CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAI
KOLKATA

REGIONAL BENCH – COURT NO.II

Service TaxAppeal No. 76338 of 2014

(Arising out of Order-in-Appeal No. 30/BOL/2014 dated 14.07.2014 passed by the Commissioner of Central Excise (Appeals-III), Kolkata, 180, Santipally, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

M/s. Maheswari Enterprises, **: Appellant**
21, CLM Lane, Raniganj,
District – Burdwan (W.B.)

VERSUS

The Commissioner of Central Excise, **: Respondent**
Bolpur Commissionerate,
SIAN, Bolpur, Birbhum,
West Bengal – 731 204

APPEARANCE:

Shri. K. Kurmy,Advocatefor the Appellant

Shri. K. Chowdhury,Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO.76615/ 2019

DATE OF HEARING: 29.08.2019

DATE OF DECISION:29.08.2019

PER P. DINESHA :

By this appeal, the assessee-appellant is challenging the Order-in-Appeal dated 14.07.2014 passed by the Commissioner of Central Excise (Appeals-III), Kolkata.

2. Today when the matter was taken up for hearing, Shri. K. Kurmy, Ld. Advocate, appeared for the assessee-appellant and Shri. K. Chowdhury, Ld. Departmental Representative, appeared for the Revenue.

3. Ld. Advocate for the appellant submitted at the outset that the Ld. First Appellate Authority has, by a non-speaking order, dismissed its appeal only on the ground that the appellant had not fulfilled the conditional Stay Order dated 24.01.2014 since they have not made the pre-deposit as ordered therein.

4. *Per contra*, Ld. A.R. for the Revenue while supporting the findings in the impugned order, submitted that the Stay Order dated 24.01.2014 was passed directing the appellant to make pre-deposit, which the appellant having not done, no interference is called for.

5. We have considered the rival contentions and have gone through the impugned order.

6. The Ld. First Appellate Authority has dismissed the assessee's appeal only for want of pre-deposit; there is no finding on merits anywhere in the impugned order. We also note that the Stay Order dated 24.01.2014 has become final with the assessee-appellant not challenging the same further.

7.1 In view thereof, we are of the considered opinion that the ends of justice would be met if the appellant is directed to make a pre-deposit of 7.5 % of the duty amount before the Ld. First Appellate Authority and thereafter, the Ld. First Appellate Authority may proceed to take up the matter for disposal on merits.

7.2 It goes without saying that the Ld. First Appellate Authority shall dispose of the appeal on merits subject to the assessee making the pre-deposit of 7.5% of the duty amount, after granting reasonable opportunities to the assessee. All the contentions are left open. We refrain from passing any order on merits as the Ld. First

Appellate authority has not given any findings on merits in the impugned order.

8. The appeal is therefore treated as allowed by way of remand with the above directions.

(Operative part of the order pronounced in open court)

SD/
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

SD/

(P. DINESHA)
MEMBER (JUDICICAL)

Sdd