CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

E/COD/20374/2018 in E/20567/2018-SM

Appeal(s) Involved:

E/20669/2018-SM, E/20567/2018-SM

[Arising out of Order-in-Appeal No. BW-EXCUS-000-APP-106-17-18 dated 12/01/2018 passed by Commissioner of Central Tax, MYSORE (APPEALS)]

M/s. R B Fabs
Sy No 159/3 Hulugondanahalli Harohalli Hobli
Kanakapura Taluk
RAMANAGAR - 562112
KARNATAKA

Appellant(s)

Versus

COMMISSIONER OF CENTRAL TAX
Commissioner Of Central Tax,
Mysuru Commissionerate
No. S-1 & S2, Vinaya Marga
Siddhartha Nagar
Mysuru – 570 011
Karnataka

Respondent(s)

Appearance:

None
MSSV & CO
NO.63/2, II FLOOR, RAILWAY PARALLEL ROAD, KUMARA PARK WEST, BANGALORE-560020.

For the Appellant

Mr. Pakshirajan, AR — For the Respondent

Date of Hearing: 18/06/2018
Date of Decision: 18/06/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20820-20821 / 2018

Per : S.S GARG

Appellant has moved a miscellaneous application for condoning the delay of 10 days in filing the supplementary appeal. It is mentioned in the application that the main appeal against the impugned order was filed on time. In view of the main appeal being filed on time, I condone the delay of 10 days in filing the supplementary appeal.

2. These two appeals have been filed by the appellant against the common impugned order dated 12.1.2018 passed by the Commissioner (A) whereby the Commissioner (A) has dismissed the appeals for non-compliance of conditions of mandatory pre-deposit under Section 35F of the Central Excise Act, 1944. Since the issue involved in both the appeals is identical and there is a common impugned order, therefore both the appeals are being disposed of by this common order.

3. Briefly the facts of the present case are that the appellants are engaged in manufacture of prefabricated buildings falling under Chapter Heading 7308 / 1000 of the First Schedule to Central Excise Tariff Act, 1985 as well as in erection, commissioning and installation of such prefabricated buildings for which they are procuring goods such as wire rope, wire rope

fittings, GI decking sheets, bolt-nut washers, HT bolts etc., and using the same for providing installation and erection services. The records of the appellant covering the period from December 2013 to June 2015 were audited by the department and it was observed that the appellant were also engaged in trading of goods which is an exempted service. They were availing CENVAT credit on common input services like erection charges, auditor fees, maintenance and repair services, etc., used in manufacturing as well as trading activity but had not maintained separate accounts in respect of inputs/input services used in dutiable and exempted activities as required in temrs of Rule 6(2) of CENVAT Credit Rules, 2004. A show-cause notice proposing to recover an amount of Rs.7,89,036/- being 6% of the value of exempted service availed for the period from 2011-12 to 2014-15 along with interest and imposition of penalty was issued to the appellant. A statement of demand for an amount of Rs.3,38,280/- being 6% of the value of exempted service availed for the further period from April 2015 to March 2016 along with interest and penalty was also raised. After following the due process, the lower authority rejected the contention of the appellant and confirmed the demands of Rs.7,89,036/- and Rs.3,38,280/- along with interest and penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner (A) who rejected the appeal for non-compliance under Section 35F of the Central Excise Act, 1944.

4. Today, the case was listed for hearing but none appeared on behalf of the appellant. Since the issue in both the appeals lies in a narrow compass, therefore, I proceed to decide the same in the absence of the appellant.

5. Heard learned departmental representative (AR) and perused the grounds of appeal of the appellant.

6. The appellant has stated in the grounds of appeal that he has complied with the statutory requirements of Section 35F of the Central Excise Act, 1944 and the findings of the Commissioner (A) is factually incorrect that the appellant has not made a pre-deposit of Rs.84,549/- being 7.5% of the amount of Rs.11,27,316/-. The appellant has also stated in the grounds of appeal that the Commissioner (A) has only considered the mandatory pre-deposit in one case whereas the appellant has attached the corresponding challans for payment of 7.5% of the duty demand as pre-deposit.

7. On the other hand, the learned AR fairly conceded that the appellant has made the pre-deposit of 7.5% before filing the appeal before the Commissioner (A). He has also admitted that the appellant has paid 2.5% of the demand before filing the present appeals before this Tribunal.

8. After considering the material on record and after hearing learned AR, I am of the considered view that the dismissal of the appeal by the Commissioner (A) for non-compliance of Section 35F is not sustainable in law in view of the fact that the appellant has made a pre-deposit of Rs.84,549/- being 7.5% of the amount confirmed in the Order-in-Original. Consequently, I set aside the impugned order and remand the case back to the Commissioner (A) to decide the appeals on merits.

(Operative portion of the Order was pronounced
in Open Court on **18/06/2018**)

S.S GARG
JUDICIAL MEMBER

rv...