IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Principal Bench, New Delhi

COURT NO. IV

Excise Appeal No. 53183 of 2018 (SM)

[Arising out of the Order-in-Appeal No. IND-EXCUS-000-APP-108-17-18 dated 01/09/2017 passed by The Commissioner (Appeals), CGST & Central Tax, Indore (M.P.).]

M/s SACOS Indigo Pvt. Ltd. **Appellant**
90-91A, Sector – 1,
Industrial Area Pithampur,
Madhya Pradesh.

Versus

The Commissioner (Appeals), **Respondent**
Central Goods Service Tax, Central Excise
Post Box No. 10, Manik Bagh Road,
Manik Bagh Palace,
Indore (Madhya Pradesh).

Appearance

Shri Ashutosh Upadhyay, Advocate – for the appellant.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri C.L. Mahar, Member (Technical)**

Final Order No. 50513/2019 Dated : 22/03/2019

DATE OF HEARING : 22/03/2019.
DATE OF DECISION:22/03/2019.

Per. C.L. MAHAR :-

The facts in brief are that the appellant are engaged in manufacture and export of poly propylene, woven fabrics and sacks, jumbo bags falling under Chapter 63 of Central Excise Act, 1985, that during September – October 2013-2014 the appellants had cleared 63,000 + 90,000 pieces of woven sacks valued at Rs. 3,47,000/- and Rs. 12,96,550/- respectively to M/s

Neo Corp International Ltd. These goods were to be exported by the Neo Corp International Ltd. and appellant have cleared these consignments without payment of central excise duty, however, it was found that the goods have not been shown by them on the invoices as meant for export and no duty of central excise has been paid on the same. The procedure for clearance of goods for export without payment of central excise duty as prescribed under law has also not been followed by the appellant. A show cause notice dated 30 September 2014 came to be issued to the appellant wherein central excise duty amounting to Rs. 2,55,920/- have been demanded from them, penalties under Rule 25 and Rule 27 of the Central Excise Rules has also been invoked against the appellant. The penal provisions of Rule 26 of the Central Excise Rule has also been invoked against M/s Neo Corp International Ltd. who was recipient of duty free cleared central excise goods. The matter has been adjudicated by the learned Assistant Commissioner vide his order-in-original No. 25/AC/Demand/14-15 dated 15/06/2015 where under after confirmation of central excise duty amounting to Rs. 2,55,920/- same has also been appropriated from certain rebate amounts due to the appellant. The appellant have also been asked to make payment of Rs. 35,489/- towards interest leviable on the duty forgone under Section 11AA/11AB of the Central Excise Act, 1944. A penalty of Rs. 2,55,920/- have also been imposed on the appellant under Rule 25 and a penalty of Rs. 5,000/- has also been imposed under Rule 27 of Central Excise Rules, 2002. It is also important to note that a penalty of Rs. 2,55,920/- has also been imposed under Rule 26 of the Central Excise Rules.

2. The appellant have approached the Commissioner (Appeals) against order-in-original and the learned Commissioner (Appeals) vide his order dated 01/09/2017 has rejected the appeal of the appellant on the ground that the proper pre-deposit as required under Section 35 F (i) of the Central Excise Act, 1944

has not been made by the appellant. The learned Commissioner (Appeals) has observed as under :-

> "As regards to mandatory pre-deposit of 7.5%, I find that the total penalty in this case was Rs. 2,55,920/- + Rs. 2,55,920/- + Rs. 5,000/- Total Rs. 5,16,840/-. So the amount of pre-deposit which is required to be paid is Rs. 38,763/- but the appellant paid only Rs. 19,569/- and thus the pre-condition of payment of mandatory pre-deposit under Section 35 F (i) of the Central Excise Act, 1944 not fulfilled".

3. And accordingly the Commissioner (Appeals) has rejected the appeal of the appellant and the appellants are before me against the above-mentioned order-in-appeal.

4. The learned Advocate has taken me through the records of the appeal from the stage of show cause notice to the order-in-appeal. We find that vide the order-in-original dated 15/06/2015 an amount of Rs. 35,489/- has been confirmed against the appellant on account of the recovery of interest, a penalty of Rs. 2,55,920/- have been imposed under Rule 25 of Central Excise Rules, 2002 and a penalty of Rs. 5,000/- have also been imposed under Rule 27 of Central Excise Rules, 2002 and thus for the purpose of calculation of the pre-deposit amount, the penalties i.e. of Rs. 2,55,920/- + Rs. 5,000/- need to be considered and an amount equivalent to 7.5% of these penalties need to be deposited before filing an appeal before Commissioner (Appeals). The amount which need to be deposited as per the requirement of Section 35 F (i) comes to Rs. 19,569/- which admittedly have already been deposited by the appellant. The amount of the penalty of Rs. 2,55,920/- if readwith the show cause notice has actually been confirmed against M/s Neo Corp International Ltd. which is a notice No. 2 to the show cause notice and who is not before the Commissioner (Appeals) and, therefore, this amount

cannot be included in the amount of penalties imposed against the appellant themselves for determination of mandatory pre-deposit amount.

5. In view of above facts, I feel that a proper compliance of Section 35 F (i) regarding pre-deposit have already been complied with by the appellant and, therefore, I set aside the impugned order-in-appeal and remand back the same to the Commissioner (Appeals) to consider the appeal on merits in this case. Taking the amount of Rs. 19,569/- which have admittedly already been deposited by the appellant as the proper compliance of the requirement of the pre-deposit.

6. The appeal is disposed off accordingly.

(Operative part of the order pronounced in open court.)

(C.L. Mahar)
Member (Technical)

PK