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

\+ **W.P.(C) 17236/2025, CM APPL. 71007/2025 & CM APPL. 71008/2025**

M/S J.M.D ENTERPRISES .....Petitioner

Through: Mr. Bharat Bhushan, Ms. Nidhi Gupta & Mr. Anunay Mishra, Advs.

versus

CUSTOMS, EXCISE AND SERVICE TAX, APPELLATE TRIBUNAL, NEW DELHI & ORS. .....Respondents

Through: Mr. Shubham Tyagi, SSC, CBIC with Ms. Navruti Ojha, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 13.11.2025

1. This hearing has been done through hybrid mode.

CM APPL. 71008/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 17236/2025, CM APPL. 71007/2025

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, seeking issuance of an appropriate writ directing the Customs, Excise Service Tax Appellate Tribunal (hereinafter, '*CESTAT*') to accept the payment of Rs. 8,76,942/- paid under the Central Excise head as pre-deposit in terms of Section 35F of the Central Excise Act, 1944 for entertaining the appeal.

4. The present writ has raised a unique difficulty which certain tax payers are facing for making pre-deposits in respect of appeals to be filed under the Service Tax regime. Post the transition from Service Tax to GST, from the

submissions made by ld. Counsel, it appears that there is no facility to make a pre-deposit on the online portal in respect of appeals from proceedings arising out of the Service Tax regime.

5. In the present case, the Petitioner is a firm engaged in the business of electroplating of auto-parts and as per its stand, it was not liable to pay service tax under the Service Tax regime. However, upon introduction of GST, it got registered under the GST regime and started paying appropriate GST for its outward supplies.

6. A Show Cause Notice (hereinafter, *'SCN'*) dated 26th April, 2021 was issued demanding service tax to the tune of Rs.87,69,413/- for the year 2015-16 and 2016-17. The said demand was confirmed by the Adjudicating Authority. An appeal was thereafter preferred before the Commissioner (Appeals) and 7.5% of the confirmed demand was paid under the Central Excise Head.

7. The Commissioner (Appeals), however, rejected the appeal on merits *vide* order 30th November, 2023.

8. Ld. Petitioner for the Petitioner submits that he Petitioner wishes to avail of the appellate remedy before CESTAT and for the said purpose, it filed an appeal before CESTAT after making the pre-deposit under the Excise head. The order of CESTAT on the administrative side reads as under:

> *"* ***<u>ORDER</u>***
> *Notice of hearing stands delivered on the appellant. Learned counsel for the appellant has mentioned that the amount of pre-deposit was paid by the appellant, however under the wrong head. The appellant has requested time to file the refund claim of the said amount so that the amount of predeposit can be paid under the right head. It is mentioned that the amount to be paid is a huge amount and it is not possible for the appellant to make the payment*

till the earlier paid amount is refunded. In view the said submissions, learned Departmental Representative is required to assist the appellant. Since both the parties requested time to do the needful, the matter is adjourned to July 1, 2025."

9. Thereafter, the matter was repeatedly being adjourned before the CESTAT to make the deposit under the correct head. However, it is the submission of ld. Counsel for the Petitioner that despite repeated visits and correspondence with the Department, the amount has not been moved to the correct head and hence, the CESTAT is not entertaining the appeal of the Petitioner.

10. Mr. Tyagi, ld. Senior Standing Counsel appears on advance notice.

11. A similar issue as raised in this case has been considered by this Court in ***DD Interiors v. Commissioner of Service Tax & Ors., 2025:DHC:1223-DB*** where again the payment of pre-deposit was made in the GST portal and this Court had given the relief in the following terms:

> *"3 . **Admittedly, the pre-deposit was made by the Petitioner way back on 13th August, 2018 and 17th August, 2018 itself for a sum of Rs. 1,60,600/- and Rs. 4,750/- respectively. The Petitioner has also submitted the challans showing the deposit. The ground taken in the impugned order is that the same was deposited in a wrong account and therefore credit cannot be given of the pre-deposit and hence the appeal does not deserve consideration on merits.***
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> *xxx xxx xxx*
>
> *7 **. In the present case, the deposit of the 7.5% was made in an account when the integrated portal was not fully functional.** This Court had*

on the last occasion vide order dated 23rd January, 2025 observed as under :

> *6 . A mere deposit in the wrong account, that too, when the integrated portal might not have been fully functional or the existence of the same was not within the knowledge of the Petitioner, cannot result in a rejection of the appeal on the ground of defects. The matter in the opinion of this Court deserves consideration on merits by the CESTAT.*
> *7. Ld. Counsel for the Respondents submits that he would seek instructions as to since when the integrated portal has been made operational and has been informed to the assessees publicly.*
> *8. Let a competent official from the Respondent- Department be present on the next date of hearing with the instructions.*
> *9. In the meanwhile, no coercive step shall be taken against the Petitioner."*

8 . Further to the previous order, the Counter Affidavit was filed by the Department, wherein it is accepted as under :

> *14.That the new payment system, which started in July 2019, was not available before that. Therefore, the system for making pre-deposits through the CBICGST Integrated portal did not exist in 2018, when the petitioner made the 7.5% pre-deposit for the first appeal. The taxpayer followed the process allowed at that time, which was accepted by the Appellate Authority during the first appeal.*
>
> *15.That the appellant initially deposited 7.5% of the disputed amount, which was accepted by the Appellate Authority for the first appeal. Later, the appellant deposited 2.5% of the disputed amount via*

> *DRC- 03 when filing the appeal before the Appellate Tribunal."*
>
> *9. Therefore, there is no dispute about the fact that 7.5% was initially deposited before the Commissioner (Appeals) at that time when the integrated portal did not exist. Thereafter, while approaching the CESTAT, the remaining 2.5% has been deposited by the Petitioner. Thus, in effect the entire 10% which is the pre-deposit amount, stood deposited.*
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> ***10. Considering these circumstances, the appeal could not have been rejected merely on the ground that it was deposited on a wrong account especially when the said integrated portal was not even available for the Petitioner at the time of the initial deposit.***
>
> ***11. Following the decision of the Bombay High Court in Sodexo India Services Pvt. Ltd. vs. Union of India, this Court is, therefore, inclined to direct that the appeal would now be heard by CESTAT on merits without any further deposit being insisted upon. The deposit already made shall be treated as satisfaction of the pre-deposit condition.***
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> *12. In view of the above discussion, the present writ petition is allowed. The order dated 08th November, 2024 passed by CESTAT is set aside. The petition of the Petitioner is restored to its original number before CESTAT and shall now be heard on merits without any further pre-deposit.*
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> *13. At this stage, Mr. Bhatia, ld. Counsel submits that CESTAT has returned the appeal papers. If so, the Petitioner is permitted to re-present the same before CESTAT within 30 days. The same shall not be dismissed on the ground of limitation and shall now be heard on merits.*
>
> *14. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of."*

12. The present case would also be covered by the said decision. The deposit may be made under the Central Excise head as the Petitioner had no

other option as the service tax portal is non-functional. Hence, it cannot be said that the pre-deposit has to be made again. Pre-deposit having been made with the government ultimately the amount goes to the exchequer.

13. Accordingly, the appeal of the Petitioner shall now be considered by CESTAT on merits.

14. However, the pre-deposit made under the Central Excise head shall be considered as pre-deposit for the purposes of the said appeal.

15. Mr. Tyagi, ld. SSC shall, however, place on record after instructions, an affidavit as to how the Government wishes to resolve this issue. A responsible official from the GST Department shall join the proceedings online in order to assist the Court so that similarly placed parties who wish to make the pre-deposit under the Service Tax Regime are not put to inconvenience.

16. Let this order be communicated to the Secretary, Ministry of Finance, Government of India in order to enable them to arrive at a solution.

17. Copy of this order be communicated to the OSD(legal), CBIC through email (Osd-legal@gov.in) for necessary information and compliance. Let Mr. Anurag Ojha, ld. Sr. Standing Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information.

18. List on 22nd December, 2025.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

NOVEMBER 13, 2025/*Rahul/ck*