CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I (SM)

Service Tax Appeal No. 60388 of 2022

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2817-41-2019-20 dated 18.09.2019 passed by the Commissioner (Appeals), CGST, Ludhiana]

JC Cable **……Appellant**
7, New Abadi Behind Mahavir Public School,
Saingarh, Pathankot, Punjab

VERSUS

Commissioner of Central Excise, Jalandhar **……Respondent**
GST Bhawan, F-Block,
Rishi Nagar, Ludhiana, Punjab

WITH

Service Tax Appeal No. 60109 of 2023

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2817-41-2019-20 dated 18.09.2019 passed by the Commissioner (Appeals), CGST, Ludhiana]

JC Cable **……Appellant**
7, New Abadi Behind Mahavir Public School,
Saingarh, Pathankot, Punjab

VERSUS

Commissioner of Central Excise, Jalandhar **……Respondent**
GST Bhawan, F-Block,
Rishi Nagar, Ludhiana, Punjab

APPEARANCE:

Present for the Appellant: None

Present for the Respondent: Sh. Raman Mittal, Authorized Representative

CORAM:
HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60041-60042/2024

DATE OF HEARING: 02.02.2024
DATE OF DECISION: 02.02.2024

PER : S. S. GARG

These two appeals filed by the appellants are arising from the common impugned order dated 18.09.2019 passed by the Commissioner (Appeals), whereby the ld. Commissioner (Appeals) has dismissed the appeals filed by the appellants as non-maintainable in the absence of fulfilment of condition of pre-deposit as per Section 35F of the Central Excise Act, 1944 as made applicable to service tax matters by virtue of Section 83 of the Finance Act, 1994. Since the issue in both the appeals is identical, therefore, both the appeals are taken up together for discussion and disposal.

2. Briefly stated facts of the case are that the appellants are engaged in providing taxable services under the category of 'Cable Services' through their cable network to various subscribers without paying service tax. Show Cause Notices were issued to them for demanding service tax involved and also proposing penal action against them. After following the due process, the Adjudicating Authority vide Order-in-Original confirmed the demand against the appellants under Section 73 of the Act alongwith interest and also imposed penalties under Sections 76, 77 and 78 of the Act. Aggrieved by the order of the Adjudicating Authority, the appellants filed appeals before the Commissioner (Appeals) and the ld. Commissioner (Appeals) dismissed their appeals for non-compliance of mandatory pre-deposit under Section 35F of the Central Excise Act, 1944 as made applicable to

service tax matters by virtue of Section 83 of the Finance Act, 1994. Hence, the present appeals.

3. Heard the ld. DR and perused the records.

4. The appellants have sent e-mail requesting that the matter be disposed of on merit in accordance with law.

5. I have perused the impugned order as well as the grounds of appeals filed by the appellants and have heard the ld. DR. The only issue involved in the present case is whether the appellants are liable to pay service tax under the category of 'Cable Services' or not?

6. Further, I find that now before filing the appeals before this Tribunal, the appellants have complied with the mandatory condition of pre-deposit as prescribed under Section 35F of the Central Excise Act, 1944 as made applicable to service tax matters by virtue of Section 83 of the Finance Act, 1994 and have deposited 10% of the disputed duty demanded by the respondent.

7. Further, I find that the ld. Commissioner (Appeals) has not decided the issue on merits and has dismissed the appeals only on non-fulfilment of the condition of mandatory pre-deposit under Section 35F of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

8. Further, since the appellants have complied with the requirement of Section 35F of the Central Excise Act, 1944 as made applicable to service tax matters by virtue of Section 83 of

the Finance Act, 1994, in my considered opinion, these appeals need to be remanded back to the ld. Commissioner (Appeals) to decide the same on merits. Hence, I set aside the impugned order and remand the cases to the ld. Commissioner (Appeals) with the direction to decide the same after giving reasonable opportunity to the appellants and thereafter, pass the reasoned order within the period of three months from date of receipt of the certified copy of this order.

9. In the result, the appeals are allowed by way of remand.

(Operative part of the pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi