CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60524 of 2021

(Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2858-2877-19-20 dated 11.10.2019 passed by the Commissioner (Appeals), Ludhiana)

M/s City Cable **......Appellant**
(F W J 0028 Joura Khoo Adampur Jalandhar Punjab 144004)

VERSUS

C.C.E & S.T. Jalandhar **......Respondent**
(GST Bhawan F Block Rishi Nagar Ludhiana)

<u>APPEARANCE:</u>

Ms. Kanika Malhotra, Advocate for the Appellant

Mr. Bhasha Ram and Mr. Munish Kumar, Authorised Representative for the Respondent

<u>CORAM:</u> HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 60037 of 2022

DATE OF HEARING: 01.02.2022
DATE OF DECISION: 01.02.2022

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein the Ld. Commissioner dismissed their appeal for non compliance of the provision of section 35F of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994.

2. The appellant contends that now they have complied with the provisions of Section 35F of Central Excise Act, 1944 read with

Section 83 of the Finance Act, 1994 at the time of filing appeal before this Tribunal, therefore, the matter be remanded back to the Ld. Commissioner (Appeal) for decision on merits.

3. On the other hand, Ld. AR took the objections that the impugned order was dispatched to the appellant on 14.10.2019 which was never received back, therefore, the appeal filed by the appellant on 03.06.2021 is barred by limitation. He further submitted that the matter involves issue of classification which cannot be heard by Single Member Bench. Finally, he admitted that although the appellant has complied with the condition of pre-deposit in terms of Section 35F of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 and the issue is not decided by the Ld. Commissioner on merits, therefore, the matter be remanded back to the Ld. Commissioner (Appeal) to decide the issue on merits.

4. Heard the parties.

5. There is no evidence has been placed by the Ld. AR with regard to the service of the impugned order on the appellant, in that circumstances, it cannot be held that the appeal filed by appellant before this Tribunal is barred by the limitation in the absence of any evidence on record. Further, before me only issue is that the Ld. Commissioner dismissed their appeal for want of mandatory pre-deposit in terms of Section 35F of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, therefore, there is no issue of classification of before me, therefore, this Bench is competent to entertain the appeal. Finally, as agreed by both the sides that the

appellant has made mandatory pre-deposit in terms of Section 35F of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994.

6. The matter be remanded back to the Ld. Commissioner (Appeal) to decide the matter on merits, therefore, as agreed by both the sides that the mandatory condition of pre-deposit has been complied with by the appellant, I remand matter back to the Ld. Commissioner (Appeal) to decide the matter on merits within 30 days of receipt of this order.

7. The appeal is disposed of by way of remand.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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