CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70830 of 2024

(Arising out of Order-in-Appeal No.355-ST/APPL/LKO/2023 dated 19/05/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

M/s Pawan Kumar Mishra, **.....Appellant**
(548/144/4, Surya Nagar, Rajajipuram, Lucknow-226017)

VERSUS

Commissioner of Central Excise &

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

(3/194, Vishal Khand, Gomti Nagar, Lucknow)

APPEARANCE:

Shri Abhay Kumar Singh, Advocate for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

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

FINAL ORDER NO.70580/2025

DATE OF HEARING : 18 August, 2025
DATE OF DECISION : 18 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.355-ST/APPL/LKO/2023 dated 19/05/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow. By the impugned order Commissioner (Appeals) has held as follows:-

> *"I find that Commissioner (Appeals) being creature of statute is bound by the machinery provisions contained therein and cannot exceed the jurisdiction contained in the statute. Thus, without going into merit of the case, in the light of the statutory provision as above, the appeal is rejected on the ground of non payment of mandatory pre-deposit."*

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 Shri Abhay Kumar Singh, Advocate 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 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)

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