CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI.

PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No.53944 of 2023 (SM)

[(Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-29-2022-2023 dated 14.09.2022 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore (M.P.)]

M/s. Torino Laboratories Pvt. Ltd. **Appellant**
Plot No.65/1, Sector-I,
Pithamur Distt.
Dhar, M.P.-454 775.

Versus

Commissioner of CGST & Central Excise **Respondent**
29, Bharatpuri, Administrative Area,
Ujjain (M.P.) 456 010.

APPEARANCE:

Dr. Darshan Kataria, Director of the appellant.
Shri Mahesh Bhardwaj, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 51157/2023

DATE OF HEARING/DATE OF DECISION :04.09.2023

BINU TAMTA:

The present appeal has been filed by the appellant challenging the Order dated 14.09.2022, whereby the Commissioner (Appeals) rejected the appeal solely on the ground that the assessee had not complied with the provisions of Section 35 F of the Central Excise Act, 1944, inasmuch as, they had not made the pre-deposit before filing of the appeal. The Commissioner (Appeals) has specifically noted that despite the suitable guidance provided to the appellant, the mandatory pre-deposit remains unpaid and, therefore, the appeal was dismissed on that ground itself. The plea by the appellant before me is that the portal was not functional and hence, they could not make the pre-deposit. He says that they have already made the requisite pre-deposit before this Tribunal and, therefore, have complied with the requirement of availing the opportunity of statutory appeal.

2. I, therefore, remand the matter before the Commissioner (Appeals) to consider the same on merits. Both the parties may submit written submissions and compilations, as required before the Commissioner (Appeals). The appeal is allowed by way of remand.

[Order dictated & pronounced in open court]

(BINU TAMTA)
Member (Judicial)

ckp