IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Ex.Miscellaneous Application (ROA) No.76141 of 2019
And
Ex.Appeal No.803 of 2011

(Arising out of Order-in-Appeal No.76/Kol.VII/2011 dated 30.05.2011 passed by Commr. of Central Excise (Appeals I), Kolkata)

M/s Oscar Equipments Pvt. Ltd.
Bhasa, Diamond Harbour Road,
P.S. Bishnupur, Dist.-24 Parganas (S),
Pin-700064

Applicant (s)

VERSUS

CCEx. , Kol.VII
C.R.Building,
169, AJC Bose,
Kolkata-700014

Respondent (s)

APPERANCE :

Shri Raja Guha, Consultant for Appellant No.(2)
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

MA ORDER NO.76851/2019
FINAL ORDER NO.76005/2019

DATE OF HEARING : 13.08.2019
DATE OF DECISION : 13.08.2019

PER P.K.CHOUDHARY :

The appellant/applicant has filed this Miscellaneous Application for restoration of their appeal, which was dismissed by the Tribunal vide Final Order No.FO/A/75046/2014 dated 14.02.2014, for non-compliance of the pre-deposit under Section 35F of the Central Excise Act, 1944. It is mentioned in the Miscellaneous Application that they did not receive the copy of the Final Order dated 14.02.2014 passed by the Tribunal and it was received by them only on 08.03.2019. After receiving the Final Order, they have complied with the direction of the Tribunal and they have deposited an amount of Rs.3,20,000/- on 27.03.2019. A photo copy of the e-receipt is enclosed with the Miscellaneous Application.

2. I observe from the record that both the Orders (Stay Order & Final Order) dated 26.12.2013 & 14.02.2014 respectively were passed by the Tribunal ex-parte and the appellant claimed that they did not receive any certified copy of these orders.

3. In view of the submissions made by the Ld.Consultant for the appellant/applicant and the detailed reasons as mentioned in the Miscellaneous Application, the order dated 14.02.2014 dismissing the appeal is recalled and the appeal is restored to its original number.

4. In the result, the Miscellaneous Application (ROA) is allowed.

5. I observe that the Ld.Commissioner (Appeals) has not decided this appeal on merit and had dismissed the appeal before him for non-compliance of the pre-deposit under Section 35F of the Central Excise Act, 1944. Accordingly, with the consent of both sides, appeal itself is taken up for hearing. Since, the Ld.Commissioner (Appeals) did not decide the appeal on merit, it would be appropriate to remand the matter to him to decide the appeal on merit since the appellants have already complied with the Stay Order dated 26.12.2013.

6. In view of the above, I remand the matter to the Ld. Commissioner (Appeals) for deciding the issue on merits in accordance with law. Needless to mention, a reasonable opportunity of hearing be granted to the appellant to present their case. Both sides are at liberty to produce evidences in their support.

7. In the result, the Appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open court.)

Sd/
(P. K. Choudhary)
Member (Judicial)

mm