Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 13397 of 2014 - DB

(Arising out of OIA-DMN-EXCUS-000-APP-118-14-15 dated 09/07/2014 passed by Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Accra Pac India Pvt Ltd ....**Appellant**
Plot No. 1105, 3rd Phase, Gidc,
Vapi, Gujarat

VERSUS

C.C.E. & S.T.-Daman ....**Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station, Vapi, Gujarat - 396191

APPEARANCE:
Shri Ambarish Pandey, Advocate for the Appellant
Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 11911/2023

DATE OF HEARING: 03.07.2023
DATE OF DECISION: 11.09.2023

RAMESH NAIR

This appeal is directed against Order-In-Appeal whereby the Commissioner (Appeals) dismissed the appeal for non-payment of pre-deposit of Rs 17 Lacs ordered by the Commissioner (Appeals) in the said order.

2. Shri Ambarish Pandey, learned Counsel appearing on behalf of the appellant submits that while passing the order, the amended Section 35 F was in force according to which 7.5 % of the duty amount was required to be paid for filing appeal before Commissioner (Appeals). He submits that while filing the appeal before this Tribunal, the appellant have paid 10% of the total duty amount. It is his submission that since now there is a provision for payment of maximum 10%, the same may be considered as pre-deposit and Commissioner (Appeals) may be directed to decide the appeal on merit, He placed reliance on the following judgments:-

- Niraj Gyanchand Jain – 2017 (4) TMI 894 –CESTAT
- Sridhar Metal – 2015 (4) TMI 489- CESTAT
- Maneesh Export - 2015 (6) TMI 405 – CESTAT
- Nimbus Communications Ltd – 2016 (44) STR 578 (Bom.)
- Barijoriwala Rolling Mills Pvt Ltd – 2016 (7) TMI 125- Rajasthan High Court
- Puri Brothers – 2016 (6) TMI 13 – Rajasthan High Court
- Jain Poles Industries – 2016 (3) TMI 1086 – Rajasthan High Court

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the record. We find that though at the time of passing the said order by the Commissioner (Appeals) the amended provision of Section 35 F was not in force. However, in the matters coming before the Tribunal related to pre-deposit after the amendment of Section 35 F, this Tribunal taking a lenient view allowing the admission of the appeal on pre-deposit of 10% as prescribed under amended Section 35 F. Therefore, we are also of the view that since the appellant have already deposited 10% of the duty amount, the same is sufficient to hear the appeal on merit.

5. Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the Commissioner (Appeals) for passing a fresh order on merit.

(Pronounced in the open court on 11.09.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

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