CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70396 of 2021

(Arising out of Order-in-Appeal No.08-ST/APPL/LKO/2021 dated 05/01/2021 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Marg Software Solutions, **.....Appellant**

(SF-I & III, Asha Apartment-I,
Raja Ram Mohan Rai Marg,
7-Way Road, Lucknow-226001)

VERSUS

Commissioner of Central Excise &

CGST, Lucknow **....Respondent**

(7A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Dushyant Kumar, Consultant for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.70151/2025

DATE OF HEARING : 20 March, 2025
DATE OF DECISION : 20 March, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.08-ST/APPL/LKO/2021 dated 05/01/2021 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order following has been held:-

"However, the appellant has not submitted any evidence in respect of mandatory pre-deposit of 7.5% of the penalty imposed by the impugned order, required under section 35F of Central Excise Act, 1944,as made applicable to service tax matters vide section 83 of the Finance Act, 1994. The said section provides that the Commissioner (Appeals) cannot entertain appeals without mandatory

pre-deposit of 7.5%. Hence, the appeal cannot be entertained and the same is dismissed."

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 Dushyant Kumar, Consultant appearing for the appellant and Shri A.K. Choudhary, Authorized Representative appearing for the revenue.

3.2 Arguing for the appellant learned Consultant 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 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 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