CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70385 of 2024

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-394-2022-23 dated 06.03.2023 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Shiv Associates, **.....Appellant**
(10, Nainital Road,
Shivpuri Colony, Bareilly-243122)

VERSUS

Commissioner of Central Excise &
CGST, Noida **....Respondent**
(Wegmans Business Park, Plot No.III,
Knowledge Park-III, Greater Noida,
Gautam Buddha Nagar)

APPEARANCE:

Shri Dushyant Kumar, Advocate & Shri Vipnesh Kumar, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70303/2026

DATE OF HEARING : 14.08.2026
DATE OF DECISION : 14.08.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.NOI-EXCUS-002-APP-394-2022-23 dated 06.03.2023 passed by the learned Commissioner (Appeals) CGST, Noida whereby the learned Commissioner (Appeals) has not decided the appeal on merits but rejected the same for want of compliance of mandatory pre-deposit in terms of Section 35F of the Central Excise Act, 1944 as made applicable to the Service Tax read with Section 83 of the Finance Act, 1994.

2. We find that the learned Commissioner (Appeals) has observed as under:-

"10.1 In this context, I find that in the instant appeal was filed on 01.08.2022 against the impugned OIO dated 27.04.2022 but received by the appellant only on 06.05.2022 and as passed by the Assistant Commissioner GST & Central Excise, Division-Badaun. On perusal of the appeal memo dated 08.08.2022, I observe the appellant has filed the instant appeal without fulfilling the condition of mandatory pre-deposit of 7.5% of duty demanded and penalty in dispute, as mandated vide Section 35F of the Central Excise Act, 1944 as made applicable to the Service tax matters vide Section 83 of the Finance Act, 1994.

10.2 Subsequently, the appellant on 16.08.2022 fulfilled the condition of mandatory pre-deposit of 7.5% of duty demanded and penalty in dispute, as mandated vide Section 35F of the Central Excise Act, 1944 by way of depositing Rs.1,31,028/- vide Challan bearing CIN No.20220816123130950612 dated 16.08.2022.

11. I observe that the impugned OIO was communicated on 06.05.2022, therefore, as per Section 85 of the Finance Act, 1994, the appellant was under obligation to file the instant appeal along with proof of pre-deposit by 05.08.2022 as the stipulated period of three months to file the appeal against impugned Order in Original, including the period of one month condonable under proviso to sub-section 3A to Section 85 of the Act by the Commissioner (Appeals), terminated on 05.08.2022. Juxtaposition to this the appellant has fulfilled all mandatory condition of Section 35F the Act, 1944 only on 16.08.2022 as made applicable to the Service tax matters vide Section 83 of the Finance Act, 1994, by making the mandatory pre-deposit vide No.20220816123130950612 dated 16.08.2022.

12. In view of above, I hold that instant appeal is not entertainable as the appellant has failed to comply with the provisions of Section 35-F of Central Excise Act, 1944 as made applicable to the Service tax matters vide Section 83 of the Finance Act, 1994 within stipulated period of three months, including the period of one month condonable by the Commissioner (Appeals) and as such is fit for summarily rejection."

3. We find that vide the Order-in-Original dated 27.04.2022 a demand of Rs.17,47,035/- was confirmed and accordingly, the Appellant was required to deposit 7.5% of the confirmed demand which comes to Rs.1,31,028/-. We find that the Appellant assessee deposited the amount of Rs.1,31,028/- vide Challan bearing CIN No.20220816123130950612 dated 16.08.2022.

4. It is our considered view that the condition of mandatory pre-deposit has been made applicable to safeguard the interest of the Revenue. The learned Commissioner (Appeals) or the Tribunal shall not entertain i.e. shall not list the appeal for hearing unless the condition of mandatory pre-deposit stipulated under Section 35F of the Central Excise Act, 1944 as made applicable to Service Tax read with Section 83 of the Finance Act, 1994 has been complied with. The learned Commissioner (Appeals) has confused himself and has interpreted the intention of the Statute in a completely different manner other than what was intended for.

5. Since, the Appellant has complied with the requirement of mandatory pre-deposit, we find it appropriate to set aside the impugned order and remand the matter to the learned Commissioner (Appeals) to decide the appeal on merits without further visiting the aspect of pre-deposit. Needless to mention that all issues are kept open and the Appellant should cooperate in the hearing of the appeal before the learned Commissioner (Appeals) and should not seek unnecessary adjournment.

6. The appeal filed by the Appellant is allowed by way of remand to the learned Commissioner (Appeals).

(Operative part of the Order pronounced in open court)

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

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

LKS