IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal Nos. ST/292-293/2009

Arising out of Order-in-Appeal Nos. 34-33/ST/BBSR-II/2009 dated 09.09.2009 passed by the Commissioner (Appeals) Central Excise, Customs & S. Tax, Bhubaneswar.

1. M/s. Jagannath Enterprises
2. M/s. Konark Enterprises

….Appellant(s)

Vs.

Commissioner of Central Excise, Customs & S. Tax, BBSR-II.

…Respondent(s)

Appearance:
Shri L. Pangari, Advocate for the Appellant (s)
Shri S. S. Chattopadhyay, Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 24.01.2019

ORDER No. FO/A/75228-75229/2019

Per Bench:

The appellants herein are provider of C & F service. They were registered for payment of Service Tax, but the Department noticed that the appellants have short paid Service Tax during the period April, 2003 to December, 2004. Show Cause Notices were issued proposing demand of differential duty not paid by the appellants. These Show Cause Notices were decided by the adjudicating authority by issue of separate Orders-in-Original. These orders were challenged before the Commissioner (Appeals). The Commissioner (Appeals), passed separate stay orders directing the appellants to deposit certain amounts as pre-deposit in terms of Section 35F of Central Excise Act, 1944. Both the appellants failed to comply with the stay orders and consequently, the Commissioner (Appeals), dismissed the appeals before him by passing the impugned orders dated 09.09.2009.

2. At the time of consideration of the stay petition filed alongwith appeals before this Tribunal, there was a direction for payment of certain amounts as pre-deposits under Section 35F of the Act. This was complied by both the appellants and the delay in compliance of stay order has been condoned by the Hon'ble High Court of Cuttak. The appeals, accordingly, are taken up for decision.

3. Heard Shri L. Pangari, Ld. Advocate appearing for both the appellants. Revenue is represented by Shri S. S. Chattopadhyay, Ld. A. R.

4. After hearing both sides and perusal of records, we note that the Commissioner (Appeals) has dismissed the appeals before him for failure to comply with the pre-deposit orders under Section 35F of the Act.

5. He has not considered the issue on merit. Consequently, we set aside the impugned orders and remand the matter to the lower appellate authority to decide issue on merit after giving an opportunity to both appellants to plead their case.

(Dictated and pronounced in the open court.)

(V. PADMANABHAN)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Tushar Kr.