CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70041 of 2023

(Arising out of Order-in-Appeal No.118-ST/ALLD/2022 dated 16/06/2022 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad)

M/s Raj Construction, **.....Appellant**
(Auri More, Near Agrawal Auto Sales,
Sonebhadra-231225)

VERSUS

Commissioner of Central Excise &

Service Tax, Varanasi **....Respondent**

(CGST Commissionerate, Varanasi)

APPEARANCE:

Shri Uday Raj Tiwari, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70070/2025

DATE OF HEARING & DECISION : 04 February, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. 118-ST/ALLD/2022 dated 16/06/2022 passed by Commissioner (Appeals) Central Excise & CGST, Allahabad. By the impugned order Commissioner (Appeals) has dismissed the appeal of the appellant by observing as follows:-

> *"4.5 Since the instant appeal has been filed, after 06.08.2014, i.e., the date from which the amended Section 35F of the Central Excise Act, 1944 came into effect, without complying with the statutory requirement of mandatory pre-deposit, i.e., deposit of 7.5% of the Service Tax, I, therefore, find that this appeal is not maintainable*

in terms of Section 35F of the Central Excise Act, 1944 amended with effect from 06.08.2014 and in the light of the aforementioned judicial pronouncements.

5. In view of the above, I hold that present appeal filed by the appellant is not maintainable and as such, the same is rejected."

2.1 From the above impugned order it is evident that Commissioner (Appeals) has dismissed the appeal of the appellant only for want of mandatory pre-deposit.

3.1 I have heard the Shri Uday Raj Tiwari Learned Counsel appearing for the appellant and Smt Chitra Srivastava Authorized Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits 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.

3.3 Arguing for the revenue learned Authorized Representative fairly agrees that the appellant have made the mandatory pre-deposit.

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 fact that the impugned order has not passed on merits of the case, as at the time of filing the appeal before Commissioner (Appeal) the appellant failed to comply with the requirements of Section 35F, the appeal was dismissed for want of predeposit. 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 35F of the Central Excise Act, 1944.

4.3 Since the 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.

5.1 Appeal is allowed and matter is remanded back to Commissioner (Appeal) for denovo consideration.

5.2 Since the appeal has been quite old, Commissioner (Appeal) is directed to decide the appeal on merits of the case by following the principles of natural justice within three months from the date of receipt of this order.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp