FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 24/04/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70395/2017-SM[BR] dated 19/04/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 01(5) of the Finance Act, 1994 relating to Service Tax Act, 1994.

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1	ST/MISC/70139/2017	ST/70260/2017	**Wheler Club Ltd** The Mall, Meerut Cantt MEERUT UTTA R PRADESH 250001
			Name and Address of Respondent
2			C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Copy To
3Advocate(s) / Consultant(s):

Shambhu chopra
HIGH COURT CHAMBER NO
147, New Building ,Allahabad

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy ~~16~~ Guard File

Asstt. Registrar

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

Appeal No. ST/70260/2017-CU[SM] With Misc. Application No. ST/MISC/70139/2017

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPEAL-I/262/2016-17 dated 15/12/2016 & Letter C. No. 26–ST/APPL–I MRT/2017/1271 dated 02/03/2017passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Meerut)

M/s Wheeler Club Limited **Appellant**

Vs.

Commissioner of Customs, Central Excise & Service Tax, Meerut **Respondent**

Appearance:
Shri Shambhu Chopra, Advocate, for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:
Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 19/04/2017
FINAL ORDER NO. 70395/2017

Per: Anil Choudhary

The appellant has filed the present appeal against Letter C. No. 26–ST/APPL–I MRT/2017/1271 dated 02/03/2017 & Order-in-Appeal No. MRT/EXCUS/000/APPEAL-I/262/2016-17 dated 15/12/2016.

2. Vide Order-in-Appeal, the appeal was dismissed for insufficiency of the amount of pre-deposit under Section 35F of the Central Excise Act, 1944. Although as per the appellant, they had deposited the amount of pre-deposit, being 7.5% totaling Rs.3,33,112/-, but the ld. Commissioner, as regards the part of the tax deposited under VCES did not recognize the same and accordingly dismissed the appeal for

want of pre-deposit. Thereafter, the appellant deposited the said amount of shortfall as pointed out by the ld. Commissioner being Rs.2,83,828/-, vide e-receipt/Challan No. 03245 dated 03/02/2017 and applied for restoration of their appeal on 06/02/2017 being Appeal No. 107-ST/APPL-I MRT/MRT/2016. The said application for restoration of their appeal was dismissed/rejected vide the aforementioned letter dated 02/03/2017. Referring to Section 35F of the Central Excise Act, 1944 and further observing that the Commissioner (Appeals) is not vested within the authority under the statutory provision to restore an appeal, which has been decided as per Section 35A of the Central Excise Act, 1944. Further, observing that the appellant may approach the higher appellate forum for redressal of their grievance.

3. The ld. Counsel appearing on behalf of the appellant states that the cause of justice have been defeated by the letter/order of ld. Commissioner (Appeals) refusing to restore the appeal, thereby refusing to exercise inherent jurisdiction vested in him. The ld. Counsel further points out that no defect memo was issued to the appellant for removing the defects i.e. deficiency in the amount of pre-deposit, as pointed out by the ld. Commissioner (Appeals), in the final order (OIA) dismissing the appeal. Accordingly, the impugned order is bad being in violation of the principles of natural Justice.

4. The ld. A. R. for the Revenue have relied on the impugned order/letter.

5. The defects pointed out, as per office note dated 18/04/2017 is ignored, for the time being, in the interest of Justice, in the peculiar facts and circumstances of this case. Further in view of appeal being on the point of refusal by Commissioner (Appeals) to exercise his jurisdiction, the fee already paid is deemed sufficient.

6. Having considered the facts on record and the contentions of the parties, I hold that there has been failure on the part of ld. Commissioner (Appeals) to exercise the jurisdiction vested in him, as an appellate court. Section 151 Code of Civil Procedure, 1908 provides – nothing in this code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of Justice to prevent abuse of the process of the Court. I further notice that Section 5 of the Code of Civil Procedure, 1908 provides – where any Revenue court are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the State Government may, by notification in the official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those courts or shall only apply to them with such modifications as the State Government may prescribe. I further notice that the provisions of the Code of Civil Procedure, 1908 have not been excluded from application, so far assessment and appellate proceedings

under the Central Excise & Service Tax Act and/or Finance Act, 1994 are concerned, save and except, to the extent, specifically varied, in the particular Act/Rules.

7. Accordingly, I observe that the ld. Commissioner have inherent jurisdiction, as provided in Section 151 Code of Civil Procedure, 1908, which he is failed to exercise. Accordingly, this appeal is allowed by way of remand with the directions to ld. Commissioner (Appeals) to give opportunity of hearing to the appellant on merits and after hearing pass a reasoned order on merits. So far the issue of pre-deposit is concerned, this Tribunal records satisfaction that sufficient amount is deposited as required under Section 35F of the Central Excise Act, 1944.

8. I direct the Registry to register this appeal and accordingly issue the final order. Miscellaneous Application also stands disposed of.

Order be issued dasti.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

प्रमाणित प्रति / Certified True Copy
24/04/2017
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari