.

For Respondent: Mr. Palash S. Singhai, Advocate.

ORDER

17.10.2023: Heard learned counsel for the Appellant. This Appeal has been filed against the order passed by the Adjudicating Authority dated 25.07.2023 in MA No.2905 of 2019. The MA was filed by the Resolution Professional praying for following reliefs:

- “(a) *That this Hon'ble Tribunal be pleased to direct the Respondents themselves, and/or their servants, agents, assigns, subordinates, superiors or inferiors in office and/or any other persons claiming through or under them or otherwise howsoever, to refund the Pre- deposit amount of Rs. 1,00,00,000/- in favour of the Corporate Debtor in the bank account detailed in Schedule 1;*
- (b) *Pending the final hearing and disposal of this Application, this Hon'ble Tribunal be pleased to restrain the Respondents themselves, and/or*

Cont'd.../

their servants, agents, assigns, subordinates, superiors or inferiors in office and/or any other persons claiming through or under them or otherwise howsoever, from acting upon and/or restraining them from dealing with the Pre-deposit amount of Rs. 1,00,00,000/- deposited with the Respondents in any form or manner;

(c) An ex-parte relief in terms of prayer (b) above may be granted; and;

(d) Such other order or orders be passed as the Hon'ble Tribunal may deem fit and proper.”

2. The issue which was under consideration in the MA was pre-deposit of Rs.1 Crore which was made by the Corporate Debtor for filing the Appeal against an order of demand issued by the Assessing Authority. The Appeal which was filed by the Corporate Debtor was allowed by the Appellate Tribunal on 08.03.2019 by remanding the matter to the Adjudicating Authority for fresh adjudication. The matter was pending before the Adjudicating Authority when a circular was issued by Government of India dated 10.03.2017. Relying on the said circular, the Adjudicating Authority directed refund of the pre-deposit to the Resolution Professional/ Liquidator. Appellant aggrieved by the said order has come up in this Appeal.

3. It is submitted by learned counsel for the Appellant that after remand by the Appellate Tribunal the demand has again been confirmed against the Corporate Debtor, hence, there is no occasion to refund the pre-deposit. It is further submitted that the claim which was filed by the Appellant before the

Liquidator was of Rs.49 Crores whereas amount which was admitted was very less amount. It is submitted that there being pending demand against the Corporate Debtor refund ought not to have been allowed.

4. Learned counsel for the Respondent relying on circular of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs dated 10.03.2017 submits that the issue is fully covered by the circular where the Government has already taken decision to refund the pre-deposited amount alongwith interest, where the appeal is decided in favour of the party/assessee and even in the event of remand, refund of the pre-deposit shall be payable alongwith interest.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. The circular dated 10.03.2023 which has been relied by learned counsel for the Respondent in Para 26 lays down following:

“26. Refund of pre-deposits:-(i) 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

(ii) 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. 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.

(iii) 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 as per the time limits prescribed in the law or in the order, unless such order is stayed by a competent Appellate Authority. It is important to note that in such cases of consequential refund, besides filing of appeal against the order, it is also necessary that a protective demand of the refunded amount be issued under Section 11A by not lower than Assistant/Deputy Commissioner of Central Excise as per new monetary limits for adjudication of cases by the Central Excise officers and transferred to the call-book.

(iv) In the event of a remand, refund of the pre-deposit shall be payable along with interest.”

7. The circular has been issued on 10.03.2017. The Central Board of Excise and Customs is well aware of all the provisions of Customs and Excise Act and if there would have been such intention that if there is demand it can be adjusted by per-deposit amount there ought to have been some provision in the circular rather the provisions of the circular are otherwise. The circular clearly mentions that 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. In case of remand, as per 26(iv) refund of pre-deposit is also contemplated to be made along with interest. We are of the view that the Adjudicating Authority has rightly allowed application M.A.2905/2019 directing refund of pre-deposit.

8. The submission of learned counsel for the Appellant that amount which was claimed by the Department was much more whereas only a meagre amount had been admitted. We are of the view that the issue which are sought to be raised by the Appellant is not subject matter of the MA, hence, need not be considered in this Appeal.

9. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Archana/nn