CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70202 of 2026

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-56-2023-24 dated 08/05/2023 passed by Commissioner (Appeals) Central Excise & CGST, Noida)

M/s Jai Kishan Sharma, **.....Appellant**
(D-9, Second Floor, Eldeco Residency
Green, Sector P-1, Greater Noida-201310)

VERSUS

Commissioner of Central Excise &

CGST, Noida **....Respondent**

(3rd Floor, Wegmans Business Park, KP-III, Noida)

APPEARANCE:

Shri Madhukar Anand, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO.70215/2026

DATE OF HEARING : 25 June, 2026
DATE OF DECISION : 25 June, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.NOI-EXCUS-002-APP-56-2023-24 dated 08/05/2023 passed by Commissioner (Appeals) Central Excise & CGST, Noida. By the impugned order following has been held:-

"ORDER

Accordingly, without going into merits of the case, I hereby reject the present appeal No.425/ST/Noida/APPL/GBN/2022-23 dated 21.03.2023 filed M/s Jai Kishan Sharma, D-9, Second Floor, Eldeco Residency Green, Sector P-1, Greater Noida, Gautam Budh

Nagar, (U.P.) against the Order-in-Original No. 61/AC/S.Tax/GBN/Div-III/2022-23 dated 08.12.2022 passed by the Assistant Commissioner, Central Goods& Service Tax, Division-III, G.B.Nagar due to the failure of the appellant to make pre-deposit in terms of Section 35F of the Central Excise Act, 1994,as made applicable to Service Tax read with Section 83 of the Finance Act, 1994."

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 Madhukar Anand, Advocate appearing for the appellant and Shri Santosh Kumar, Authorized Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that Commissioner (Appeals) has not decided the matter on merit for want of mandatory pre-deposit, now 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.

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 matter is 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)

akp