CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.70439 of 2025

(Arising out of Order in Appeal - NOI-EXCUS-002-APP-433-23-24, dated - 18/12/2023 passed by Commissioner (Appeals) CGST, Noida)

Alok Garg **.....Appellant**
(94 7 Shastri Nagar Garh Road
Meerut, Uttar Pradesh 250004)

VERSUS

Commissioner, Central Excise, Noida **....Respondent**
(GST Bhawan, IRCON Building, Plot No.-C-232, A/2-A/3, Sector-48,
Gautam Budh Nagar, Noida, Uttar Pradesh 201301)

APPEARANCE:

A letter on record for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.-70737/2025

DATE OF HEARING : 30.09.2025
DATE OF DECISION : 30.09.2025

P. K. CHOUDHARY:

When the matter was called none appeared on behalf of the Appellant, however, a written communication dated 25.09.2025 has been received which is reproduced below:-

Before the Appellate Tribunal Allahabad

Deputy /Asstt Registrar (Appeal Tribunal)
Custom , Excise & Service Tax Appellate Tribunal
Kendriya Sadan , 6th & 7th Floor ,
34, M.G Road , Civil Lines ,
Allahabad -211001

Sub:-Appeal No.**E/70439/2025[SM]**
Arising out of :- **NOI-EXCUS-002-APP-433-23-24**
Date Fixed: **30.09.2025**

Respected Sir,

It is submitted as under :-

(1).That the above appeal has been filed against the order of Ld. Commissioner (Appeals) Noida before your honour.

(2).That the appeal has been rejected by the Ld. Commissioner (Appeals) ground that the pre deposit u/s 35 A of the Central Excise Act was not deposited.

(3).That the appellant has deposited the total tax liability with the service tax return for both the period I & IInd half of the F/Y 2016-17. But no credit has been given nor verified from their office record and the appeal has been rejected by the Ld. Commissioner Appeals, Noida. The A.O. has also not consider the deposited challan of the appellant for Ist and IInd half with service tax Return and created a demand which was wrong without verifying their record.

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(4).That Copy of Service Tax Return along with Challan's have been filed with the A.O. as well as with commissioner Appeals, Noida. A copy of the same documents are also enclosed with the Tribunal Appeal for consideration of yourself.

Considered the above facts and circumstances your honour is requested to please remand the case to the authorities below for verifying the tax deposited and cancel the demand.

Submitted.

Date:-25.09.2025

(S.Mittal)
Advocate
SATYENDRA MITTAL, Advocate
Tax Law's Consultant.
4, Meera Enclave, Garh Road, Meerut
E. No.- UP01345/77
C.O.P. No.- 136922 of 2018

2. I find that the learned Commissioner (Appeals) has not decided the appeal on merits but dismissed the same for want of compliance of mandatory pre deposit under Section 35F of the Central Excise Act, 1944. It is the case of the Appellant that the demand pertains to Financial year 2016-17 and for the period from April 2016 to June 2016 and then from July 2016 to September 2016, the total tax liability was Rs.2,86,987/- which was deposited and the details were filed in the ST-3 Returns and the same have been appropriated by the Adjudicating Authority. It is the submission of the Appellant that for the period from October 2016 to December 2016 and from January 2017 to March 2017, the tax liability was Rs. 3,56,365/- and the same was deposited vide challans and was mentioned in the ST-3 Returns and accordingly, the entire demand stood deposited by the Appellant-Assessee and no further demand is outstanding against him.

3. The relevant tables showing the liability of Service Tax and the details of payments has been submitted by the Appellant

alongwith their appeal paper book and the same are reproduced for ready reference and appreciation of facts:-

Period	Taxable Value	Service Tax	S.B.Cess	K.K.Cess	Total
April to June 16 @ (14+.5%)	496607.00	69525.00	2483.00		
April to June 16 @ (14+.5+.5%)	332037.00	46485.00	1660.00	1660.00	1,21,813/-
July to sept 16 @ (14+.5+.5%)	1101160.00	154162.00	5506.00	5506.00	1,65,174/-
Total (A)	1929804.00	270172.00	9649.00	7166.00	2,86,987/-

Period	Taxable Value	Service Tax	S.B.Cess	K.K.Cess	Total
Oct 16 to Dec 16	1053648.00	147511.00	5268.00	5268.00	1,58,047/-
Jan 17 to March 17	1322140.00	185100.00	6611.00	6611.00	1,98,322/-
Total (B)	2375788.00	332611.00	11879.00	11879.00	3,56,369/-

April 16 to March 17	Taxable Value	Service Tax	S.B.Cess	K.K.Cess	TOTAL
GROSS TOTAL (A+B)	**4305592.00**	**602783.00**	**21528.00**	**19045.00**	**4948948/-**

DATE	Service Tax	S.B.Cess	K.K.Cess	Intt.	Total
Deposit on 01.07.2016	116011.00	4143.00	1660.00	0.00	121814.00

Deposit on 01.10.2016	154163.00	5506.00	5506.00	0.00	165175.00
Deposit on 04.01.17	147511.00	5268.00	5268.00	0.00	158047.00
Deposit on 01.04.17	181111.00	6468.00	6468.00	96.00	194143.00
Deposit on 03.04.17	3989.00	142.00	142.00	10.00	4283.00
TOTAL	602785.00	21527.00	19044.00	106.00	643462.00

4. I find that in the memo of appeal, the Appellant has disputed the tax amounting to Rs.4,54,910/-. The learned Commissioner (Appeals) has observed that the Appellant was required to deposit an amount of Rs.34,119/-(7.5% of the confirmed demand of Rs.4,54,910/-) as per Section 35F of the Central Excise Act as made applicable to the Service Tax matters vide Section 83 of the Finance Act, 1994. I find that the Appellant-Assessee has deposited the entire amount of Rs.3,56,369/- as against Rs.4,54,910/- which is much more than the amount as required to be deposited in compliance of the Section 35F of the Act. However, the learned Commissioner (Appeals) has not decided the appeal on merits and therefore, I find it appropriate to remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further visiting the aspect of pre-deposit. All issues are kept open. The Appellant-Assessee is directed to cooperate in the remand proceedings and not to seek unnecessary adjournments. The appeal filed by the Appellant-Assessee is allowed by way of remand to the learned Commissioner (Appeals).

(Dictated and pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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