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

REGIONAL BENCH – COURT NO.2

Ex.Appeal No.75613 of 2019

(Arising out of Order-in-Appeal Nos.122-123/Kol.III/2018 dated 12.09.2018 passed by Commr. of Central Excise (Appeals I), Kolkata)

M/s Ganapati Laminators & Packages Pvt. Ltd.
Muragachha,
P.O. Jugberia, P.S. Khardah,
Dist.-24 Parganas (North),
Pin-743178

Applicant (s)

VERSUS

CGST & Excise, Kolkata North
180, Shantipally,
Rajdanga Main Road,
Kolkata-700107

Respondent (s)

APPERANCE :

Shri N. K. Chowdhury, Advocate for Appellant No.(2)
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

WITH

Ex.Appeal No.75628 of 2019

(Arising out of Order-in-Appeal Nos.122-123/Kol.III/2018 dated 12.09.2018 passed by Commr. of Central Excise (Appeals I), Kolkata)

Mr. Vijay Kumar Gupta, Director
Vill.-Muragachha,
P.O. Jugberia, P.S. Khardah,
Dist.-24 Parganas (North),
Pin-743178

Applicant (s)

VERSUS

CGST & Excise, Kolkata North
180, Shantipally,
Rajdanga Main Road,
Kolkata-700107

Respondent (s)

APPERANCE :

Shri N. K. Chowdhury, Advocate for Appellant No.(2)
Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.76006-76007/2019

DATE OF HEARING : 13.08.2019
DATE OF DECISION : 13.08.2019

PER P.K.CHOUDHARY :

This is second round of limitation before the Tribunal. I find in the earlier round that the Tribunal had passed the following Orders :

> *"5. Keeping in view the facts and circumstances of the case and the undertaking given by the appellants, the appellants are directed to deposit an amount of Rs.35,500/- (Rupees thirty five thousand and five hundred only) within a period of four weeks. On deposit of the above mentioned amount, pre-deposit of remaining amount of duties and penalties is waived.*
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> *6. The Commissioner (Appeals) dismissed the appeals for non-compliance with the provisions of Section 35F of the Central Excise Act, 1944 as the appellant failed to comply with the condition of the stay order. As discussed above, as the appellants undertake to deposit an amount of Rs.35,500/- within a period four weeks, therefore, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide the appeals afresh on merit, on showing the deposit of the above mentioned amount and after affording an opportunity of hearing to the appellants. Both the appeals are disposed off by way of remand and the stay petitions are disposed off accordingly."*

2. Subsequently, the appellant complied with the order of the Tribunal dated 20th December, 2010. However, there was some communication gap in intimating this compliance report with the lower appellate authority and the Ld.Commissioner (Appeals) vide the impugned order, again dismissed the appeal before him for non-compliance of the Tribunal's Order dated 20th December, 2010 without going into the merit of the case.

3. In these circumstances as stated above, I find that it would be appropriate to remand the matter again to him to decide the appeals on merit without insisting on any further pre-deposit.

4. In view of the above, I remand the matters 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 appellants to present their case. Both sides are at liberty to produce evidences in their support.

5. In the result, the Appeals filed by the appellants are allowed by way of remand.

(Dictated and pronounced in the open court.)

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

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