IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 51916 of 2015

[Arising out of the Order-in-Appeal No. 138(ST)/RPR/2014 dated 03.12.2014, passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Raipur]

Padamcharanguman Singh **Appellants**

Vs.

CCE, Raipur **Respondent**

Appearance:

Shri Krishna Mohan k Menon and Ms Dania Nayar, Advocates for the Appellants
Shri Vivek Pandey, AR for the Respondent

CORAM:

Hon'ble Mr. C L Mahar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)

Date of Hearing/ Decision: 08.08.2018

FINAL ORDER No. 52794 /2018

Per Rachna Gupta:

Present appeal is directed against the order of Commissioner (Appeals) dated 3.12.2014. The only point to be considered herein is whether the appeal of the appellant has been rightly dismissed in terms of provisions of 35 F of Central Excise Act, 1944 for want of the mandatory compliance of Circular number 984/8/2014 -CX dated 16.09.2014 requiring the mandatory pre-deposit of amount equivalent to 7.5% of the Service Tax involved or not.

2. We have heard Shri Krishna Mohal K Menon and Dania Nayar, learned Advocates for the appellant and Shri Vivek Pandey, learned DR for the department.

3. It is mentioned on behalf of the appellant that appellant in the present proceedings deposited Rs. 2,38,625/- vide Cheque No. 020917 dated 05.12.2012 drawn on IDBI account No. 049104000064877. It is submitted that while making the said deposit the assessee code of the appellant i.e. AWZPS936LST001 was incorrectly mentioned as AWZPS55936LST001. It is impressed upon that the said deposit tantamount to mandatory deposit to the extent of 7.5% of the Service Tax in view of Circular number 984/8/2014 -CX dated 16.09.2014. It is alleged that same has not been considered by the Commissioner (Appeals). Therefore, it is prayed that the impugned order be set aside.

3. While rebutting this argument, learned DR has mentioned that there are number of applications made for getting the mistake as mentioned herein to have been correct. The said procedure has not been complied with. There was no reason with the Commissioner (Appeals) to consider the mentioned ground as reasonable and justifiable ground. Thus, he has rightly invoked the

section 35F while dismissing the appeal. The present appeal is to be set aside.

4. After hearing both the parties and perusing the record, we are of the opinion that appellant has made the deposit of Rs.2,38,625/- which is 7.5% of the duty herein on 5.12.2012, it has nowhere been firmly denied that the aforesaid / mention payment has not been made by the appellant except that it being in wrong assessee code, nor for it to be considered as the payment under the said Circular. It is apparent on record that the intimation about mentioning of in-correct assessee code while making pre-deposit was given by the appellant to the department vide his letter dated 12.11.14. In the given circumstances, we deem fit for case to be remanded requiring the adjudicating authority below/ Commissioner (Appeals) to verify about the aforementioned deposited by the appellant and then to adjudicate the controversy involved.

5. Accordingly, we hereby allow the appeal by way of remand.

(dictated and pronounced in the open Court)

(C L Mahar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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