CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. II

Service Tax Appeal No.70072 of 2026

(Arising out of Order-in-Appeal No.687-ST/ALLD/2023 dated 13/01/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad)

M/s Ashok Kumar Pandey, ...Appellant

(60 C/o RM Shukla @, Niryat Bhavan,
Station Road, Bhadohi-221401)

VERSUS

Commissioner of Central Excise &

CGST, Allahabad ....Respondent

(Commissionerate, Allahabad)

APPEARANCE:

Absent on call, for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70076/2026

DATE OF HEARING : 02 March, 2026
DATE OF DECISION : 02 March, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.687-ST/ALLD/2023 dated 13/01/2023 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Allahabad.

2.0 Appellant is absent on call. I have heard Shri Santosh Kumar learned Authorized Representative appearing for the revenue.

3.1 I observe that in this appeal at the diary stage appellant was directed to file an application for condonation of delay. This application for condonation of delay was listed on 03.06.2024 and on the request of counsel for appellant was adjourned to

30.07.2024. On 30.07.2024, counsel for the appellant was direct to file an affidavit explaining the reasons for delay and the ammter was adjourned to 30.08.2024. No affidavit was filed and counsel requested for adjournment. Taking note of the same matter was adjourned to 01.10.2024. As no affidavit was filed even on the next date of hearing (01.10.2024) in presence of the counsel for appellant the Application for Condonation of Delay was dismissed as per the Miscellaneous Order No 70268/2024 dated 01.10.2024.

3.2 Appellant filed a restoration application No 70350/2025 along with the affidavit as directed by the bench earlier. Taking note of the submissions made in the affidavit the restoration application was allowed vide miscellaneous Order NO 70294/2025 dated 18.12.2025.

3.3 After restoration of the application for condonation of delay and order allowing the same, registry numbered the appeal and have listed the same for consideration of the bench.

4.1 I have considered the impugned order along with the submissions made in appeal.

4.2 I find impugned order records as follows:-

> *"5. In view of the above, I modify the impugned Order as under:*
>
> *(i) Confirmation of demand of Service Tax (including Cesses) is reduced to Rs. 51,512/-along with interest under Section 75 of the Act.*
>
> *(ii) Penalty imposed upon the appellant, under Section 78 of the Act, is reduced to Rs. 51,512/-.*
>
> *(iii) The penalties imposed under Section 77(1)(a), 77(1)(c), 77(2) of the Act shall remain unchanged."*

4.3 From the above impugned order it is evident that the total amount of demand for tax involved in the present appeal is "Rs.51,512/- with penalties of Rs.51,512/-, Rs.10,000/- each under Section 77(1)(a), 77(1)(c), 77(2) of the Act.

4.4 Second proviso to Section 35 B (1) reads as follows:-

35B. Appeals to the Appellate Tribunal.—(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

…………..

Provided further that] the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where—

(i) *in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or*

(ii) *the amount of fine or penalty determined by such order,*

does not exceed two lakh rupees.

3.5 Section 86 (7) of the Finance Act, 1994 reads as follows:-

"(7) Subject to the provisions of this Chapter, in hearing the appeals and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing the appeals and making orders under the [Central Excise Act, 1944] (1 of 1944)."

3.6 Total amount of demand for tax involved in the present appeal is "Rs.51,512/- with penalties of Rs.51,512/-, Rs.10,000/- each under Section 77(1)(a), 77(1)(c), 77(2) of the Act. As the total amount involved in the present appeal is less than Rs.2 lakhs, I do not find that appeal need be admitted by Tribunal or to be maintainable before this Tribunal in terms of second proviso to Section 35B (1) of Central Excise ACT, 1944 read with Section 86 (7) of the Finance Act, 1994 . Moreover, there is no issue of rate of taxation or valuation of services involved in the present case. In case of Roots Multiclean Ltd

[2016 (336) E.L.T. 25 (Mad)] Hon'ble Madras High Court has held as follows:

> *"4.3 A perusal of Section 35B of the Act would go to show that sub-section (i) specifies orders against which appeal lies to the Appellate Tribunal and the proviso to sub-section (i) stipulates three clauses of cases, which have to be decided by the Central Government, in Revision, under Section 35EE of the Act. Under the second proviso to Section 35B of the Act, the Appellate Tribunal is vested with discretion to refuse to admit an appeal, in respect of the order referred to in clause (b) or clause (c) or clause (d), where,*
>
> *(i) in any disputed case, other than a case, where the determination of any question having a relation to the rate of duty of the excise or to the value of goods for the purpose of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved or*
>
> *(ii) the amount of fine or penalty determined by such order does not exceed two lakhs rupees.*
>
> *4.4 The CESTAT may, at its discretion, refuse to admit an appeal, if the (a) duty involved or (b) difference of duty involved or (c) penalty involved is less than Rupees two lakhs. However, such appeal cannot be refused if the issue pertains to valuation or rate of duty. Originally the limit was rupees fifty thousand which has been enhanced to Rupees two lakhs, by Finance Act (No. 2), 2014, with effect from 6-8-2014.*
>
> *4.5 Further, in the case of J.K. Sharma v. Government of India, 1993 (66) E.L.T. 66 (Mad.), it has been held that the minimum monetary limit prescribed under Section 131B of the Customs Act, 1962, as per the proviso applies to each clause separately and not cummulatively and that under each clause, referring duty, differential duty, penalty or fine,*

the limit will be separately applicable (analogus to Second Proviso to Section 35B(i) of the Customs Act, 1962).

4.6 The Tribunal has a power to refuse to admit an appeal, at its discretion, if the amount involved (duty or fine or penalty) is not more than Rupees two lakhs. But, this would not be applicable, if the dispute is pertaining to cases other than duty or rate of duty or valuation of goods. Whether the disputed issue before the Tribunal was pertaining to cases other than duty, rate of duty or valuation of goods, and if that be so, whether the Tribunal is justified in dismissing the appeal under Section 35B of the Act is the issue to be decided."

4.0 Appeal is dismissed as not admitted.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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