CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70027 of 2020

(Arising out of Order-in-Appeal No.425-CUS/APPL/LKO/2019 dated 29.07.2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Ramanand Patel **.....Appellant**
(Odawalia Dist. Majarajganj)

VERSUS

Commissioner (Appeals), GST &

Central Excise, Lucknow **....Respondent**

(Lucknow)

APPEARANCE:

Shri Anuj Agrawal, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

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

FINAL ORDER NO.- 70252/2023

DATE OF HEARING : 18 December, 2023
DATE OF DECISION : 18 December, 2023

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.425-CUS/APPL/LKO/2019 dated 29.07.2019 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow has held as follows:-

> *"By the impugned order penalty of Rs.10,000/- has been imposed on the appellant, five thousand rupees under section 112 and five thousand rupees under section 114AA of the Customs Act. As per Section 129E of the said Act, pre-deposit of 7.5% i.e. Rs.750/- was required whereas the appellant has deposited only Rs.375/- as per the Challan dated 22.4.2019. In absence of the mandatory pre-deposit, the appeal cannot be entertained and the same is dismissed on the same ground."*

2.1 Heard Shri Anuj Agarwal, advocate appearing for the Appellant and Shri Manish Raj, Authorized Representative appearing for the Revenue.

2.2 Arguing for the Appellant, learned advocate submits that

- There was a shortfall of Rs.375/- in making a pre-deposit on account calculation mistake, for which this appeal has been dismissed by the Commissioner (Appeals).
- All the amount to be pre-deposited has been deposited and further amounts for making this appeal before this Tribunal has also been deposited.
- As no order has been passed on merits, matter should be remanded for consideration on merits.

3.1 I have considered the impugned order along with the submissions made in appeal during the course of arguments.

3.2 Commissioner (Appeals) should have allowed an opportunity to the Appellant to make good of the shortfall in pre-deposit before dismissing and should have considered appeal on merits.

3.3 As informed by the learned counsel for the Appellant this amount of shortfall in pre deposit has been made good by the appellant. For this reason this appeal should be considered on merits by the Commissioner (Appeals) in remand proceedings.

3.4 As the matter has been delayed substantially from 2019 to 2023 there should be a time bound disposal of the appeal in the remand proceedings.

4.1 Appeal allowed and matter remanded back to the Commissioner (Appeals) for the decision on merits.

4.2 In remand proceedings Commissioner (Appeal) should decide this matter within three months from the date of receipt of this order following the principles of natural justice.

(Dictated and pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS