CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70158 of 2022

(Arising out of Order-in-Appeal No.30-ST-APPL-LKO-2022, dated -24/01/2022 passed by Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow)

M/s B B Enterprises **.....Appellant**
(Ramjas Building, 289/4, 4th Lane, Nishatganj,
Lucknow, Uttar Pradesh 226006)

VERSUS

Commissioner, Central Excise & Service Tax, Lucknow
....Respondent
(7A, Ashok Marg, Lucknow)

APPEARANCE:

Request for adjournment for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70749/2024

DATE OF HEARING : 20.11.2024
DATE OF DECISION : 20.11.2024

SANJIV SRIVASTAVA:

Learned counsel for the Appellant has requested for an adjournment, however, I find that the issue involved in the present appeal is in a very narrow compass and is accordingly taken up for hearing today itself.

2. The present appeal is directed against the Order-in-Appeal No.30-ST-APPL-LKO-2022, dated -24/01/2022 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow. By the impugned order Commissioner (Appeals) has held as under:-

> *"I have gone through the case records, grounds of appeal and submission made during the personal hearing. In the Appeal Memo (ST-4), the appellant at Point 6 stated that Rs.*

> *2,69,052 confirmed in the O-in-O has been appropriated, hence, pre-deposit of 7.5% is not required, however, perusal of the O-in-O reveals that no such order has been made. I also find that the appellant was required to make pre-deposit of 7.5% of the duty amount demanded from them vide the impugned order in terms of Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax matters in terms of Section 83 of the Finance Act, 1994, however, the appellant failed to deposit the same, hence, without going into the merit of the case, I reject the appeal."*

3. Heard learned Authorized Representative for the Respondent-Revenue and have perused the appeal records.

4. I find that in the impugned Order-in-Appeal learned Commissioner (Appeals) has not decided the appeal on merits and rejected the same for non-compliance of Section 35F of the Central Excise Act, 1994 as applicable to Service Tax matters in terms of Section 83 of the Finance Act, 1994.

5. I find that the compliance of pre-deposit has been made before filing the appeal in the Tribunal. Accordingly, I find it appropriate to remand the matter to the Commissioner (Appeals) to decide the appeal on merits without further visiting the aspect of limitation.

6.1 Appeal filed by the Appellant is allowed by way of remand to the Commissioner (Appeals). As the matter is quite old Commissioner (Appeal) should in remand proceedings decide the matter within three months from the date of receipt of this order.

6.2 Appellant should not seek any refund of pre-deposit made as per Section 35F for filing this appeal till the time Commissioner (Appeal) decides the matter in remand proceedings.

(Dictated and pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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