IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/70993/2018-CU[DB]

(Arising out of Order-in-Appeal No. 30-GBN-EXTN-APP-17-18 dated 20/04/2018 passed by Commissioner of Central Tax, GST & Central Excise (Appeals), Meerut)

M/s Mahagauri Real Estate Solution **Appellant**

Vs.

Commissioner of Central Tax, GST, Ghaziabad **Respondent**

Appearance:

Shri Prashant Shukla, Advocate, for Appellant
Shri Shiv Pratap Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 13/02/2019

FINAL ORDER NO. **70274/2019**

Per: Archana Wadhwa

After hearing both the sides, we find that Commissioner (Appeals) has dismissed the appeal on the ground that the appellants have not deposited 7.5% of the penalty imposed upon them, in terms of the provisions of Section 35F of the Central Excise Act, 1944.

2. It is seen that the Original Adjudicating Authority confirmed the demand to the extent of Rs.6,94,630/-. The entire amount was adjusted against the deposits made by the appellant. In terms of the provisions of Section 35F of the

Central Excise Act, 1944, where duty has been confirmed along with imposition of penalty, as assessee is required to deposit 7.5% of the duty, as a condition of hearing of his appeal and there is no requirement of deposit of any percentage of penalty. The said requirement of deposit of penalty to the extent of 7.5% is called for only in those cases where there is no duty confirmation and only penalty is imposed.

3. In as much as, in the present case admittedly the appellant has deposited the entire Service Tax, we are of the view that the same has satisfied the provisions of Section 35F of the Central Excise Act, 1944 and Commissioner (Appeals) should have disposed of the appeal on merits. Accordingly, we set aside the impugned order and remand the matter to Commissioner (Appeals) for decision on merit without raising any objection in terms of the provisions of Section 35F of the Central Excise Act, 1944.

(Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari