CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Miscellaneous Application No.70140 of 2022
(On behalf of the appellant)
IN
Service Tax Appeal No.70396 of 2022

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-28-22-23 dated 22/04/2022 passed by Commissioner (Appeals) Central Excise & CGST, Noida)

M/s Kronos Solutions India Pvt. Ltd., ...Appellant
(Tower-4, Floor 4-5-6, Okaya Centre,
Plot No.5, Block-B, Sector-62, Noida)

VERSUS

Commissioner of Central Excise &

CGST, Delhi ....Respondent

(5th Floor, C-56/42, Renu Tower, Sector-62, Noida-201301)

APPEARANCE:

Shri Sunil Kumar, Advocate for the Appellant
Shri Sandeep Pandey, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70184/2023

DATE OF HEARING : 06 November, 2023
DATE OF DECISION : 06 November, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-001-APP-28-22-23 dated 22/04/2022 passed by Commissioner (Appeals) Central Excise & CGST, Noida. By the impugned order Commissioner (Appeals) has dismissed the appeal of the appellant by observing as follows:-

> *"9. Juxtaposition to the above provisions of law in the instant case in the common appeal memo filed by the appellants at point no.6 of form no.ST-4 it is stated that "No". It is pertinent to note here that the present appeal*

was filed on 01.11.2021 without fulfilling the condition of Pre- deposit as required under Section 35F of Central Excise Act, 1944 as made applicable to like matters of Service Tax by virtue of Section 83 of the Finance Act, 1994. More than four months have lapsed since filing of the said appeal and failure of the appellant to submit the requisite challan of pre-deposit lead me to reasonable belief that they have neither deposited the said pre-deposit amount till date, nor they intend to do so. Therefore, I observe that in terms of aforesaid quoted Section 35F of the Central Excise Act, 1944, the appeal in question is not entertainable and as such is fit for summarily rejection.

10. Accordingly, without going into merits of the case I hereby reject the present appeals due to the failure of the appellants to make pre- deposit in terms of Section 35F of the Central Excise Act, 1994, as made applicable to Service Tax read with Section 83 of the Finance Act, 1994.

This appeal is disposed of accordingly."

2.1 I have heard the Shri Sunil Kumar Advocate appearing for the appellant and Shri Sandeep Kumar Pandey Authorized Representative appearing for the revenue.

2.2 Arguing for the appellant learned Counsel submits a copy of the challan and informs that appellant have complied with the conditions of the mandatory pre-deposit i.e. 10% of the disputed amount, as required in terms of Section 35 of the Central Excise Act,1944 for consideration of appeal by the Tribunal. Further, he prays to remand the matter back to Commissioner (Appeals) for decision on merits.

2.3 Arguing for the revenue learned Authorized Representative fairly agrees that the appellant have made the mandatory pre-deposit as per this challan.

3.1 Appellant has filed the present Miscellaneous Application for early hearing of the appeal which has been allowed. Further, with the consent of both the sides as the issue involved is in very narrow compass, I have taken the matter for consideration today itself.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Taking the note of the above fact that the impugned order has not passed on merits of the case, the matter needs to be remanded for reconsideration by Commissioner (Appeals) as the appellant has deposited the entire amount required to be deposited as mandatory pre-deposit for consideration of the appeal by this Tribunal i.e. 10% of the disputed amount as prescribed by Section 35 F of the Central Excise Act, 1944.

4.3 Since impugned order do not considers the appeal filed by the appellant on merits, no decision has been rendered on merits by Commissioner (Appeals). Matter needs to be remanded back to the Commissioner (Appeals) for decision on merits.

4.4 I want to make it clear that appellant shall not withdraw any part of the pre-deposited amount or make a claim for any refund of this amount till the disposal of the appeal by the Commissioner (Appeal) in remand proceedings.

4.5 Since the appeal has been filed by the appellant before Commissioner (Appeals) on 01.11.2021 and disposed of by him without going into the merits of the case, Commissioner (Appeal) is directed to decide the appeal on merits of the case within three months from the date of receipt of this order following the principles of natural justice.

5.1 Miscellaneous application for early hearing of the appeal is allowed as noted in para 3.1.

5.2 Appeal is allowed and matter is remanded to Commissioner (Appeal) for de novo consideration.

(Dictated and pronounced in open court)

Sd/-

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp