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

**Ex.Appeal Nos.137/10 & 391/10**

(Arising out of Orders-in-Appeal Nos.41/Kol.I/2009 dated 26.11.2009 & 16/Kol.I/2010 dated 02.03.2010 both passed by the Commissioner of Central Excise (Appeals), Kolkata.

M/s ISC Processors Ltd.
M/s Prime Thermal Pvt. Ltd.

Applicant (s)/Appellant (s)

**Vs.**

CCEx. Kol.I

Respondent (s)

Appearance:
Shri B. N. Chattopadhyay, Consultant for the Appellant (s)
Shri S. S. Chattopadhyay, Supdt. (AR) for the Revenue

**CORAM:**
**HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)**
**HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)**

Date of Hearing : 18.09.2018
Date of Decision : 18.09.2018

**ORDER NOs.FO/77276-77277/2018**

**Per Shri P. K. Choudhary :**

The present appeals are filed by the appellants against the Orders-in-Appeal Nos.41/Kol.I/2009 dated 26.11.2009 & 16/Kol.I/2010 dated 02.03.2010 both passed by the Commissioner of Central Excise (Appeals), Kolkata.

2. The ld.Consultant appearing on behalf of the appellants submitted that the Commissioner (Appeals) had dismissed both the appeals for non-compliance with his orders under Section 35F of the Central Excise Act, 1944, without going into the merit of the cases.

3. The D.R. for the Revenue fairly agrees with the above submissions made by the ld.Consultant for the appellants.

4. Heard both sides and perused the appeal records.

5. We find that the ld. Commissioner (Appeals) has not decided the issue on merit, but dismissed the same for non-compliance with his orders under Section 35F of the Central Excise Act, 1944. It is also seen from the record that on the earlier occasion, the appellant (in Ex.Appeal No.391/10) made a pre-deposit of Rs.25,000/- pursuant to the Tribunal's Order No.S/578/Kol/2003 dated 29.09.2003 and in respect of Ex.Appeal No.137/10, the appellant deposited an amount of Rs.4.00 lakhs mentioned in the Tribunal's Stay Order No.S/451/Kol/2012 dated 15.05.2012.

6. In view of the above, we of the considered view that the Commissioner (Appeals) should decide the matter on merits taking into account the above deposits as made by both the appellants. Accordingly, we set aside the impugned orders and remand the matters to the ld. Commissioner (Appeals) for deciding the issue on merits. Needless to mention, a reasonable opportunity of hearing be granted to the appellants to present their cases. Both sides are at liberty to produce evidences in their support.

7. Both the appeals are allowed by way of remand.

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

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| Sd/ | Sd/ |
| **(Bijay Kumar)** | **(P. K. Choudhary)** |
| **Member (Technical)** | **Member (Judicial)** |

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