

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70103 of 2021

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-734-20-21 dated 09.10.2020 passed by Commissioner (Appeals) CGST, Noida)

M/s India Yamaha Motor Pvt. Ltd.,

.....Appellant

(A-3, Industrial Area, Noida Dadri Road,
Surajpur, Gautam Budh Nagar-201306 U.P.)

VERSUS

**Commissioner of Central Goods &
Services Tax, Greater Noida**

....Respondent

(3rd Floor Wegmens Business Park,
Plot No.3, K.P.-III, Greater Noida-201306, U.P.)

APPEARANCE:

Shri Atul Gupta, Advocate & Ms. Ushmeet Kaur Monga, Advocate for
the Appellant

Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70556/2024

DATE OF HEARING : 14 May, 2024
DATE OF DECISION : 02 September, 2024

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-002-APP-734-20-21 dated 09.10.2020 passed by learned Commissioner (Appeals) CGST, Noida.

2. The facts of the case in brief are that the Appellant M/s India Yamaha Motor Pvt. Ltd. is engaged in manufacture inter-alia of motor cycles, scooters, parts and accessories thereof, falling under Chapter 87 of the erstwhile Central Excise Tariff Act. The Appellant filed an appeal against an Order-in- Original No.161-167/DC/2017 dated 21.06.2017 before the Commissioner, CGST (Appeals) Noida and the Appellant made a pre-deposit for filing of such appeal. The appeal of the Appellant

was allowed with consequential benefits vide Order-in-Appeal No.NOI-EXCUS-002-APP-141-19-20 dated 08.05.2019 by the Commissioner (Appeals). In terms of direction in the Order-in-Appeal dated 08.05.2019, the Appellant filed an application for refund of the amount pre-deposited. The Assistant Commissioner, Central GST, Division -1- Gautam Buddh Nagar, Uttar Pradesh vide Order-in-Original No.435-R/AC/D-I/GBN/19-20 dated 06.02.2020 allowed the refund of the amount pre-deposited, however he has not granted statutory interest on the amount so refunded in terms of Section 35FF of the Central Excise Act, 1944. Being aggrieved with the part of the Order-in-Original dated 06.02.2020 by which the statutory interest on refund was not granted, the Appellant preferred an appeal before the Commissioner (Appeals) CGST, Noida. The Commissioner (Appeals) instead of deciding the appeal on merit held as follows:-

- that the issue of interest was not a part of the proceedings before the Ld. Adjudicating Authority as the same is not coming from the OIO;
- that the payment of pre-deposit amount was not made in cash, but by way of debit from the ITC account;
- that the amount of pre-deposit exceeded the restricted amount of Rs.10 crores as mentioned in the proviso to Section 35F of the Excise Act;
- that the issues of whether interest is applicable on the pre-deposit amount made by the Appellant and the restricted amount under Section 35F shall apply for the purpose of interest under Section 35FF, have to be decided at the original stage; and
- that the Appellant is directed to approach the Ld. Adjudicating Authority since the issue of interest was not dealt with by the Ld. Adjudicating Authority in the OIO.

Hence the present appeal the Tribunal.

3. Learned Advocate appearing on behalf of the Appellant submitted that undisputedly, the amount pre-deposited has already been refunded to the appellant, therefore, in terms of Section 35FF interest on refund of amount pre-deposited is mandatorily to be paid. The Appellant humbly submits that the obligation of refund of pre-deposit is not distinct and separate from the obligation of interest on such refund under Section 35FF of the Excise Act. Reliance in support of above submission, is placed on the ratio of the decision of the Tribunal in the case of **L.G. Electronics India Pvt. Ltd. v. Commissioner of C. Ex., Noida, 2019 (369) E.L.T. 1395 (Tri. - All.)**, where it was held that interest needs to be paid when the same is payable by way of operation of law. The Appellant further relies on the decision in the matter of **Continental Engines Pvt. Ltd. Vs. Commissioner (Appeals), C. Ex. & CGST, Jaipur-I 2022 (382) E.L.T. 522 (Tri. - Del.)** where it was held that "Appellant was simultaneously entitled to interest which was to be calculated @ 12% from the date of payment of said amount and not from the date of expiry of three months from the date of said order, no concept of any time-limit was mentioned in Section 35FF of Central Excise Act, 1944."

4. Learned Departmental Authorized Representative justified the impugned order and prayed that the appeal filed by the Appellant being devoid of any merits may be dismissed.

5. Heard both sides and perused the appeal records.

6. For better appreciation of the facts relevant portion of the provisions under Section 35FF is reproduced as under:-

"SECTION 35FF. Interest on delayed refund of amount deposited under section 35F. — *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”.

7. A bare perusal of Section 35FF mandates that when the Appellant is refunded the amount of pre-deposit earlier paid in terms of Section 35F consequent upon the order from the Appellate Authority, interest shall also be paid to the Appellant from the date of payment of pre-deposit amount till the refund of such amount. Thus, I find that payment of interest along with refund under Section 35FF of the Excise Act, is not dependent on whether the same has been claimed by the Assessee or not. The same is axiomatic. In case, refund is paid to the Appellant consequent upon specific order for consequential relief from the Appellate Authority, the concerned Authority is under a statutory obligation to pay interest from the date of payment of pre-deposit amount till the refund of such amount. Reason being, Section 35FF uses the expression “*there shall be paid to the Appellant interest*”, thereby indicating that payment of interest is not discretionary but mandatory under the provision. Therefore, payment of interest is statutory and axiomatic. In the present case, Department is not disputing that Appellant has made the pre-deposit of more than Rs.10 crore under Section 35F of the Excise Act on 05.09.2017, which was post 06.08.2014 when Section 35FF was amended. The same is clearly evident from the operative portion of the Order-in-Original, wherein refund of pre-deposit amount was sanctioned by the Ld. Adjudicating Authority in terms of Section 35F *ibid*. Even if the interest is not claimed specifically by an Assessee, that does not absolve the Adjudicatory Authority from mandatory legal responsibility to grant interest on the amount refunded. The requirement to pay interest under Section 35FF is by operation of law, it is not to be claimed by the person in respect of whom consequential benefit is already directed by the Appellate Authority. In the present case, once the Ld. Adjudicating Authority committed a legal error in not granting interest on refund of pre-deposit while passing the Order-in-

Original and appeal against the Order-in-Original is filed, then the Ld. Appellate Authority is bound to correct the error. The finding given by the Ld. Commissioner (Appeals) in the impugned order that question of interest does not arise at this stage, is not legally sustainable. In the case of **Cadila Pharmaceuticals Ltd. vs. Commissioner of Service Tax, Ahmedabad, 2018 (1) TMI 424 – CESTAT Ahmedabad**, the Tribunal categorically held that Section 35FF itself provides for payment of interest on refund of pre-deposit amount and the same does not differentiate between the payment of pre-deposit made in cash or by debit in the Cenvat credit account. The relevant observations made by the Tribunal are reproduced below:-

*"6. It can be seen from the above reproduced Section, statute itself provides for an interest on refund of an amount deposited in furtherance of Sec. 36F consequent on the order of the Appellate Authority from the date of payment of the amount till the date of refund of such amount. **The said Section does not differentiate between the deposits made in cash or by debit in Cenvat account.** There being no differentiation as regards the deposit in the Section, the First Appellate Authority reliance on the CESTAT Circular No15/CESTAT/Gen/2013 dt 8.8.2014 is misplaced and not at all applicable in the case in hand. **In my view, the wordings of the Section 35 FF are very clear and unambiguous and the facts of this case also being not disputed, denial of interest to appellant under Section 35FF for only for the reason that there is no loss that has occurred to appellants which needs compensation is unsustainable findings.** It is settled law that Section of the statute needs to be interpreted as they are."*

[Emphasis supplied]

8. Thus, from a conjoint reading of Section 35F and Section 35FF, as reproduced above, it is submitted that merely because Section 35F restricts the pre-deposit amount as Rs.10 crore,

does not mean that Assessee will not be entitled for interest on refund of pre-deposit amount under Section 35FF even if it paid the pre-deposit amount more than Rs.10 crore. In other words, when the Department accepted the pre-deposit amount exceeding Rs.10 crore at the time of filing of appeal without any objection and kept such amount with it till the disposal of appeal, Department cannot now deny interest upon refund of such pre-deposit amount by contending that the pre-deposit amount exceeds Rs.10 crore.

9. In view of the foregoing, it is my considered view that interest has to be paid to the Appellant as per Section 35FF of the Central Excise Act, 1944. The impugned order is set aside and the appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in open court on - **02nd September, 2024**)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS