CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70463 of 2022

(Arising out of Order-in-Appeal No.142/ST/ALLD/2022 dated 05.07.2022 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Ruby Builders, **.....Appellant**
(272, HIG Ratanlal Nagar, Kanpur)

VERSUS

Commissioner of Central Excise & CGST, Allahabad **....Respondent**
(38, M.G. Marg Civil Lines, Allahabad-211001)

APPEARANCE:

Shri Suvigya Agarwal, Advocate & Shri Mohd. Suhail, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70225/2026

DATE OF HEARING : 06.07.2026
DATE OF DECISION : 06.07.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.142/ST/ALLD/2022 dated 05.07.2022 passed by the learned Commissioner (Appeals) Central Excise & CGST, Allahabad.

2. We observe that the learned Commissioner (Appeals) has not decided the appeal before him on merits but rejected the same for want of necessary compliance of pre-deposit.

3. This is the second round of litigation before the Tribunal and in the earlier round, the Tribunal vide Final Order No.70276/2019 dated 13.02.2019 had remanded the matter to the Original Adjudicating Authority for a fresh decision after examination of every contract in the light of declaration of law by the Tribunal in the decisions which are referred in paragraph

02 of the Tribunal's order. Para 02 of the Tribunal's order is reproduced for ready reference:-

> *"2. The appellant before the authorities below took a categorical stand that the said construction of the houses was for the poor persons in terms of the Government Scheme i.e. Jawaharlal Nehru National Urban Renewal Mission, which was for the construction of houses for slum and poor people. The same has been held to be non-taxable by the Tribunal in their latest decision in the case of M/s Jethanand Arjundas & Sons vs. CCE & S.T., Indore Final Order No.53288/2018 dated 14.11.2018. It stands held in the said decision that the houses constructed under the said scheme are not classifiable under the category of construction of residential complex, inasmuch as, there was no commercial activity involved. Reliance also stands placed upon the other two decisions of the Tribunal in the case of NCR Builders Pvt. Ltd. vs. Commissioner of Central Excise & S.T. reported as 2017 (3) GSTL 198 (Tri.-All.) and also in the case of Commissioner of Central Excise & S.T., Allahabad vs. Ganesh Yadav reported as 2017 (6) GSTL 428 (Tri.-All.). Learned Advocate fairly agrees that the said decisions were not placed before the authorities below and as such there was no occasion for them to deal with the applicability of the same."*

4. In the *de novo* proceedings, the learned Adjudicating Authority, instead of obeying the Tribunal's order and in gross violation of judicial discipline, had vide the Order-in-Original dated 29.12.2021 observed that:-

> *"40. Since no new facts could be placed on record by the party in pursuance of the Hon'ble CESTAT Order dated 13.02.2019, I do not find any reason to make any alteration to the Order-in-Original No.11/ST/ADC/2014 dated 25.02.2014. Since the instant proceedings have been drawn in compliance to the directions issued by the Hon'ble CESTAT relation to an Order already passed before*

> *introduction of GST, these proceedings are covered under the provisions of Section 174 of the CGST Act, 2017."*

Accordingly he repeated the earlier Order-in-Original.

5. Being aggrieved, the Appellant assessee was before the first Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-in-Appeal, has now rejected the appeal before him for want of pre-deposit.

6. Heard both the sides and perused the appeal records.

7. We find that in the earlier round, the matter travelled to the first Appellate Authority and upto the Tribunal and now since this is the second round of litigation, there is no occasion to raise the issue of pre-deposit. That the Appellant had filed its first appeal after making mandatory pre-deposit of 7.5% required for filing of appeal. Respondent has rejected Appellant's appeal on the ground that Appellant has produced GST Challan dated 03.08.2018 showing payment of Rs.1,44,200/- under the minor head 'others' of CGST which could not be treated as pre-deposit as mandated under Section 35F of Central Excise Act, 1944.

8. It is also on record that the appeal was originally filed on 28.04.2014 (i.e. prior to 06.08.2014). Therefore, requirement of mandatory pre-deposit of 7.5% of disputed amount is not attracted in this case. The Appellant has sought stay and waiver from pre-deposit in terms of Section 35F of Central Excise Act, 1944 listing out the following grounds for waiver:-

> *"(i) The Appellant has a strong prima facie case and balance of convenience is also in favour of the Appellant as the entire disputed demand is illegal, arbitrary, barred by limitation, without jurisdiction and unauthorized by law as no taxable service is involved / rendered and no liability to Service Tax attracted by the Appellant. The decision of Courts and Tribunals and the binding of CBEC circulars clearly support the Appellant.*
>
> *(ii) The issue under appeal is already decided by various Courts in favour of assessee."*

9. In view of the above observation, the impugned order is set aside and we 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. The Appellant is also directed to cooperate in hearing before the learned Commissioner (Appeals) and not to seek unnecessary adjournments. The appeal filed by the Appellant is allowed by way of remand to the learned Commissioner (Appeals). A copy of this order may be sent to the Chief Commissioner for taking appropriate action.

(Dictated and pronounced in open court)

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

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

LKS