

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI

COURT NO. 1

DEFECT MISCELLANEOUS APPLICATION NO. 51094/ 2019
IN Defect Diary No. 52688/2019

MAHESH VERMA

APPELLANT

Vs.

PRINCIPAL COMMISSIONER OF CGST,
CENTRAL EXCISE, BHOPAL

RESPONDENT

Present for the Appellant : Shri Jitin Singhal, Advocate

Present for the Respondent : Shri O P Bisht, AR

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. C L MAHAR, MEMBER (TECHNICAL)

Date of Hearing/Decision : 04/02/2020

DEFECT MISCELLANEOUS ORDER NO. 15 /2020

PER JUSTICE DILIP GUPTA:

The appeal was filed in the office on 16 October,2019. It was not accompanied by deposit of statutory amount contemplated under section 35F of the Central Excise Act, 1944¹. Accordingly, a communication was sent to the appellant to remove the defects.

2. It has been pointed out by the learned Counsel appearing for the appellant that an application for waiver of pre-deposit has been filed.

3. Learned Authorized Representative appearing for the Department has submitted that with effect from 06 August,

¹ The Act

2014, the statutory amount has to be deposited and there is no power with the Tribunal to waive the condition of pre-deposit.

4. Section 35 F as amended on 06 August, 2014 provides for deposit of a certain percentage of duty demanded or penalty imposed before filing the appeal. It specifically mentions the Tribunal shall not entertain any appeal if the amount is not deposited.

5. A Division Bench of the Delhi High Court in Diamond Entertainment Techno. P. Ltd. vs. Commissioner of CGST, Dehradun² observed as under:-

"18. A reading of Section 35F of the Central Excise Act reveals, by the usage of the peremptory words "shall not" therein, that there is an absolute bar on the CESTAT entertaining any appeal, under Section 35 of the said Act, unless the appellant has deposited 7.5 % of the duty confirmed against it by the authority below.

19. The two provisos in Section 35F relax the rigour of this command only in two respects, the first being that the amount to be deposited would not exceed ` 10 crores, and the second being that the requirement of pre-deposit would not apply to stay applications or appeals pending before any authority before the commencement of the Finance (No. 2) Act, 2014, i.e. before 6th August, 2014.

20. Allowing the CESTAT to entertain an appeal, preferred by an assessee after 6th August, 2014, would, therefore, amount to allowing the CESTAT to act in violation, not only of the main body of Section 35F but also of the second proviso thereto, and would reduce the command of the legislature to a dead letter."

6. The same view was taken by the Delhi High Court in Mark Splendour Nonwovens Pvt. Ltd. vs Deputy Commissioner Central Excise³ and the observations are as under:-

"2. Having heard the counsel for the petitioner and looking into the provisions of the Act, it appears that after the order-in-original was passed, on 28-2-2017, if any appeal is to be preferred by this petitioner before CESTAT, the mandatory pre-deposit amount is to be deposited, which is @ 7.5% of the duty and penalty amount.

² 2019(368) ELT 579 (Del)

³ 2019 (368) ELT 285 (Del)

3. Now, after the amendment to Section 35F, as amended in 2014, the waiver applications cannot be preferred because the statute itself has waived either 90% of the amount or 92.5% of the amount, meaning thereby that it is now compulsory for the appellant preferring appeal before the CESTAT to pre-deposit 7.5% or 10% of the duty amount and the penalty amount, as the case may be.”

7. Thus, as the Tribunal is not vested with any power to waive the requirement of pre-deposit, the application for waiver of pre-deposit stands rejected.

8. There is no prayer by the appellant for grant of time to make the deposit.

9. In such a situation, the appeal stands dismissed for non-compliance of the statutory requirement.

(Dictated and pronounced in the Court)

Justice Dilip Gupta
(President)

C. L. Mahar
(Technical Member)

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