

2022-TIOL-1029-CESTAT-AHM

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH
REGIONAL BENCH, AHMEDABAD
COURT NO. 3**

Service Tax Appeal No. 10855 of 2020

[Arising out of OIA-RAJ-EXCUS-000-APP-102-2020, Dated: 28.09.2020
Passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Date of Hearing: 11.10.2022

Date of Decision: 11.10.2022

**FALCON PUMPS PVT LTD
SURVEY NO. 39/4, VAVDI INDUSTRIAL AREA,
BEHIND HOTEL KRISHNA PARK,
GONDAL ROAD, NH-27, POST- VAVDI, RAJKOT-GUJARAT**

Vs

**COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX,
RAJKOT CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001**

Excise Appeal No. 10853 of 2020

[Arising out of OIA-RAJ-EXCUS-000-APP-101-2020, Dated: 28.09.2020
Passed by Commissioner (Appeals), Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

**FALCON PUMPS PVT LTD
SURVEY NO. 39/4, VAVDI INDUSTRIAL AREA,
BEHIND HOTEL KRISHNA PARK,
GONDAL ROAD, NH-27, POST- VAVDI, RAJKOT-GUJARAT**

Vs

**COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX,
RAJKOT CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001**

Appellant Rep by: Shri Saurabh Rachchh with Shri P.D. Rachchh (Advocate)

Respondent Rep by: Shri Rajesh K Agarwal, (Superintendent) AR

CORAM: Ramesh Nair, Member (J)

ST - The issue at hand in the present case is whether the appellant-company is entitled for refund of pre-deposit made u/s 35F of the Central Excise Act, 1944, by way of reversal in GST-ITC credit.

Held - there is no dispute that the appellant have made pre-deposit in terms of Section 35F ibid for entertaining the appeal by the Commissioner (Appeals) - The Commissioner (Appeals) also entertained the appeal on payment of 7.5% though the same was reversed in the GST-ITC account - This clearly shows that the Commissioner (Appeals) has accepted the 7.5% reversal in GST-ITC as per-deposit in terms of Section 35F - Despite the clear finding, the Commissioner (Appeals) upheld the order-in-original and rejected the appeal which is contrary to own findings - Since the Commissioner (Appeals) agreed that the appellant is eligible to avail the credit in their electronic credit ledger the appeal should not have been rejected, whereas the refund should have been allowed if not in cash, but atleast by way of credit in their electronic credit ledger - This is an apparent error in the order of the Commissioner which needs to be rectified - Accordingly, I set aside the impugned order and remand the matter to the Commissioner (Appeals) to give a clear order considering his own finding that the appellant is eligible to avail the credit in their electronic credit ledger: CESTAT

Matter remanded

Case laws cited:

Dell International Services India P. Ltd. 2019 (365) ELT 713 (Tri. Bang.)... Para 2

Balson Polyplast Pvt. Ltd OIO No. 03/REF/2022-23 dated 10.05.2022 ... Para 2

FINAL ORDER NOS. A/11240-11241/2022

Per: Ramesh Nair:

The issue in the present case is that whether the appellant is entitled for refund of pre-deposit made under Section 35F by way of reversal in GST-ITC credit.

2. Shri Saurabh Rachchh, learned Advocate with Shri P.D. Rachchh Advocate appearing for the appellant submits that there is no dispute that pre-deposit of 7.5% was made against filing of appeal before Commissioner (Appeals) and on succeeding the appeal, the appellant is entitled for the refund in terms of Section 35F of Central Excise Act, 1944. Merely because the 7.5% was paid by way of reversal in the GST-ITC account, refund cannot be rejected. He placed reliance on the following judgements:

- Dell International Services India P. Ltd. 2019 (365) ELT 713 (Tri. Bang.)

- OIO No. 03/REF/2022-23 dated 10.05.2022 (Balson Polyplast Pvt. Ltd.)

3. Shri R.K. Agarwal, learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that the learned Commissioner (Appeals) has allowed the credit of this pre-deposit amount in their electronic credit ledger, therefore, the appellant should not have any grievance. He also placed reliance on the decision of the Division Bench of Allahabad Tribunal, order dated 23.08.2022, whereby it was held that pre-deposit cannot be made by way of debit in ITC.

4. I have carefully considered the submission made by both the sides and perused the records.

5. I find that there is no dispute that the appellant have made pre-deposit in terms of Section 35F for entertaining the appeal by the Commissioner (Appeals). The learned Commissioner (Appeals) also entertained the appeal on payment of 7.5% though the same was reversed in the GST-ITC account. This clearly shows that the Commissioner (Appeals) has accepted the 7.5% reversal in GST-ITC as per-deposit in terms of Section 35F. From the impugned order, the learned Commissioner (Appeals) also given clear finding at page No. 36 in para 7 of Appeal No. E/10855/2020 and page 31 in para 7 of Appeal No. E/10853/2020 which is reproduced below:

".....However, payment of pre-deposit by the Appellant is not under dispute. The appellant is, therefore, eligible to credit of Rs. 3,94,041- in their Electronic Credit Ledger."

".....However, payment of pre-deposit by the Appellant is not under dispute. The appellant is, therefore, eligible to credit of Rs. 3,19,690/- in their Electronic Credit Ledger."

6. Despite the above clear finding, the Commissioner (Appeals) has upheld the order-in-original and rejected the appeal which is contrary to his findings. Since the Commissioner (Appeals) has agreed that the appellant is eligible to avail the credit in their electronic credit ledger the appeal should not have been rejected, whereas the refund should have been allowed if not in cash, but atleast by way of credit in their electronic credit ledger. This is an apparent error in the order of the Commissioner which needs to be rectified. Accordingly, I set aside the impugned order and remand the matter to the Commissioner (Appeals) to give a clear order considering his own finding that the appellant is eligible to avail the credit in their electronic credit ledger. Appeal is allowed by way of remand.

(Dictated & Pronounced in the open court)

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