CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. II

Service Tax (Early Hearing) Application No.70175 of 2025
(On behalf of Appellant) **In**
Service Tax Appeal No.70846 of 2024

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/218/2023-24 dated 14/03/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Ghaziabad)

M/s Haroon Construction, **....Appellant**

(Mohalla Bisatiyan, Kairana, Shamli-247774)

VERSUS

Commissioner of Central Excise &

Service Tax, Meerut-I **....Respondent**

(Mangal Pandey Nagar, Meerut)

APPEARANCE:

Shri Aalok Arora, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70484/2025

DATE OF HEARING : 14 July, 2025
DATE OF DECISION : 14 July, 2025

SANJIV SRIVASTAVA:

The present Miscellaneous Application is filed by the appellant for out of turn hearing of the appeal.

1.2 In view of the submissions as made by the learned Counsel for the Appellant, prayer for out of turn hearing of the appeal is allowed. Early Hearing Application filed by the Appellant is allowed.

1.3 Further, with the consent of both the sides, we proceed to hear the appeal today itself.

1.4 This appeal has been filed against the impugned Order-in-Appeal No.MRT/EXCUS/000/APPL-MRT/218/2023-24 dated

14/03/2024 passed by Commissioner (Appeals) Central Goods & Services Tax, Ghaziabad. By the impugned order following has been held:-

> *"ORDER*
>
> *In view of the above discussion & findings, withoft going into merits of the case, I hereby dismiss the present appeal No. 70-ST/AAPL-MRT/MRT/2023-24 dated 11.10.2023 filed by M/s Haroon Construction, Aal Khurd, Kairana, Shamli-247774 (U.P.) against the Order-in-Original No.. 134/AC/D-SML/2022-23 dated 28.03.2023 passed by the Assistant Commissioner, Central GST Division-Shamli, due to failure of the appellant 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."*

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 We have heard the Shri Aalok Arora, Advocate appearing for the appellant and Shri Santosh Kumar, 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 We 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 We 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)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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